

Pullman Foods Ltd v The Welsh Ministers and another [2020] EWHC 2521 (TCC)

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Facts

Land was originally let in 1972 for a term of 42 years to a company that constructed a cold storage and distribution depot on the land.

Under the lease, the tenant covenanted:

“at the expiration or sooner determination of the said term quietly and peaceably to deliver up the demised premises leaving the same in good and substantial repair and condition to the satisfaction of the Board having first (if required by the Board to do so) removed any buildings or works and having made good to the satisfaction of the Board all damage occasioned to the demised premises by or in such removal.”

In due course, the lease was assigned to the current tenant (P). As P failed to remove all the buildings at the end of the term as requested by the landlord (L), L granted licences to P's parent company to enable it to clear the site. However, it seems that the parent company's contractors caused asbestos left behind in the buildings to be spread across the site.

Issue

Did the presence of asbestos mean that P was in breach of its yielding-up covenant?

Decision

The use of the word 'condition' in the yielding-up covenant showed that P's obligation was capable of extending to works that went beyond pure 'repair'. The presence of the asbestos meant that the site was in a damaged or deteriorated condition (as opposed to in a 'good condition') and its removal was reasonably required to comply with the covenant.

Points to note/consider

1. This case is a reminder that the use of the word 'condition' in a repairing/yielding-up covenant is far from superfluous and can significantly increase a tenant's liability. Unlike a breach of a 'repair' obligation, it is not necessary to show damage or deterioration from a former state for a breach of a 'condition' obligation to exist.

For example, in *Welsh v Greenwich London Borough Council* [2000] 6 WLUK 716, a flat suffered from severe black spot mould growth and condensation from a lack of insulation. The Court of Appeal held that the landlord was in breach of its obligation to maintain the dwelling in 'good condition and repair', even though there was no damage to the structure of the building and therefore no disrepair. By failing to provide thermal insulation or dry lining for the external walls, the landlord had allowed excessive condensation and severe black spot mould to continue and so had failed to maintain the flat in good condition.

2. The judge found in this case on the balance of probabilities that the asbestos had arrived on site after the grant of the lease and derived from buildings erected under the lease. However, he was clear that P's liability would have been the same even if the asbestos had already been on the site at the date of the lease. This is therefore a reminder that an obligation to 'keep' premises in good repair and condition also includes an obligation to 'put' them into that condition in the first place and shows the importance for a tenant of having a proper structural survey carried out before taking a lease (the fact that a tenant is unaware of a property's poor condition on the grant of a lease is no defence).

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