

IN THE HIGH COURT OF JUSTICE

Appeal Ref CH 2024- 000159

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

CHANCERY APPEALS (ChD)

ON APPEAL FROM THE ORDER OF HHJ BLOOM DATED 3 JULY 2024 J00CL541

AND ON APPEAL FROM THE ORDER OF RECORDER GIBBONS ON 9 JULY 2024

IN THE COUNTY COURT AT CENTRAL LONDON

BETWEEN

(1) ADHAM ALBALOUS

(2) HISHAM SEIFEDDINE BASHKAR

Claimants

and

(1) WLP TRADING & MARKETING LTD

(2) QWLET LTD

Defendants

AGREED NOTE OF JUDGMENT

[DAMAGES]

[This note of judgment has been approved by counsel for both parties]

This is a claim for damages for unlawful eviction made by two claimants against, originally, two defendants - Both defendants are limited companies. The first defendant company is the direct landlord of the claimants. The second defendant company was a managing agent for the first defendant. The second defendant has played no part in this hearing and has indeed been dissolved.

Both claimants were tenants at a property known as 162 Willesden Lane, London, NW6 7PQ. The first claimant had a tenancy of a property known as Flat E which was a 1 bed basement flat in that building. The second claimant had a tenancy of a property known as Flat 6 which was a studio flat on top floor.

Both tenancies were assured shorthold tenancies and therefore liable to be terminated under section 21 Housing Act 1988.

The claim before the court arises from the manner with which the first defendant purported to terminate these tenancies - put very simply by unlawfully evicting both the claimants from their respective properties.

The first defendant undertook a number of acts which amount to either part of the eviction unlawfully or it is said was harassment of each of them.

I don't need to go through them in detail. They are summarised very helpfully for me in a skeleton argument provided by Mr Marsh Hyde who appears as counsel for for the first claimant and for the second claimant.

But summarising it there were a number of actions that took place during the course of February 2022 when actions were done such as disconnecting electricity and water at the premises, damaging a gate, and smashing up an electrical cupboard and causing damage and stripping Flat E of doors and windows etc. to make it uninhabitable for each claimant. There also appears to have been some physical assault of some other tenant in Flat 2 in the same building.

The first defendant then proceeded to carry out works at the premises by way of demolition as part of an apparently large scale development of the site for which planning permission had been granted.

Both these claimants brought these proceedings and sought in the initial stages injunctions against the first defendant preventing it undertaking further work and to allow them to reoccupy the premises. There were a number of orders made for directions including an order for an expert report on the condition of the premises. In the event ultimately work had been done to such an extent that the premises were no longer capable of being occupied and on that basis that injunction was discharged.

The conduct of the first defendant throughout these proceedings has been egregious to the extent that we have today a situation where a few days before this hearing the first defendant was refused relief from sanctions for failing to comply with an order made in March for specific disclosure. The result has been that Mr Armstrong had a rather limited role because the defence in each case has been struck out and the first defendant debarred from defending these proceedings. I have therefore heard submissions from counsel for first and second claimant on the various heads of damages which it is said the Court should award each of these claimants for the harassment and unlawful eviction that each of them underwent.

It appears that the consequences for the claimants of the first defendant's conduct were particularly damaging and both of the claimants underwent a period of many weeks when they had no accommodation and their personal possessions had been disposed of. There is as part of this claim a head for trespass and unlawful eviction which in the case of the first claimant extended for 200 days to 1 September 2022 and in the case of the second claimant extended for 179 days to 16 August 2022 when the court made possession orders.

I have to say at this stage that the first defendant only sought a possession order in April 2022 in other words quite a number of weeks after the 1st Defendant had ejected the claimants and commenced its building work.

The first defendant has submitted to me that despite the fact that the first defendant is debarred from defending the case the Court can have regard to the Defence, as it were, to set the scene and to clarify matters in the claim. It to me the only matter on which the Defence impinges on is one that doesn't help the first defendant at all.

