THE HIGH COURT

HIGH COURT ON CIRCUIT

NORTHERN CIRCUIT

COUNTY OF DONEGAL

BETWEEN/

LONDONDERRY AND LOUGH SWILLY RAILWAY COMPANY LIMITED

Applicants
Appellants

AND

MAUREEN GILLEN

Respondent

JUDGMENT OF McCARTHY SITTING AS A JUDGE OF THE HIGH COURT

DELIVERED THE 7TH DAY OF MAY 1984

By indenture of lease dated the 8th of November 1956, the applicants hold certain lands and premises at Moville, Co. Donegal, at the yearly rent of £40 for a term of twenty years from the 1st May 1956. It is common case that, on the expiry of the lease, subject to compliance with the terms of the statute, the applicants would have been entitled to a new lease under the Landlord and Tenant Act, 1931. The 1931 Act was wholly repealed by the Landlord and Tenant (Amendment) Act, 1980, which came into force, by Ministerial Order,

on the 8th September 1980. By virtue of s. 11(3) of the 1980 Act any notice given under the 1931 Act would be treated as a notice under the corresponding provision of the 1980 Act and the provisions of s. 21 of the Interpretation Act, 1937 in respect of the continuance of pending proceedings and the preservation of existing rights and liabilities was unaffected.

Obtaining relief under the 1931 Act and under the 1980 Act requires certain procedural steps, one being of considerable significance - the service of notice of intention to claim relief under the Act, such notice to be served at different times, depending upon the nature of the expiring tenancy. In the instant case, under the 1931 Act, the notice had to be served not less than 3 months before the termination of the tenancy. No such notice was served then or at any time until after the repeal of the 1931 Act, when an appropriate notice under s. 20 of the 1980 Act was served on the 25th November 1981. The present application is under s. 83 of the 1980 Act which provides:-

> "Where a person fails to do any act or thing in the time provided for by or under this Act, the Court may, on such terms as it thinks proper (and shall unless satisfied that injustice would

be caused) extend the time where it is shown that the failure was occasioned by disability, mistake, absence from the State, inability to obtain requisite information or any other reasonable cause."

This section corresponds with s. 45 of the 1931 Act which provided as follows:-

"Whereby or under this Part or any of the foregoing Parts of this Act a period is fixed for the doing of any act or thing, the Court may, either before or after the expiration of such period, extend such period upon such terms as the Court thinks proper."

The applicants submit that s. 83 is a more liberal extension section than s. 45. It might well be argued that the detailing in s. 83 of the cause of failure restricts rather than expands the availability of the relief sought. An examination of the decided cases, to which I have been referred, and a list of which is appended hereunder, would appear to show a later readiness to indulge the careless and the inattentive as well as the ignorant rather than was the case in earlier years. The principle being applied under s. 45 does not appear to me to have varied between O'Neill v. Carthy (1937) and Wigoder v. Moran (1977) - the Court should grant the relief

when it would be just to do so, a principle not restricted, I think, to the law of landlord and tenant.

S. 83 of the 1980 Act may be said to have altered the emphasis. It prescribes that where it is shown that the failure was occasioned by disability, mistake, absence from the State, inability to obtain requisite information or any other reasonable cause, the Court shall unless satisfied that injustice would be caused extend the time.

The applicants here seek the relief wherever it may be obtained - either under s. 45 of the 1931 Act or s. 83 of the 1980 Act. The main thrust of the applicants' contention, as deposed to on affidavit, is that "the applicant company believed at all times that the applicant company were entitled to a new lease amd remained on in possession during the currency of negotiations which they believed were being carried out on their behalf by Messrs Dickson & McNulty (their solicitors) and at no time between consulting Messrs Dickson & McNulty by letter dated the 19th October 1977 and a trespass by the respondent was there any concern on the part of the applicant company that there would be any difficulties in respect of their possession of the said premises. I say and believe that if any tenancy is granted the result would be no more or less than what was

anticipated by the respondent or her predecessors in title and that if the applicants are prevented from applying for a new tenancy they will suffer heavy economic loss together with the economic loss already suffered to date by virtue of the forcible re-entry as aforesaid they having built up a goodwill while the respondent will be enriched by the unexpected windfall of vacant possession and to the extent of the improvements and erection of buildings carried out by the applicant company."

