Claim No: CHY09015

IN THE CENTRAL LONDON COUNTY COURT

BETWEEN:

MS JO GAVIN (1)
MS CHANTAL CRACY (2)

Claimants

and

COMMUNITY HOUSING ASSOCIATION LIMITED

Defendant

SKELETON ARGUMENT ON BEHALF OF THE CLAIMANTS

FOR TRIAL STARTING ON 12 JULY 2010

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1. This is the Claimants' skeleton argument for the purposes of the trial due to start on 12 July 2010 for a duration of up to 9 days.

2. The Claimants are representing themselves at trial. They have never had to write such a document before but it is in their understanding that this will be read on the first day of trial by His Honour Judge Cowell, together with the Defendant's skeleton argument and copies of the pleadings, albeit without copies of the evidence supporting this case. There is therefore no precise reference to such evidence in this skeleton argument. It is the Claimants' guess that a trial timetable will be given by HHJ Cowell at the beginning of the trial and that further oral arguments can then make use of such reference.

3. Background

4. This Claim relates to 2 properties

   (1) 104 Cromer Street, London WC1, which was demised to the first Claimant by the Defendant by a lease dated 8 June 2000

   (2) 106-108 Cromer Street, London WC1, which was demised to the Claimants by the Defendant by a lease dated 8 April 2004

5. At the origin of this Claim is a series of building issues occurring at first between April 2004 and July 2005 inside and outside the two commercial premises demised to the Claimants and affecting the premises and/or the business activities taking place within those premises by causing material damage within the premises and/or causing an interruption of the said activities. In both cases the

facts were aggravated by the lack or slowness of response from the landlord, the Defendant, to remedy to the issues occurring in the building and/or to the damage resulting from them within the premises occupied by the Claimants. This caused significant financial losses to the Claimants who were unable to continue their businesses without being interrupted.

6. In August 2005 the Claimants were asked by the Defendant to complete an insurance claim form with UK Underwriting Ltd (UKU) in order to claim for damages. New problems started as the insurers seemed very slow to process the Claim, while more issues with the building that were affecting the Claimants' businesses went on occurring with no or little reaction from the Defendant.

7. One full year later the insurance claim was passed on to the liability insurers for the Defendant, Royal & Sun Alliance (RSA). Throughout this time similar issues as described above in paragraph 5 were occurring in the building matched with similar reaction from the Defendant as also described above in the same paragraph.

8. The Claimants appointed a loss adjuster in December 2006 to help them deal with their claim now handled by RSA. Further delays occurred and further building issues too.

9. It is important to state that the Claimants' position throughout this initial period of time as well as much later in these proceedings has always been to try and settle issues in a fair and speedy manner in order to be put back to a reasonable financial position where they could continue as if the disrepair had not occurred. The Defendant's position was to behave throughout with no urgency to save the Claimants' position and at no point did they or their third party, the insurance, admit to liability.

10. While the financial situation of the Claimants was getting aggravated by the day, the liability insurers simply sent letters stating that the Claimants had not particularised their losses substantially enough for the claim to be processed. Interestingly most of the financial information that was provided to the insurers was identical to what has recently been provided to the single joint expert accountant appointed for the purpose of these proceedings, who, despite the difficulty of the task, seemed perfectly able to make an estimation of losses.

11. Eventually in 2008 the Claimants were informed by the Defendant that due to the unfinished claim with the insurers, their need for a current insured risk to be repaired in the 104 premises could not be met. Shortly after the Defendant sent a Section 25 Notice to the first Claimant.

12. In July 2008 the Claimants appointed solicitors to represent them against the Defendant. In November 2008 the Defendant sent bailiffs and had the locks broken and changed on both premises, following which the Claimants obtained an injunction against the Defendant at the High Court and a hearing was held before Mr Justice Christopher Clarke on 14 November 2008.

13. Mr Justice Clarke ordered that the Claimants issue a Part 7 Claim Form together with Particulars of Claim by 5 December 2008 and that the action was to be transferred to the Central London County Court Chancery Section.