One of elements of the Defence is one whereby the first defendant states each of the claimants had surrendered their tenancies in January and left the premises and moved out taking their goods with them. That always was it seems to me an unsubstantiated allegation. It was never explained how the Claimant's surrendered their tenancy and indeed the evidence adduced from the first defendant appeared to contradict that they had surrendered before any of the works were commenced. There was certainly not any evidence or a hint of evidence to suggest that any form of written agreement to surrender or any surrender of keys or any other fact which could amount to such surrender. The first defendant being a professional landlord one would have expected that they would be well aware of the position where a tenant is in occupation under a tenancy agreement.

Insofar as individual claimants are concerned both have been characterised as being vulnerable by reference to their medical conditions which are alluded to in their witness statements. In the case of the first claimant he suffered from high blood pressure and diabetes and also sciatica and lumbago. The second claimant had high blood pressure and depression for which he was in receipt of medication. The first claimant was in one sense saved from the worse experiences of the actions of the 1st Defendant which are said to amount to harassment because he was sadly abroad attending the funeral of his sister which took up his time from January 2022 until he returned on 18 February 2022. When he did return, he found that the whole building had been stripped including his flat of all his personal property which had been disposed of.

On 28 February 2022 injunctive relief was granted and the first claimant attempted to regain access to the flat but was refused. He had already been served with a section 21 notice.

As far as the second claimant was concerned, he was served with a section 21 notice requiring vacation of the premises in January. The second claimant thereafter suffered as I've already alluded to by a number of acts that were in my judgment clearly calculated to secure his vacating the property: Disconnection of water and electrical supplies on the 4th February, breaking a gate 2 days later, tearing out electrical wiring on 17th February, assault on another tenant on 18th February. On the 19th February the 2nd claimant found the premises empty and damaged with work already under way to demolish property and someone on the premises with a guard dog. And so it proceeded.

It is clear to me that the first defendant behaved in a way that was calculated to harass and intimidate both claimants to secure their leaving of the property and indeed to unlawfully

evict them. Those actions give rise to claims for damages under a number of headings which I have been addressed this morning at considerable and very helpful length.

I'll deal with each of those headings in turn.

First, I deal with compensation for trespass and unlawful eviction. I have been very helpfully shown a schedule of cases which have been decided in various county courts including this court which deal with similar circumstances to the present and they provide an illustration of the sorts of damages that are awarded under this heading.

All of these decisions are of the county court so not binding but it seems to me that unless there is a good reason to depart from the figures that were awarded in those cases this court should try and ensure a level of consistency between the various cases. What one gleams from this is that in general terms there is a basis for compensation which is arrived at by applying a nightly rate per day for the period over which claimant has been kept out of occupation.

Generally those rates are broadly between around £250 and £380 per day. One case which I've been referred to has £1200 per day when adjusted for inflation but that case is something of an outlier. It seems to me that taking into account the traumatic dispossession suffered by both these claimants as a result of the first defendant's conduct an appropriate rate is £375 per day applied to the first claimant's circumstances that is being out for 200 days until 1st September results in an award of £75,000.00 and in the case of the second claimant that is being out for 179 days to 16th August 2022 coming to £67,125.00

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This reflects the period up until the possession orders. I cannot see any reason to apply a different rate per day to each claimant that is to say to merit a finding of a difference across their two cases. Their circumstances are sufficiently similar.

I now turn to claim for harassment under the Protection from Harassment Act. I have already alluded to fact the first claimant was not privy to all the actions experienced by fellow tenants because he was away abroad in Syria from 18th January to 18th February. However when he did return, he was faced with the trauma of finding in effect his property torn apart and personal effects dissipated and he was subsequently refused ~~refused~~ readmission despite the imposition of an injunction requiring him to be allowed back into possession.

It follows from what I've said that I don't consider the first claimant has been victim of harassment to the same degree as the second claimant. But the second claimant has suffered harassments on various dates. These were each serious incidents calculated to dispossess the second claimant of the property.

Overall I find that the first defendant's conduct was particularly egregious. His actions and those on his behalf were a breach of section 1 of the Protection from Harassment Act as well as section 3 of the Protection from Eviction Act. The first defendant's agent was warned by

the local authority of the need to obtain a court order before possession would be granted. One would expect, as a professional landlord with a managing agent, the first defendant would know that and not need to be told. I have alluded to the first defendant claim that the tenancies were surrendered and there is no evidence whatsoever that was the case. Indeed in one of the witness statements of the second defendant, Mr Muntandher, does not cover surrender at all which suggests the claimants were still present on the premises after surrender is said to have occurred.