(In passing, I note that the applicant company did not avail of the "improvement" provisions of the 1931 Act). Under the 1931 Act, the due time for service of notice was not later than the 31st January 1976; the applicants did nothing until the 23rd November 1976 when Mr. Kevin Duddy, their accountant, called to the respondent "regarding the renewal of the lease of Moville Depot and she informed me that she had to confer with her sons before coming to a decision relating thereto". (Mr. Duddy's affidavit). Nothing further happened until the respondent wrote to Mr. Duddy on the 10th May 1977 asking for particulars of the rental; he called to her home on two occasions and wrote on the 8th August 1977 referring to the expiration of the lease and the anxiety of the applicants to

have the lease renewed and giving particulars of the rent. On the 18th October 1977 the respondent telephoned him and told him that she would not renew the lease. Mr. Duddy told his superiors who handed the matter over to their solicitors - in subsequent correspondence both the solicitors and the General Manager of the applicant company questioned whether or not "the game is worth the candle" meaning whether or not it was worth embarking on expensive legal proceedings to get a renewal of a lease of property which the applicants might not really require. Nothing further happened until, coincident with attending the District Court in Moville in June 1978, Mr. Dickson wrote to Mr. McCay, the General Manager, about the Moville Depot; nothing further until the respondent telephoned Mr. Dickson on the 3rd September 1980 "to sort out the position regarding this property for her". Again on the 20th October 1980, by which time the 1931 Act had been repealed, it was the respondent who moved again and telephoned Mr. Dickson stating "she would like you to write or telephone her as soon as you have any news for her as she is anxious about the matter". Mr. Dickson did, indeed, write to Mr. McCay after he took these telephone calls but, apparently, did not find it necessary or desirable to write to Mrs. Gillen, the

respondent, who, rather understandably, sought to recover her property, albeit by direct action in putting up a gate to keep the applicants out of the Depot, which she did in April 1981. It was not until November 1981 that any notice was served although, in the interval, other proceedings had been brought in the Circuit Court.

Counsel for the applicants has contended that the applicants remained in occupation within the meaning of s. 29 of the Act of 1980, that s. 20, subs. 2(d) of that Act, effectively, gave until the 8th March 1981, the specified period of six months for the applicants to serve notice of intention to claim relief under the new statute and that, negotiations having begun between Mr. Duddy and Mrs. Gillen, once the matter had been handed over to the applicants' solicitors, as it was in October 1977, that the failure of the solicitors to pursue the matter more actively or to produce a satisfactory result in some form was not to be visited upon the applicants. The relief is sought either as a preserved right remaining under s. 45 of the Act of 1931 or by the combined operation of s. 29 and s. 80 of the Act of 1980.

I reject the argument. Under the 1931 Act, which was in full

(8)

life and vigour at the time of the expiration of the term granted by the lease, the notice of intention to claim relief should have been served three months before its expiration; the applicants did nothing until November 1976 and then, indeed, little enough. They were stirred into action, not of their own volition, but by a query from Mrs. Gillen; they responded, not to Mrs. Gillen, but to their solicitors who copied their example by doing nothing until a chance visit by Mr. Dickson to Moville. Again neither they nor their solicitors did anything for over two years and it is likely enough that but for Mrs.Gillen's understandable impatience and positive action in seeking to enter upon her own property, they might still be doing nothing. The Act of 1931 ceased to exist as of the 8th September 1980. Suppose that some time in 1980, the applicants had brought a like application under s. 45 - I question its chances of success; are they now to be given, in every sense of the phrase, a new lease of life by the coming into force of the Act of 1980. I do not find it necessary to express a view as to the argument advanced under s. 29 of the Act of 1980; I am content to judge the matter on the basis that that argument was well founded. Be it so, however, the facts here are far from bringing the case within the

ambit of the principle underlying the decisions to which I have referred. I recognise the force of an argument based upon the demands of justice but I do not subscribe to the view that justice necessarily demands indulgence merely on the basis that no material injustice is done to the other party. Further, I cannot but think that public policy is ill-served by affording a general absolution to the careless and inattentive tenant on an argument that no injustice is caused; still less, in my view, would public policy be served by such an absolution being given to a careless or inattentive legal advisor while his prudent and careful colleague wonders if "the game is worth the candle". In the present case, the applicants, themselves, no doubt a company with a long history of dealing in matters of landlord and tenant, fail at the start; the damage had been done before they consulted their solicitors at all. If s. 83 were to apply, I cannot find any reasonable cause to have been shown as occasioning the failure to serve the notice at whatever was the appropriate time and, therefore, the submission based on it fails in limine.