14. It is crucial to this case to understand that from day one and even more so from the beginning of these proceedings, the Claimants and the Defendant have never been on an equal footing. The Defendant is a Housing Association with a large property portfolio and appears to have unlimited resources when it comes to funding the services of highly skilled legal professionals. The Claimants on the other hand have been relying on the success of their two businesses as their only source of income. Not only did they invest life time savings into the internal refurbishment of the premises leased to them by the Defendant but they were time and time again prevented from making any profit from the businesses they were planning to run in those premises due to the series of events unfolding as summarised above.

15. The fact that the Claimants had to employ the services of other specialised professionals such as chartered accountants, loss adjusters, solicitors, barristers, expert building surveyors, forensic accountants and even mediators is certainly not usual in the life of a small business but this was all triggered by the difficulties encountered by the Claimants with the Defendant, and by the obvious and relentless willingness of the Defendant to run the Claimants out of costs. It certainly escalated in terms of costs to a level that no business of such size would normally plan to include in its budget, as that would not be viable. But the Claimants saw that they had no choice as this was the only way to get themselves heard; the costs game started in 2006 when RSA asked the Claimants to provide them with "proper" accounts for the businesses from April 2004, which is the starting date of the insurance claim in question. It has to be noted that the appointment of an accountant is not compulsory for small businesses run by individuals with a self-employed status, as is the case with the Claimants. Self-employed people are entitled to do their own accounts and it is more likely to happen in situations where there is either little activity to record and/or there is a need for saving on the cost of external services. In the event, both situations applied, but in order to satisfy the request from RSA the Claimants had to endorse the costs of their accounts being verified and formatted by a fully qualified Chartered Accountant. This was only the beginning of a long series of expensive external services that the Claimants have since had to pay for, simply in order to continue being heard.

16. Indeed, as soon as the court proceedings started the Claimants were hit by the vertiginous scale of fees expected by the legal profession to represent them. The Claimants had to get by with what they could afford and find alternative ways to fight this legal battle such as being representation on a direct access basis but also by doing most of the correspondence and preparation work themselves. With no former experience of such proceedings, no legal training whatsoever, not enough funds to sustain proper legal representation, no revenue coming from their businesses, the last two years have proved to be such a difficult and stressful experience for both Claimants that it is actually impossible for them to express it in its true light. Nevertheless, now finally at the dawn of a trial it is very much hoped by the Claimants that despite their lack of legal skills and the somewhat

awkwardness of some of their arguments, all those efforts were not in vain and that they may be given a fair chance to expose their claim and have their case finally heard at trial so that justice can rule at last.

17. Proceedings that followed and case management

18. 4 February 2009 - Defence & Counterclaim

19. 13 February 2009 - Reply

20. 15 July 2009 - Application from the Defendant to vary the undertaking given by the Defendant in Mr Justice C Clarke's Order dated 14 November 2008

21. 18 August 2009 - note of HHJ Cowell in advance of the CMC Hearing of 28 August 2009

22. 28 August 2009 - CMC hearing before HHJ Cowell (with Lesley Woods representing the Claimants on a direct access basis). This dealt with directions for trial and the 15 July 2009 application which was adjourned to trial.

23. 9 November 20009 – Order of HHJ Cowell and Summary of Case

24. A PTR Hearing originally expected on 11 December 2009 did not take place due to having not been listed.

25. 5 February 2010 - PTR hearing (with Marc Beaumont representing the Claimants on a direct access basis) dealing with unfinished amendments to Particulars of Claim – partially heard (with Defendant's costs ordered to be paid by Claimants) but mostly adjourned to 26 February 2010 – then re-adjourned to 25 march 2010

26. 11 February 2010 - Order of HHJ Cowell

27. 24 February 2010 – Application from the Claimants to permit proposed amendments to Particulars of Claim, following refusal by the Defendant

28. 25 March 2010 - PTR hearing (with Veale Wasbrough Vizards Solicitors and Vikram Sachdeva as Counsel representing the Claimants). This dealt for the main part with suggested amendments to Particulars, which were mostly refused.

