

THE HIGH COURT

2004 934 S

BETWEEN

CROHAN O'SHEA, SEAN FITZPATRICK AND O'SHEA HOMES LIMITED

PLAINTIFFS

AND

LYNCH FREIGHT (KILMALLOCK) LIMITED

DEFENDANT

Judgment of Mr. Justice de Valera delivered on the 20th day of January, 2009.

At all times material hereto the plaintiffs were the legal and beneficial owners of Unit 16 (formerly Site 16), Park West, Gallanstown, County Dublin, which they had leased from Airscape Limited and Park West Management (Dublin) Limited.

The defendant is a limited liability company and at all material times hereto occupied these premises by a sub-lease dated the 3rd April, 1998.

This sub-lease contained, *inter alia*, covenants on the part of the defendant to:-

- (a) pay for services (including electricity, oil, gas and water) and
- (b) insurance premiums as defined in paragraphs 2.2 and 3.1 of the said lease.

The plaintiffs' claim herein is for the payment of sums due by the defendant to the plaintiffs under these headings.

It is to be noted that the plaintiffs undertook, at the commencement of these proceedings following a preliminary objection by the defendant, to stamp this sub-lease and to pay all arrears arising thereon.

Uncontroverted evidence was given that sums amounting to €98,814.41 calculated on the basis of:-

- (a) Service charges from the 1st January, 1991
to the 31st December, 2002:- €54,292.55.
- (b) Insurance premiums 1st January, 1999
to the 31st December, 2004:- €44,521.86,
- Total:- €98,814.41

These amounts, having already been discharged by the plaintiffs pursuant to the head lease to the principal lessor, Airscape Limited, in accordance with the said lease.

It is common case that the defendant herein has not paid the plaintiffs or any one of them, these amounts as required by the sub-lease and evidence was given by Mrs. Joan Lynch of these demands having been made – in respect of the demands for insurance payments receipts of the demands is not denied in the defence.

Evidence was given in this matter over a period of three days (only a short period on the third day) involved giving of evidence in relation to the guarantee. While this evidence could have been completed on day two of the hearing this was held over on assurances by the defendant that a witness, a Mr. Birmingham, would attend. Mr. Birmingham did not attend and an unnecessary day's costs were incurred because of this.

The preponderance of evidence on this matter was given over to the adequacy of the services provided, which adequacy was disputed by the defendant and the propriety of the insurance cover obtained and payments made.

On these two grounds I am satisfied that the services contracted for were, to a very large extent, provided and where there was any deficiency in such service or services, the plaintiffs, through Mr. O'Shea, made all reasonable efforts to have such deficiency corrected or ameliorated. Any deficiency which may have occurred was not, in my view, sufficient to justify the defendant in refusing payment therefore.

Similarly I am satisfied that the payments made by the plaintiffs for insurance cover were proper and appropriate and as already noted no expert evidence was called by the defendant to contradict this view.

I am therefore satisfied that the charges for services and the insurance premiums are properly due by the defendant to the plaintiffs in the amount of €98,814.41.