As to the argument based upon unexpected enrichment - the windfall I doubt if Henchy and Parke JJ. (in Wigoder's case) intended

to propound any principle that a "windfall" produced by the combined effect of a statute and the neglect of others to pursue their legal rights creates some legal remedy based, not upon unjust, but rather, fortuitous enrichment.

I dismiss the application.

APPENDIX

1. O'Neill v. Carthy (1937) I.R. 580.
2. Bridgeman v. Powell (1937) I.R. 584.
3. Hayes Conyngham & Robinson Ltd. v. Kilbride (1963) I.R. 185.
4. Meaney v. Maguire (unreported - 17th December 1970).
5. Linders v. Dublin Corporation (unreported - 16th December 1970).

These two latter cases were determined by George Murnaghan J. and I append hereto a photocopy of the relevant pages the book of the Registrar Mr. MacDomhnaill, in which the judgments are recorded, for which information I am indebted to Ms. Nuala McLoughlin, Registrar of the High Court.

6. Linders Garage (Chapelizod) Limited v. Syme & Anor. (1975) I.R. 161.

7. The Grey Door Hotel Company Limited v. Pembroke Trust Limited (unreported - 29th January 1976), a considered judgment of Hamilton J., which judgment is attached hereto.

8. H. Wigoder & Company Limited v. Moran & Anor. (1977) I.R. 112.

THE HIGH COURT

239

THE GREY DOOR HOTEL COMPANY LIMITED

-v-

PEMBROKE TRUST LIMITED

Judgment

HAMILTON J.

Delivered on the 23rd day of January 1976.

This is an appeal brought by the applicant against the refusal of the Circuit Court to extend the time for service of a notice of intention to claim relief pursuant to the Landlord and Tenant Acts 1931 to 1971 seeking a new tenancy in respect of the tenement "All and Singular the flat comprising the basement and the return room on the ground floor in the premises 22 Upper Pembroke Street in the city of Dublin" which order was made on the 3rd day of March 1975.

The said premises were held by the applicant pursuant to an agreement in writing made the 1st day of April 1965 between Pembroke Trust Limited the respondents herein of the one part and the Grey Door Hotel Company Limited, the applicant herein of the other part, whereby it was agreed that

"(1) the landlord shall let and the tenant shall take all and singular the flat comprising the basement and the return room on the ground floor in the premises 22 Upper Pembroke Street in

the city of Dublin (hereinafter called "the demised premises") to hold for a term of 10 years from the 1st day of January 1965 paying therefor the yearly rent of £200 payable by equal quarterly payments of £50 each in advance on the 1st day of January, the 1st day of April, the 1st day of July and the 1st day of October in each year, the first of such quarterly payments to be made on the execution of this agreement."

The term granted by the said agreement expired on the 31st day of December 1974.

By letter dated the 9th day of January 1975 written on behalf of the respondent company by the secretary thereto and addressed to the applicant herein the respondent company pointed out that:-

"As the term of your lease expired on 31st December 1974 possession is required and we shall be glad if you would make arrangements to give us possession as soon as possible".

It is quite clear that the term of years granted by the said agreement dated the 1st day of April 1965 had expired on the 31st day of December 1974.

Section 24 (1) of the Landlord and Tenant Act 1931 provides that:-

"No claim for relief under this Act shall be maintained unless the claimant shall, within the time hereinafter mentioned, have served on the person against whom such claim is intended to be made

notice (in this Act referred to as a notice of intention to cla
relief) in the prescribed form of his intention to make such clai

Sub section 2 of the said section provides that:-

"Every notice of intention to claim relief shall be served within whichever of the following times is applicable that is to say:-

(b) in the case of a tenancy terminating by the expiration of a term of years or other certain period or by any other such event, not less than 3 months before the termination of the tenancy."