29. February/March 2010 – Numerous attempts from Claimants and their Solicitors to arrange mediation with the Defendant – in vain.

30. 26 April 2010 – Application from the Defendant requesting disclosure by the Claimants

31. 11 May 2010 – Application from the Claimants requesting disclosure by the Defendant

32. 20 May 2010 – Consent Order signed by both parties re 30 April 2010 application

33. 2 July 2010 – Application from the Defendant that their Claim for possession of 104 Cromer Street issued against the First Claimant and dated 30 June 2010 (with Claim No. 0CL01682) is consolidated with these proceedings.

34. 8 July 2010 – a mediation meeting is arranged between both parties on the initiative of the Defendant

35. Since the CMC hearing on 28 August 2009, some disclosure was provided by both parties; witness statements were exchanged; a report was prepared by the appointed Single Joint Expert accountant, who also gave answers to questions raised by each party; building expert surveyors appointed by each party prepared reports and had a meeting to discuss their agreed and disagreed issues.

36. Matters to be dealt with at the trial

37. At the time of writing and in relation to disclosure, the 11 May 2010 application from the Claimants requesting further disclosure from the Defendant has still not been processed by the Court, which leaves the Claimants very uncertain as to how the trial may process in fairness. Without the disclosure of evidence that the Claimants has grounds to believe is directly relevant to this claim and in the possession and/or control of the Defendant, but yet has not been provided, this leaves the Claimants in an unfairly prejudiced position.

38. In relation to the listing of the Defendant's application dated 2 July 2010, please refer to paragraphs 50 to 53 below for further details.

39. It is the Claimants' view that it will be necessary for the court to examine each issue contained in the Claimants' claim, individually and one by one, in order to establish, with the support of the evidence available, the precise nature of the issue and its cause; the damage caused to the demised premises; the time element surrounding it; and finally the liability for that issue and any subsequent damage caused. Such evidence will include various documents that have been disclosed by either party, witness statements from both parties and expert building surveyors' reports. In order to isolate these issues more quickly, it will also be of assistance to use the three Schedules that were submitted as attachments to the proposed (and later mostly refused) amendments to the Claimants' Particulars of Claim.

40. Although fully aware of the contract linking them to the Defendant, the Claimants believe that relying solely on the terms expressed in the leases, as seems to be the Defendant's position, may have the effect of making their claim partially incomprehensible. They believe that it will be necessary for the purpose of this trial to get to understand the full background surrounding the issues in question in this claim. This is firstly because the Defendant happens to be the landlord of the whole Estate which comprises the premises leased to the Claimants. Secondly because several of the Defendant's insurance companies seem to have been playing influential and/or decisive roles in matters relating to this claim. Thirdly because, while all issues relate to a building aspect that affected those two premises, some of these issues and/or what caused them relate to matters situated outside the scope of the leases, for example when the origin of a problem, or the problem itself, is located outside of the leased premises, yet having a direct impact

on those premises (e.g. with the water ingress in the electricity room, as referred to in schedule-1, item no.6); or when a problem in the building owned by the Defendant has always been in the knowledge of the Defendant but has been deliberately concealed away from the Claimants (e.g. with the lack of air bricks, as referred to in schedule-3); or when the problem is created by a third party who may themselves be engaged in a separate contract with the Defendant (e.g. with the refusal by the insurers to pay for the repair to the floor, schedule-1, item 4).

41. This is not simply a case of repairing obligations tied to the leases as repeatedly insinuated by the Defendant in their pleadings and correspondence – although there is no discussing by the Claimants that most of the "repair" obligations in the premises fall onto the Claimants' side in the lease. In fact the repairing obligations put on the tenants in the lease is something which, although deplored by the Claimants in their Particulars of Claim, was nevertheless clearly observed by them and is not at stake in this claim as far as the losses claimed are concerned. Indeed it is important to note in order to understand the background of this claim that the Claimants carried out a large number of repairs to the 106 premises as these were leased to them in a particularly bad state of disrepair.

