CENTRAL LONDON PROPERTY TRUST, LTD. v. HIGH TREES HOUSE, LTD.

KING'S BENCH DIVISION

[1947] KB 130, [1956] 1 All ER 256, [1946] WN 175

HEARING-DATES: 18 July 1946

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CATCHWORDS:

Estoppel -- Estoppel in pais -- Estoppel by conduct -- Lease of flats -- Written promise to reduce rent owing to war-time conditions -- No consideration -- Reduced rent paid -- Binding effect of promise -- Effect of ending of war-time conditions.

Landlord and Tenant -- Rent -- Reduction of rent -- Lease of flats -- Written promise to reduce rent owing to war-time conditions -- No consideration -- Reduced rent paid -- Binding effect of promise -- Effect of ending of war-time conditions.

HEADNOTE:

Landlords let a new block of flats in 1937 to H. Ltd. (called "the tenants"), on a ninety-nine years' lease at a ground rent of £ 2,500 a year. Few of the flats had been let at the outbreak of war in 1939, and, in view of the tenants' difficulty in paying the rent out of profits in prevailing conditions, the landlords agreed in writing in 1940 to reduce the rent to £ 1,250. No duration of the reduction of rent was specified and there was no consideration for it. The tenants paid the reduced rent. By early in 1945 the whole block of flats was let. On Sept. 21, 1945, the landlords wrote asking that the full rent of £ 2,500 should be paid and claiming arrears of £ 7,916. They subsequently brought a test action to recover the balance of rent for the quarters ending Sept. 29 and Dec. 25, 1945.

Held: (i) the promise of a reduction of rent, being intended to be legally binding and to be acted on, and having been acted on by the tenants, was binding on the landlords to the extent that they would not be allowed to act inconsistently with it, although it was not the subject of estoppel at common law; but

(ii) the promise was for a reduction of rent which was temporary and was to endure so long only as the block of flats was not substantially let, and, since the block of flats was substantially let early in 1945, the landlords were entitled to the full rent for the quarters ending Sept. 29 and Dec. 25, 1945.

INTRODUCTION:

Action. The landlords let a block of flats to the tenants on a ninety-nine years' lease under seal in 1937 at a ground rent of £ 2,500, which in view of war-time conditions and without consideration they agreed in writing in 1940 to reduce to £ 1,250. Early in 1945 the flats became fully occupied and in September, 1945, the landlords claimed that rent was payable at the full rate of £ 2,500 and they also claimed arrears in respect of earlier years. They brought a test action for the recovery of the full rent for the two quarters ending on Sept. 29, 1945, and Dec. 25, 1945. The tenants contended that the reduced rent was payable for the whole term of the lease, or alternatively that it was payable up to September, 1945, on the ground that the landlords were estopped from now claiming the additional rent or alternatively that they were bound by their promise of a reduction in the rent, which was made with the intention that it should be binding and should be acted on and which was, in fact, acted on by the tenants.

COUNSEL:

Robert Fortune for the landlords. Ronald Hopkins for the tenants.

PANEL: Denning, J.

JUDGMENTBY-1:

DENNING, J.: On Sept. 27, 1937, Central London Property Trust, Ltd., the landlords, let a block of flats to High Trees House, Ltd., the tenants, for a term of ninety-nine years from Sept. 29, 1937, at a rent of £ 2,500 a year, the lease being by deed and properly executed. Those two companies were closely linked. The plaintiffs held all the shares of the defendant company (the tenants) and they were linked by directors and secretaries.

This new block of flats had not been fully occupied by the beginning of the war in 1939 owing to the absence of people from London; I think only one-third of it had been let by the outbreak of war. With war conditions prevailing, it was plain to those who ran these companies that the rent payable under the lease could not be paid out of the profits. In those circumstances, as a result of discussions, an arrangement was made between the directors concerned, which was put into writing. On Jan. 3, 1940, the landlords wrote to the tenants in these terms:

"We confirm the arrangement made between us by which the ground rent should be reduced as from the commencement of the lease to £ 1,250 per annum";
and at a meeting of the plaintiff company (the landlords) in April, 1940, the resolution was confirmed that the tenants be charged ground rent from Mar. 1, 1939, at the reduced rate of £ 1,250 a year in place of the £ 2,500 a year provided in the lease.

I am satisfied that that arrangement was intended simply as a temporary expedient to deal with the exceptional conditions then prevailing, under which the block of flats was only partially let. The arrangement had no reference to events in which the block of flats was wholly let, if they subsequently occurred. Indeed, having regard to the close connection between these two companies, I do not suppose anything would have come before the courts but for the fact that in March, 1941, the debenture-holders of the plaintiff company (the landlords) appointed a receiver, by whom the affairs of the landlords have since been managed.

Before and after his appointment the tenants paid the reduced rent of £ 1,250 a year; in one bad year they could not pay even that, but paid a smaller amount. Otherwise £ 1,250 a year was paid in 1941, 1942, 1943, and 1944. Even when the premises were fully let, at the beginning of 1945, the reduced rent of £ 1,250 was paid. The receiver had not looked into the lease, or realised what the rent was. Only in September, 1945, did he realise that the rent reserved was £ 2,500 a year. Accordingly, on Sept. 21, 1945, he wrote to the tenants saying that the £ 2,500 a year must be paid, and also arrears, which he says are £ 7,916.

