

What the Judge said:

On Monday Morning at the start of the hearing 20th Sept 2010 I read out a statement explaining that 3 documents that I d received from the claimants before I gave Judgment on the 9th Sept 2010 had been treated by me as the claimants final submissions on liability. Those documents did not include a lengthy document containing 245 paragraphs which were the claimants final submissions which I saw for the first time during the weekend of the 18th & 19th Sept attached to the claimants application dated the 16th Sept 2010 which was for permission to appeal which application I have not yet dealt with. In all five attachments were sent to me at home at my address on the 7th Sept by my clerk. One consisted of two diary entries which I received another consisted of photographs, two further documents were the two attachments I refer to on the 20th of Sept and the fifth and last attachment was the claimants submissions. I can only assume that when I opened the last attachments which was the claimants submissions I thought it was a copy of the defendants submissions that is because the first page of them both have almost identical paragraphs 1's sub titles a and b on the first page and almost are identical as can be seen simply by looking at the first page of each. I realised on 20th of Sept that I'd inform the clerk of what had happened and I decided that the proper course was to attend to the claimants final submissions on Tuesday the 21st of Sept and consider and if so to what extent I should alter any part of my judgment on the 9th Sept and what further matters might call for consideration as mentioned and then that I should finally give this Judgment on Wed 22nd Which I now do.

So my observations will begin by referring to paragraph numbers of the claimant's submissions at

Paragraph 7. I mentioned in my judgment Ms Jaqui Greene's concern that matters were attended to and I noticed the contrasting in approaches of Ms Jaqui Greene and Mr UK as he's called.

Paragraph 8. The document that B2 tab (2) 145 does not in my Judgment to relate to any issue that I had to clarify.

Paragraph 9-11. I am aware I'm well aware that when giving evidence witnesses are not there simply to undergo a memory test and with any lapse of memory its no an indication of a deceitful testimony. I relied at the various parts of my Judgment on written accounts and events made much closer to if not contemporaries to the events at the time.

The article at C2 Tab 14 and the plan at C. 99-100 A1 did not go to anything I had decided. I did indeed comment on the witness statements by thee defendants in my Judgement on the 9th Sept and I need add nothing to what I said there.

Paragraphs 12-25. Although I use the lease of 106 to 8 as containing the relevant terms its true that I do not refer to any of the differences between that and thee lease of number 104 the point raised by the claimants in paragraph 17 of the submissions.

In paragraph 18 the claimants set out in clause 2 sub clauses 4 page A3 12 of the

lease of 104 and in paragraph 19 the claimants set out in clause 2 sub clauses 1-4 bundle A3 46 of the lease of 106 to 8 in the latter sub clause 2 appears to be a nonsense mistakenly left in or mistakenly left in sub-clause 2 instead of in the clause 4. Clauses 5 sub clause 6 of the lease of 104 A3 35 differs from clause 5 sub clause? differs of the lease of 106 to 8 A3 68 in the manner set out in paragraphs 121 of the claimant's submissions. Two matters are raised which were not mentioned in my Judgment of the 9th Sept and which I must deal with. First a reference to a In both leases in clause 2 sub clause 3and that is the right to shelter and support and protection from the elements on the demised premises and Simi alary the mention in clause 5 sub-clause 26 of the lease of 104 of the tenants obligation and I quote 'to pay a fair proportion of the costs incurred (or intending to be incurred?) by the landlord in respect of the lighting and maintenance of the fire areas. In my Judgment clause 2 (3) by the defendant in accordance with the general law as set out in the Guild 1985 a case that features heavily in my Judgment of the 9th Sept and as explained by Lord Millet in (Southwark) and Mills and I also mention in that Judgment it is the tenant grantee right to air these not landlords grantors obligation. The landlord as I understand it must not do any positive act that interferes with and with doing the things that provided support and shelter and protection of the elements that is as far as that rights goes there is not in my Judgment to be implied that in Clause 5 sub-clause 26 any term that the fire escape area should have any particular quality. So that deals with those two points raised in the claimant's submissions.