42. Whenever the word "repair" is used either by the Claimants or the Defendant in their pleadings, it should not lead to confusion by systematically being related to the repairing obligations in the lease. There were numerous occasions where a "repair" was unnecessarily waiting to be carried out or was eventually carried out by the maintenance team of the Defendant or one of their contractors as it had no relation to the tenant's repairing obligations contained in the lease, for example because it happened to be a "repair" to an insured risk – therefore relating to the landlord's obligation to insure (Clause 7(2) in the leases) – like in the case of the water ingress coming from a cracked stack pipe and causing damage to the 104 premises (schedule-1 item no.2). Or because it was located outside of the demised premises, for example in the case of the fire escape (referred to in schedule-2), thus once again not relating to the repairing obligations by the tenants.

43. In such occasions where a repair is needed for an insured risk, it is not either simply a case of insured risks damages having been claimed for by the Defendant from their insurers and money paid for it, as is repeatedly alleged in the Defence and Counterclaim of the Defendant. In some cases, yes, it is about whether the Claim was made or not, but also *how* it was made, e.g. by whom and most importantly by when. Was it really done "with all convenient speed" as noted in the leases? While this information may be possible to establish from the evidence already disclosed, unfortunately at this point in time most of the evidence requested in terms of insurance documents from the Defendant has yet to be provided and there are still uncertainties to be resolved.

44. As soon as an issue with its time factor and corresponding liability has had its chance to be examined and fairly established by the Court, the Claimants will be able to conclude on the specific cause(s) of action they wish to relate to that issue and submit it to the Defendant and to the Court.

45. There is no doubt in the Claimants' mind that valid causes of action need to be clearly put forward and related to each issue at stake during the course of the trial

in order to support their claim. This is a task which not only requires a good understanding of the leases of the premises rented to the Claimants by the Defendant, but also a thorough knowledge of the law and the mastering of precise skills that can only be acquired by specialised training and practice, a task which may prove to be difficult in any situation, but even more so in the case of the Claimants having ended with no choice but to represent themselves. The following are all causes of action referred to in the original Claimants' particulars of claim and that the Claimants intend to put forward: nuisance; breaches of some of the terms in the leases, such as the prevention of quiet enjoyment of the tenants by the Defendant and/or breach of the landlord's covenant with regards to insurance obligation; breach of statutory duty; negligence; harassment.

46. There may be cases where a particular cause of action will automatically be removed due to the findings of the Court, for instance where an issue is established to be located outside of the premises then supposedly it won't be a cause of action arising from the terms of the lease.

47. It will be a further matter for the Court to examine the losses alleged to have been suffered by the Claimants in their Schedule of loss for all matters as listed in the three Schedules and to determine the extent of such losses. This will undeniably be with the assistance of the Single Joint Expert Accountant's report and his answers to questions asked by each party, although here again there are wide variables that can only be determined by understanding the full context of the situation. This without a doubt will have already happened at least in part, if not fully, as the trial takes its course and the wide range of evidence relating to the nature of the businesses of the Claimants gets a chance to be pointed at and viewed. The Claimants also hope that this evidence will help to disperse some of the somewhat judgemental comments made here and there by the expert forensic accountant in his report and answers to questions or at least put those comments into the perspective of the reality of the situation: let us not forget that we are dealing here with two small yet potentially profitable businesses, that were run by two single individuals, the Claimants, who were in charge of absolutely every aspect of their businesses themselves, as often is the case with small businesses. We are far away from the standards of any big corporation with lots of specialised departments or services.

48. In relation to the claim for losses claimed on behalf of NN/YP, the Claimants wish to leave it to the Court to estimate losses resulting from the lack of opportunity to develop this social enterprise. The Claimants intend to demonstrate by referring to numerous evidence that has been disclosed, some of which was provided to the single joint expert accountant for his report, how NN/YP has always been the core motivation behind their sustained efforts to succeed in running either businesses within the premises and how the building issues at stake within these proceedings had a serious impact on that aspect of the Claimants' activities. They also intend to demonstrate the fact that the Defendant was at all times fully aware of the existence of the NN/YP organisation and of its close relationship with the Scarlet Maguire gallery and spaceshift businesses.