In my judgment this harassment is sufficient to place the appropriate amount of compensation into the mid band of the brackets provided for in *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ 1871 Those rates adjusted for inflation are between £10,823.53 and £32,470.59. I consider the claimants fall into that mid band; I do not think it can be said to have been a lengthy campaign as would have justified placing it into the top band.

However I assess the first claimant's damages as £18,000 and I assess the second claimant's damages at £28,000.

I turn now to the question of aggravated damages.

The test here is whether such damages should be awarded to reflect the aggravation of the injuries caused by the tort itself. Here on the evidence there has certainly been aggravation to vulnerability which had been pre-existing and is not directly compensated in a case of this sort. Aggravation is with the preexisting condition.

There is no medical evidence here but I am satisfied the claimants were clearly suffering. I have read *Mehta v Royal Bank of Scotland* (2000) 32 HLR 45 per Richard Southwell QC sitting as a High Court Judge at page 64 and it is clear that aggravated damages are compensatory rather than penal. That case quoted *Rookes v Barnard* [1964] A.C. 1129, HL(E), per Lord Devlin. I can take account of conduct under head. Here it was very clear what the 1st defendant's conduct and the motives were. The motive was to proceed with development of the land as soon as possible.

In *Mehta* Richard Southwell QC quotes the Law Commission report which identifies that examples of where such an award is made have been said to be "exceptional conduct" for this purpose including wrongful evictions. I am satisfied an award of aggravated damages would compensate for what is exceptional injury and in particular mental distress. In terms of assessment *Mehta* says that aggravated damages are unlikely to exceed conventional or ordinary damages and the total must not exceed "fair compensation for injury." Taking these factors into account and reflecting that *Mehta* is to a degree similar to this case in that the first defendant was motivated by profit and chose to ignore advice of the Local Authority the appropriate level of aggravated damages is £7,500 each

I turn to Exemplary Damages. *Mehta* says I "must exhibit moderation and not exceed public purpose and punishment and should not confer a windfall" on the first and second claimants.

To square any award of the nature contended by counsel goes beyond what conventionally can be sought. The Court has scant evidence of the likely profit to be gained by the first

defendant's conduct . In great part due to the first defendant's repeated failure to give the disclosure the court ordered. It seems to me that it would be dangerous to try and extrapolate too much from too little evidence.

What is clear however is that in terms of square meterage of the development alone was 5 times the size of the original property, bought for £2.145 million in 2018.

It was clear that it was a substantial development, it had a Community Infrastructure Levy ("CIL") calculated at some £500,000. I have to say the first defendant shows clearly more of its attitude as to what is right and proper by failing to pay the CIL and telling the Local Authority had started work in March and disputing the CIL which then resulted in proceedings pursuing payment of the original levy plus penalties.

It seems to me that taking into account the evidence I have, at the very least this development is likely to exceed the value of £10,000,000.00, 5 times the original purchase price and, in all likelihood, it may be considerably more.

I look at the level of compensation awarded so far under various heads and in relation to the first claimant that comes to £100,500 and in relation to the second claimant that comes to £102,500

It seems to me that the total exemplary damages that should be paid to each claimant £20,000.00

Each of figures will have the 10% *Simmons v Castle* uplift

There are two further elements to consider; the first is special damages.

I have looked at the schedules of special damages which appear eminently reasonable. I have no reason to doubt the claimants suffered as a result of all possessions being dissipated Each attempted to make genuine attempt to assess the loss following possession. No easy task – and involves a degree of guesswork. Nothing in schedules that seems unreasonable or stands out. I therefore award in full the amount claimed. For the first claimant £21,970.27 and for the Second claimant £22,380,03

Each claimant is also entitled to return of their deposits of £1200.00 and £1050.00 and there shall be an order in relation to that as well.

It seems only one matter remains that is in relation interest. I have not heard submissions on interest.

[discussion]

In relation to interest I shall award 4.5% on the General Damages, Aggravated Damages and Deposit from the date of issue which the parties shall calculate and agree for the minute of order to be provided. There shall be no interest awarded to date on the exemplary damages nor the special damages because interest has already been priced into those awards.