No payment being received, he brings this action to test the position in law. It concerns two periods, which provide a critical test of the rights of the parties. Rent is claimed of £ 625 for the quarter ending Sept. 29, 1945, and also of £ 625 for the quarter ending Dec. 25, 1945.

The tenants said first that the reduction of £ 1,250 was to apply throughout the term of ninety-nine years, and that the reduced rent was payable during the whole of that time. Alternatively, they said that was payable up to Sept. 24, 1945, when the increased rent would start.

If I consider this matter without regard to recent developments in the law there is no doubt that the whole claim must succeed. This is a lease under seal, and at common law, it could not be varied by parol or by writing, but only by deed; but equity has stepped in, and the courts may now give effect to a variation in writing (see Berry v. Berry (1), [1929] 2 K.B. 316). That equitable doctrine could hardly apply, however, in this case because this variation might be said to be without consideration.

As to estoppel, this representation with reference to reducing the rent was not a representation of existing fact, which is the essence of common law estoppel; it was a representation in effect as to the future -- a representation that the rent would not be enforced at the full rate but only at the reduced rate. At common law, that would not give rise to an estoppel, because, as was said in Jorden v. Money (2) (1854) (5 H.L. Cas. 185), a representation as to the future must be embodied as a contract or be nothing. So at common law it seems to me there would be no answer to the whole claim.

What, then, is the position in view of developments in the law in recent years? The law has not been standing still even since Jorden v. Money (2). There has been a series of decisions over the last fifty years which, although said to be

cases of estoppel, are not really such. They are cases of promises which were intended to create legal relations and which, in the knowledge of the person making the promise, were going to be acted on by the party to whom the promise was made, and have in fact been so acted on. In such cases the courts have said these promises must be honoured. There are certain cases to which I particularly refer: Fenner v. Blake (3) ([1900] 1 Q.B. 426), Re Wickham (4) (1917) (34 T.L.R. 158), Re William Porter & Co., Ltd. (5) ([1937] 2 All E.R. 361) and Buttery v. Pickard (6) (1946) (174 L.T. 144). Although said by the learned judges who decided them to be cases of estoppel, all these cases are not estoppel in the strict sense. They are cases of promises which were intended to be binding, which the parties making them knew would be acted on and which the parties to whom they were made did act on. Jorden v. Money (2) can be distinguished because there the promisor made it clear that she did not intend to be legally bound, whereas in the cases to which I refer the promisor did intend to be bound. In each case the court held the promise to be binding on the party making it, even though under the old common law it might be said to be difficult to find any consideration for it. The courts have not gone so far as to give a cause of action in damages for breach of such promises, but they have refused to allow the party making them to act inconsistently with them. It is in that sense, and in that sense only, that such a promise gives rise to an estoppel. The cases are a natural result of the fusion of law and equity; for the cases of Hughes v. Metropolitan Ry. Co. (7) (1877) (2 App. Cas. 439), Birmingham & District Land Co. v. London & North Western Ry. Co. (8) (1888) (40 Ch.D. 268), and Salisbury v. Gilmore (9) ([1942] 1 All E.R. 457), show that a party will not be allowed in equity to go back on such a promise. The time has now come for the validity of such a promise to be recognised. The logical consequence, no doubt, is that a promise to accept a smaller sum in discharge of a larger sum, if acted on, is binding, notwithstanding the absence of consideration, and if the fusion of law and equity leads to that result, so much the better. At this time of day it is not helpful to try to draw a distinction between law and equity. They have been joined together now for over seventy years, and the problems have to be approached in a combined sense.

It is to be noticed that in the sixth interim report of the Law Revision Committee, it was recommended that such a promise as I have referred to should be enforceable in law even though no consideration had been given by the promisee. It seems to me that, to the extent I have mentioned, that has now been achieved by the decisions of the courts.

I am satisfied that such a promise is binding in law, and the only question is the scope of the promise in the present case. I am satisfied on the evidence that the promise was that the ground rent should be reduced to £ 1,250 a year as a temporary expedient, while the block of flats was not fully or substantially fully let owing to the conditions prevailing. That means that this reduction of rent applied up to the end of 1944. But early in 1945 the flats were fully let and the rents received from them (many were not caught by the Rent Restrictions Acts) had been increased more than originally anticipated. At all events the revenue from them must have been very considerable. The conditions prevailing when the reduction was made had completely passed away, as I find, by the early months of 1945. I am satisfied that the promise was understood by all parties only to apply in the conditions prevailing at the time of the flats being partially let, and the promise did not extend any further than that. When the flats became fully let early in 1945 the reduction ceased to apply.

In those circumstances under the law as I hold it, it seems to me that the quarter's rents are fully payable for the quarter ending Sept. 29, 1945, and the quarter ending Dec. 25, 1945, which are the amounts claimed in this action.

If it had been a case of estoppel, it might have been said that the estoppel in any event would end with the ending of the conditions to which the representation applied, or alternatively only on notice. But in either case it is only a way of asking what is the scope of the representation. I prefer to apply the principle that the promise, intended to be binding, intended to be acted on and in fact acted on, is binding so far as its terms properly apply.It is binding as covering the period down to early 1945, and from that time full rent is payable. I therefore give judgment for the amount claimed, credit to be given for the £ 275 paid and accepted.

DISPOSITION:

Judgment for the landlords.

SOLICITORS:

Henry Boustred & Sons (for the landlords); Callingham, Griffith & Bate (for the tenants).