49. In relation to the Claim for rent repayment it is not sufficient for the Defendant to state that rent was paid and that there is no term in the lease relating to refunds of

rent paid. It is the Claimants' intention to demonstrate that unlawful pressure and intimidation tactics were used by the Defendant on a regular basis in order to force the Claimants to pay rent for period of times when the Defendant knew very well or ought to have known that the Cessor of rent clause contained in the leases was applying. The total figure of rent repayment sought by the Claimants will of course entirely depend on the prior determination by the Court of causation, liability and duration of each and every issue contained in the Particulars of Claims and summarised in the Schedules.

50. In relation to the two applications from the Defendant relating to Section 25 (one dated 15 July 2009, the second one dated 2 July 2010) the Claimants believe that it would only be appropriate to deal with those once the main aspects of the Claim have been heard. This is because the Claimants believe that the detailed context of any event or act is crucial to the understanding of such event or act and in this case, there ought to be much less to explain once the chronology of all related events has been unfolded.

51. In the proposed amendments to their Particulars of Claim the Claimants suggested that the issue of a Section 25 Notice by the Defendant in July 2008 was part of a series of events that together constituted an act of harassment on behalf of the Defendant onto the Claimants. This was mostly due to the timing of the issue of that notice in relation to other actions by the Defendant that gradually occurred since early 2008, starting with the acceptance then refusal to have the floor of the 104 premises repaired despite it being damaged by an insured risk covered by the Defendant' insurers; other actions from the Defendant prior to the issue of the Section 25 Notice included the threat of doubling the rent unless the Claimants replaced the damaged floor themselves; following the issue of the Notice the Defendant sent several intimidating demands of rent payment to the Claimants despite the premises not being fit for purpose and despite solicitors' letters to the Defendant triggering the cessor of rent clause on behalf of the Claimants; in the end the Defendant sent the bailiffs to repossess both premises, choosing to ignore a letter from the Claimants and failing to acknowledge their payment of all outstanding rent.

52. It is the Claimants' understanding that the amendments to the Claimants' Particulars were mostly refused by HHJ Cowell on the basis that His Honour was able to understand the case much better after the hearing of the 25 March 2010 dealing with those amendments and that there was therefore no real need to amend the original Particulars of Claim, with the exception of 3 paragraphs and the verbal mention that the three Schedules attached to the proposed amendments may be useful to this case.

53. Nevertheless the cause of action on the grounds of harassment is stated in the original Particulars of Claim and it is the Claimants' view that this ought to be taken into account when looking at the background surrounding the issue of the Section 25 Notice and the two related applications by the Defendant. It will also be necessary to look at the High Court Order by Mr Justice Christopher Clarke dated 14 November 2008 and go through the exchange of correspondence around the renewal of that notice between the Claimants and the Defendant' solicitors,

keeping the matter once again and finally within the framework of surrounding and related events.

54. Conclusion

55. It is the Claimants' intention to try and make the Court aware of the overall ruthlessness of the Defendant's acts, when they were engaged in dialogue by the Claimants so often, but yet just refusing to act in a consistent manner despite being a responsible organisation and a social, not just commercial, landlord. As repeatedly highlighted above the Claimants wish to respectfully suggest that the Court tries to maintain its watchful eye throughout the trial on various related aspects surrounding the issues uncovered by this claim as these do include significant influential factors that the Defendant has simply kept trying to dismiss, up to now. It is hoped that by keeping an overall view of the whole situation as experienced by the Claimants and the Defendant, of its pace too, throughout the years, it will be possible to understand how and why this situation has been left to escalate to such a state, which is deplorable for both Defendant and Claimants; and thus that it will be possible for the Court to decide what has to be done to finally remedy it, hopefully with measures that will prevent this to happen again in the future.

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8 July 2010