

THE HIGH COURT

[2009 No. 2615 S]

BETWEEN

TURVEY BUSINESS PARK LIMITED

PLAINTIFF

AND

LEO BENTLEY AND SUSAN BENTLEY

DEFENDANTS

NOTE OF THE EX-TEMPORE RULING of the High Court (Hogan J.) which was delivered on the 29th July, 2011.

1. I have already given a written judgment in this matter and the principles set out in that judgment form the basis for this latest supplementary ruling. There are four matters for me to decide.

(a) Whether the 2009 Certificate was properly certified.

2. I am satisfied that the 2009 certificate was properly certified. Counsel for the defendants, Ms. Moriarty, argued that it was not and she advanced that argument for a number of essentially technical reasons. For my part, I would rather apply the principle contained in my earlier judgment. The certificates do not require the same degree of strictness as might be required in the case of, for example, a search warrant or where there is an application made for the release of a prisoner under Article 40 under the Constitution. I am satisfied that the 2009 certificate has been properly certified in the manner envisaged by the lease and that there is, accordingly, a liability on the part of the defendants in the sum of €8,376.84.

(b) The payment of €4,000.00

3. With regard to this payment of €4,000 in September, 2009 I am going to adopt a *via media* as between the parties. It is plain from the evidence that the €4,000 was principally a demand in respect of a pro-rata payment from the defendants in respect of an insurance premium for the complex. Mr. Bentley was asked in 2009 to pay €4,000 on the basis that, if he did not, there would be no money to pay the insurance premium. It is also true that the actual level of the premium was slightly less than €2,000 leaving a credit of some €2,000 in favour of Mr. Bentley. I do not think that the principle in *Re Footman Bower* applies in that situation. So far as the €4,000 is concerned, the principle would be applicable if it were to be hypothecated in respect of the exact amount of the insurance premium. But since the insurance premium only came to approximately €1,900, there can be no question of a direct hypothecation of the sum in this fashion.

4. I accordingly propose to allocate €1,900 in respect of the insurance premium payable in September, 2009 and, correspondingly, allocate the remaining €2,100 to the oldest debt on the 2007 account.

(c) Interest

5. As far as the payment of interest is concerned, the terms of the lease might have been clearer. While there are a number of possibilities open, it seems to me the most sensible construction is to say that interest runs from the date of demand in general, but one must also allow reasonable period of 28 days for payment. I will, accordingly, rule that interest runs from the date of 28 days from the date of first demand.

(d) The Appropriate Plaintiff

6. It is clear from the terms of the lease that the lessor -lessee are joined together and effectively treated as one. The defendants by their course of dealings are accordingly estopped from raising this point. I am accordingly treating Turvey as the appropriate entity which is entitled to take these proceedings. I do not overlook the fact that Mr. Bentley is concerned with and dissatisfied with the level of service supplied by the plaintiff. I express no views on the merits of that argument but any remedy which he might have does not arise here. He has an alternative remedy. I note that the Supreme Court decisions in *Walek & Co. KG v. Seafeld Gentex* [1978] I.R. 167 and *Prendergast v. Biddle* (1955) are in the same vein. In the case of demand for liquidated debt, it cannot be set off as against a generalised claim of this kind. This must be ventilated in separate proceedings. I am not inviting Mr. Bentley to do this, but it would be at variance of the nature of summary proceeding to allow him to set off any sum due by reference to a generalised and as yet unascertained claim of this kind.

Matters arising from the Judgment

7. Counsel for the plaintiff asked for clarification as to whether the interest ran from the 1st January each year. The court stated in response that the date of demand is the 1st January each year and the debtor is given 28 days to pay. Interest is due on the estimated amount.

8. Counsel for the defendant asked for clarification as to whether the interest is due on the estimated or certified amounts where the estimated amount has in some instance been almost twice the certified amount. The court stated that there may be somewhat unsatisfactory but this is what the lease envisages and that it would have to be interpolate words into the lease for the contrary argument to be accepted. The solution proposed is not perfect but it appears to be the best option. The interest runs on the estimated sum from 28 days from the 1st January each year.

9. The matter was adjourned to 12th October, 2011, so that the parties could agree the figure on interest based on these findings and to deal with the issue of costs..