It is also quite clear that no such notice of intention to claim relief was served by the applicant herein on the respondent within the time prescribed by section 24 of the Landlord and Tenant Act 1931 or at all.

For this reason the applicant herein brought this motion seeking an order extending the time to serve such notice of intention claiming relief under the Landlord and Tenant Act 1931.

This motion falls to be considered under section 45 of the 1931 Act which provides as follows:-

"Whereby or under this part or any of the foregoing parts of this Act a period is fixed for the doing of any act or thing, the Court may, either before or after the expiration of such period, extend such period upon such terms as the Court thinks proper."

The circumstances in which an order extending time under the provisions of section 45 of the Act should be made have been

considered in many cases and the attention of the Court has been directed to the decisions in O'Neill .v. Carthy (1937 Irish Reports page 580) and Bridgeman .v. Powell (1937 Irish Reports 584), Havens, Cunningham and Robinson Limited .v. Kilbride (1963 Irish Reports page 185) and Linders (Chapelized) Limited .v. Syrs and Another (1975) I.R.161 delivered on the 30th day of July 1974).

In the course of his judgment in O'Neill .v. Carthy Sullivan P. stated at page 581

"In support of the application we have been referred to cases in which Courts in this country and in England have considered similar applications and discussed the grounds on which such application should be granted. So far as I can see the only principle that can be gathered from the decisions in these cases is that an extension of time should be granted whenever the Court is satisfied that it would be just to do so".

In the course of his judgment in Bridgeman .v. Powell Johnson J. stated at page 590 that:-

"It seems to me that the statutory power given to the Circuit Court by section 45 does not enable the Judge to exercise his statutory power in the matter casually, capriciously, lightly or even good-naturedly and ... , a Court is not entitled to extend the time for any reason other than the desire to do justice between the parties. .. There must be some special circumstances or

reasons to justify a Court in exercising such a power - some special circumstances such as to justify themselves as reasonable in the opinion of the Judge. Further, such exercise of discretion should not be prejudicial to the landlord."

In the course of his judgment in Linders (Chemilined) Limited .v. Syne and Another the present Chief Justice stated that:-

"The fundamental consideration is whether the interests of justice in the circumstances of this case require that the relief sought be granted. The Landlord and Tenant Act 1931 is entitled "an Act to make provision for the further improvement and amelioration of the position of tenants...." Under such an Act when the Court is given powers to extend time provided by the Act for the service of statutory notice I think the Court should do so unless a clear injustice would be caused."

The order sought and appealed from in this case is a discretionary order and in this connection Davitt P. in the course of his judgment in Hayes, Cunningham and Robinson .v. Kilbride, having reviewed the authorities O'Neill .v. Carthy and Bridgeman .v. Powell stated that:-

"I am bound by these authorities; and in my opinion, they decided that an order made in pursuance of section 45 of the Act is a discretionary order which should not be interfered with unless the Circuit Judge has erred in principle, as, for instance, by allowing his discretion to be influenced by something

which it was unreasonable to take into account. In my opini

before the Circuit Judge can exercise his discretion to grant an extension of time he must be satisfied that there are special circumstances which, having regard to the interests of both parties, render it just that the time should be extended. I take the view that this Court should not interfere with the Circuit Judge's order unless clearly of opinion that there were no reasonable grounds for considering that such special circumstances did in fact exist."

Accepting as I do the statement of the present Chief Justice in the course of his judgment in Lindsay (Chandlery) Limited -v- Syms and Another that

"The fundamental consideration is whether the interests of justice in the circumstances of this case require that the relief sought be granted" and

"Under such an Act when the Court is given powers to extend time provided by the Act for the service of statutory notices I think the Court should do so unless a clear injustice would be caused." I take the view that I am entitled to consider the matter de novo and decide whether the circumstances of this particular case require that the relief sought be granted.

The circumstances in this case are set out in the affidavits of Paul W. Keogh, the Solicitor for the applicant, Francis B.

Farrelly, a Director of the applicant company, Austin F. Redd a Director of the respondent company and Desmond O'Toole, an Auctioneer in the firm of Osborne, King & Kegran and the exhibits therein referred to.

It is always difficult to ascertain the exact position when the matter is dealt with by affidavit but it appears from the affidavit of Mr. Reddy, the Director of the respondent company that

there were some preliminary negotiations in 1973 between the applicant company and the defendant company towards the purchase by the applicant company of the defendant company's interest in the premises number 23 Pembroke Street.

It is alleged by him that these negotiations had already come to an end by the end of 1973 and that the only negotiations in progress in 1974 were based on the terms of the letter dated the 3rd day of April 1974 written by Mr. Farrelly on behalf of the applicant company to Mr. Reddy on behalf of the defendant company and that they relate to the possible purchase by the respondent company of the applicant company's interest in the premises in the basement of number 22.

Subsequent to the receipt of this letter dated the 3rd day of April 1974 Mr. Reddy states that by letter dated the 6th day of May 1974 he instructed the respondent company's auctioneers,

Messrs. Osborne, King & Hogran to negotiate with the applican company for the purchase of its premises in number 22.

Such negotiations as persisted after that date were conducted by Mr. O'Toole of the firm of Osborne, King & Hogran on behalf of the respondent company.

Mr. O'Toole in his affidavit stated that after receiving instructions to negotiate on behalf of the respondent for the purchase of the applicant's interest in the premises 22 Upper Pembroke Street Dublin he telephoned Mr. Farrelly to make an appointment to inspect the property and that he did inspect the same on the morning of the 16th day of May 1974.

He further states that towards the end of May 1974 he telephoned Mr. Farrelly and had a discussion with him about the price he was asking for his interest and that when he (Mr. Farrelly) named a price he informed him that it was too high.

He also averred in his affidavit that he informed Mr. Farrelly that he would take instructions and that if the respondent were further interested he would get in touch with him on Wednesday or Thursday of the first week in June.

He alleges that he informed Mr. Farrelly that he would only get in touch with him "if our client was interested". He states in his affidavit that he subsequently informed Mr. Reddy

of the price mentioned by Mr. Farrelly and that on or about the 3rd day of July 1974 he received the letter dated the 2nd day of July 1974 from Mr. Reddy which stated that "in view of the costs involved we have decided to take no further action in the matter at this stage". He goes on to say at paragraph 5 of his affidavit that:-

"I had no further negotiations or discussions of any kind with Mr. Farrelly, or with any other person acting on his behalf or on behalf of the above-named applicant in connection with the applicant's interest in the basement of number 22 Upper Pembroke Street, for the purchase or sale thereof or otherwise howsoever."

In his affidavit Mr. Reddy stated at paragraph 6 thereof that:-

"By July of 1974 it had become perfectly clear to myself and my company that the price being asked by the applicant and by the said Francis B. Farrelly on its behalf, for its interest in the basement of number 22 is too high, and we accordingly terminated all negotiations and instructed Messrs. Osborne, King & Hogran to do the same."

It is quite clear from the affidavit of Mr. O'Toole that subsequent to receiving the instructions from Mr. Reddy to terminate all negotiations that he did not in fact communicate such decision to Mr. Farrelly.

It is submitted on behalf of the respondent that such

notice was not necessary as they allege that Mr. O'Toole had informed Mr. Farrelly that he would get in touch with him on Wednesday or Thursday of the first week in June if the respondent company were interested in purchasing the premises at the price suggested by Mr. Farrelly in the course of his telephone call with Mr. O'Toole which appears to have taken place towards the end of May 1974.

In his affidavit Mr. Farrelly states that

"I deny that at the conclusion of this conversation that Mr. O'Toole undertook to contact me only in the event of the respondent's further interest in the matter. I understood and relied on the fact that Mr. O'Toole would contact me when the respondent considered the matter further and accordingly that there was no time factor involved."

It is quite clear from the affidavit of Mr. Roddy that the decision to terminate the negotiations was not made by the respondent company until June 1974 and that the respondent company's decision with regard to the matter was not communicated to the applicant company.

In these circumstances the Court is of opinion that the attitude taken by Mr. Farrelly and as averred to in his affidavit at paragraph 4 where he states that:-

"I therefore assumed at all times by virtue of our

61

continuing negotiations that an agreement would be reached.

An application for a new lease was not considered essential unless this should compromise the good relationship between the parties" was a reasonable one.

The decision to terminate the negotiations with the applicant company made by the respondent in June or July 1974 should have been communicated to the applicant company.

Between the months of May and the end of September, which is the relevant period, I consider that Mr. Farrelly was justified in believing that the negotiations originated by him were continuing even though Mr. O'Toole had not come back to him after the telephone conversation in May 1974.

I do not consider that an injustice would be caused if I were to extend the time for service of the notice of intention to claim relief in this case because of the foregoing fact and also because Mr. Reddy clearly anticipated that "new negotiations for terms upon which the applicant might either remain in possession of the premises or give up vacant possession thereof" would most probably be opened by the applicant company.

Consequently I will allow the appeal herein and extend the time for service of the notice of intention to claim relief.

2-100

M. J. 16. 12. 70 at 11. oc

[?]ligher v [?]onck Sdf [?]ine.
For mention.
Williams. Case settled. Decree to Decree for £250
no order as to costs in either ct. Sum in ct. No cert fund

[?]. 2808 only a notice as to lodgt. J. Must be evid. of lodgt. It is done
in Cir. Ct. Have seen them. If nec. order of mandamus will
issue.
Williams. will try to have cert by Fri. J. List for Fri. 18/12.

M. J. 16/12/70. 11. 10. oc.

[?]leany v Maguire.
Landy Williams. afflet
Flood. Reeft

[?]2553.

Landy. an afflon for extn of time to claim relief.
outlines facts.
aft afflet read. Letter from Mr Hennesghen Solr read
aft. Mrs Meany.
Tenant not at fault.
Trouble arose due to a misunderstanding between Sols.
Sect. of Act is very strictly interpreted.
Section 45. of Landlord & Tenant Act 1931. Read.
H. C. Robinson Ltd. v Kilbride. 1963 I. R. 155
ask that order of Ct Ct J. be affirmed.

Flood replies. Total lack of care shown by Deft for his
own affairs.
aft Fitzpatrick sworn 10/11 referred to.
J. Is not on ct. file. Col. Pass from it for moment.
Col. First step. 30/11/1969 was taken by afflct.
Equities not equal. Ct shd find for Landlord
Landy replies

. . . .

adjd to 17/12/70 at 11. oc. to enable Landy
to refer to cases.
J. If Landy succeeds he will get 1 days costs but if Flood
succeeds he will get 2 days costs.

Heavy (v) Lendy. Have considered cases.
General duty to have regard to rights of others.
Maguire. 1932 A.C. Lord Atkin.
D. 2553. 1963 3 W.L.R. p. 101.
Have a lot of authorities on neighbour cases.
Refers to preamble to Act " to ameliorate position of tenants etc ".
This is the very sort of case which section 45 is intended to provide for.

11.25 J. Do not propose to repeat what I said yesterday in Lunders case (overleaf) re law in this matter. Do not accept there is any binding authority. Are of equal jurisdiction, so, are persuasive & not binding.
First thing is to ascertain the facts. These are set out in affs.
1. There was a 5 year lease 28.9.69 ended.
2. Material date is 3 months prior to that (28.6.1969)

Meany was originally a client of D. M. Dowling Solrs. 17.3.68 he called to D's office and saw Rory O'Donnell, formerly asst. soln. O'Donnell however had in meantime ceased to work for Dowling but was in same premises.
M. says he instructed Mr O'Donnell re the lease renewal to serve the Notice. Also paid him. M. made the mistake as to the year.
O'Donnells aff does not fully accept facts as stated by Meany. No notice to cross examine served.
I think I shd accept Ms version & I do so
Next step. M. acc. to what is in para 9 of his affic says O'D. told him he was a year too early. Says O'D. told him to phone him next year to affly. M. says he told his wife to do so.
Mrs M. in her aff. says she phoned O'Donnell to

renew the lease upon delay. She says O'D. told her he wd do this at the right time. I accept this this left as correct.

Tenants position is that he told sols (even tho too early) to renew lease. & He acted reasonably in not worrying further.

Flood argues M. shd have got in touch once again with sols to ensure renewal was effected: Some force in this. Some sols are not as careful as they shd be. Public at large however do not hold this view. M. is a member of the public. acted reasonably in circs in not doing so.

Notice not served. M. first learned this when he went to pay his rent sometime in Nov.

Meantime M. wanted to change his sols for some other reason. Arising from this a letter was written to ~~Dowling~~ O'Donnell on ever matter. In a reply O'Donnell referred to date of expiry of Maguire lease. Shd have realised necessity to serve notice.

Clery & Co. (Ms new sols) had no instrucs re the lease. O'Donnell effly misunderstood this.

I am not considering here any question of negligence by any sols .... am deciding this case on offs.

1. Tenant did all he shd do
2. His efforts failed not thro his fault.
3. He is late and out of time
4. So he applies to me under Sec 45 of the Act.
5. If I do not extend time he cannot apply for a new lease

I think I shd accede to appln to extend time. Will hear Col as to terms on which I shd do so except that I will give Landlord his ~~time~~ costs in it. It.

Lastly. Costs of Appeal shd follow the event. As to 2nd days costs argument has been heard wasted. I shd not be penalised Flood. I wd not ask for second days costs. wd ask for expedition in appln under L & T. Act.

Lastly. Defined already in

2403

hereby give undertaking to take all nec steps to expedite matter

O. Costs here are a little different from costs in Ct. Ct. H. shd have costs in Ct. Ct.
She decided to appeal. Normally one appeals at ones own risk.
Special circs here. I will award no costs of the appeal.

Drawn 23/12/70

Mc Williams

Gallagher v Shamrock — £250 — no order as to costs

Self Directed. P.O — £250 of £320 to satisfy cl balance to Defts Soln.

Drawn P.O 23/12/70

Set aside Decree.

J Edit accordingly

Butler v O'Hanlon. — M. J. 15.12.70 — Dismiss with costs

J.W. Investments Ltd. — Mention later

D. 2549.

later Dismissed with costs on consent

Drawn 23.12.70

Mr. J. 16.12.70. 12.35.

Winder for. Applicants
Russell for. Respondents.

Liders
v
Lin Corpn.
2855.

Renewal of lease sought.

Winder opens.
Landlord & Tenant Acts 1951 – 58.
aft P.M. Liders read. Asks extension of time (19/10/
aft. do
Applt misled by conduct of the Corporation.
Bridgemen v Paul Ltd.
Dodds 1. 43 : case referred to. Not reported.
Salkeins Jameson & Pim
Arose 1-2.

2 oc. Russell replies.
Winder do.

Jdt. J. Each case of this sort depends on own facts. Little or no help in previous decisions... Part 3 of Act had purpose of giving a tenant.. a right to a new tenancy. In this Breachtas. defined th. of right to reasons property at end of tenancy. Act did provide that applcn by a tenant to get benefit of Act must apply in time. Sec 45 allows for extn of time. Agree with cases that ct must not act capriciously. Must consider all cries ... & decide justly

First I apft to get the facts correctly. As to reported cases seems to me the facts were not clearly present to minds of J.J.
As to facts of this case 29/9/70 date of expiry of lease. Notice had to be served on or before 29.6.1970
Notice was not served.
Premises under lease were demolished under order as dangerous. Out of that negotiations began. Sharp for tenant Broderick for Corpn. with a view to getting a new lease on terms to be negotiated.
Terms were negotiated & were all agreed

2405

except in regard. i. review of rent by Corfu every 14 yrs. Sherry wd not recommend. Corfu said this was essential.

Obvious bargaining here. Sherry to go back to Corfu (6.5.67 letter of). Linders delayed over 13 mos in making up their minds (17.6.68) to latest Corfu offer.

Am satisfied it was reasonable for Linders as from 17.6.68 to think that Corfu wd grant new lease on terms set out in that letter.

Nothing happened. N. done by either party. Linders say they thought there was an agreement to grant this lease. This aspect causes me greatest difficulty.. L. failed for 2 years to do anything.

Have had 2 views during case 1 for 1 against at times mind on a knife edge. Can't remain so.

Have decided in ultimate to come down in favour of the tenant. Partic as Russell thinks that Linders not entitled to relief ultimately sought, this can only be decid

Ten in default. Must pay costs of extension of time including costs of this appeal.

Grant extension for 1 week from today
Tenant to Pay Costs in both Cts.

Davon
23/12/70