Paragraphs 56-62 I have looked again at Mr Hines report D1 301 to 5, he was doing what he could on the claimants behalf just as he was in April 2006 D2 393 after the insurance payment of January 2006 which I mentioned in my Judgment on the 9th Sept. The fact that insurers took the view that the defendant was at fault B2 407 does not mean in my Judgment that the defendant was in breach of a duty to the claimants nor does it follow that the defendant was in breach of a duty to advance an insurance claim on the claimants behalf I read the letter of the 3rd July 2006 B2 489-90 as a request by the claimants for compensation from the defendant it is and I quote the insurances response which is described as extremely slow and unhelpful that in the evidence the defendant was not asked to do anything about that. I mentioned near the end of my Judgment on the 9th Sept the series of letters mentioned by the claimants in their letter to me of the 25th July 2010 two of which are referred to again in paragraph 29 any others also featured in paragraphs 46 and 48 and those letters of C1 81 was also referred to. It still seems as to me that no blame can be attached to the defendant for the failure on the claimant's part to persuade the insurers to pay them. The claimants by their loss adjuster were in direct communication with the insurers and the defendant did nothing to prevent or hinder it. The loss adjuster main experience after was a lack of information from time to time from employees of the defendant B3 36? 45 but that is a far cry from the defendant being in breach of duty and even if it were such lack of information did not result in the refusal of the insurers to pay the claimants what they were asking for. I have looked at the in D3 68 96 72 69 96 and 7n again the fact that the insurers took the view the defendant was not covered even on the basis that the defendant ought to have deal with it 6 weeks earlier so were not covered by the terms of the policy

brought me to the conclusion that the defendant acted in breach of duty to the claimant. The defendant's duty was in my judgment as the neighbouring occupier as I explained in my Judgment of the 9th Sept by reference to Guilds case.

I now turn to the particular matters of the claimant.

First the waste stack pipe next to 104. In my Judgment of the 9th Sept I assumed that the leak was reported in Sept 2004 to Jaqui Greene and I fully appreciated the fact that it took six months to remedy. The documents referred to by the claimants do not in themselves answer the question when did the defendant and its agents come to know or when ought the defendant have come to know the actual cause of the leak which meant that the defendant had then to repair it promptly as in Guilds case. That is the question I answered in the Judgment of the 9th Sept well aware of the discrepancy between Mr UK's written statement and his oral evidence. It was no part of my task to consider the cause of the leak and I did not and do not find that it was either of the claimants accidentally putting a nail into the pipe. My task was to decide when the source of the leak was first known or ought to have been first known to the defendant. The claimants were in my Judgment in no way blamed for the leak as the clearly hinted at in the defendant's submissions.

The waste stack pipe in number 106-8 I mentioned in my Judgment of the 9th Sept the diary entries in this case I decided on all the evidence particularly the oral evidence and bearing in mind the imperfections in Mr UK's case evidence that we ought to know the source of the leak earlier than he did so that was effectively a finding of negligence. It was the defendant to a considerable degree upon the claimant's own account which I accepted given by her on the 2nd Feb 2006 C1 Page 337.

The next was the scene of 104 and the floor damage. I was aware long before the claimants that there was difference as to whether the flood occurred according to what Mr UK was told by the social worker or carer of an occupant of a flat 2. It is important to appreciate Mr UK was recounting what he was told which in fact he believes is true. The claimants insisted the flood came from flat 3 and believed that see paragraph 106 of their submission that Mr UK was hiding the truth in an attempt to avoid the defendant having liability for the poor state of repair and maintenance of the flat above and so the claimants allege see paragraphs 108 that the cistern overflowed in flat 3 and that the poor state of repair was the real cause as they contend C1 296. There was in my judgment no evidence that the flood was anything other than an accident of some kind whether flat 2 or flat 3 and there was no evidence that the defendant was by any of its employees or in any other way responsible for causing the flood nor that has been referred to any lack of repair for which the defendant was responsible even assume the claimant's account in C1 296 to be correct and Mr UK's to be incorrect.

The claimant's paragraphs 109 to 128 set out the of the claimants but because the flood was stopped promptly that means contrary to paragraph 126 the law as set out in Guilds case applies and the do not in my judgment confer

any cause of action on the claimants and in relation to insurance I do not intend to repeat what I said about.

The pavement lights I was referred to C1 111 the statement of Adam the carpenter who begins his statement by pointing out the claimants who are in a dispute with the landlord as to who should fix the ceiling. I considered in my Judgment 9th Sept that Ms Jaqui Greene's attitude as in D1 125 was often referred to by Ms Bhaloo in her final submission was a very sensible one or other wise the defendant would run the risk to ... from the tenant. I accepted the pavement lights were not demised as said correctly by the claimants in paragraph 130 I still adhere to the conclusion expressed in my Judgment of the 9th Sept and about my view about clause 2 (3) of the leases I should add that the covenant for quiet enjoyment and the derogation from grant does not afford a remedy; the defendant has done no positive act for? quiet enjoyment or for making the premises substantially less fit for the purposes for which they were demised and that observation also applies to an issue about the fire escape.

The electricity cupboard leaked the crucial point I made in my Judgment of the 9th Sept that it was never said the same that the defendant was ever in breach of a duty as in Guilds case because at no time did it know or had the means of knowing where the leak came from so it can't be said to have failed The references of documents given by the claimants do not assist in the discovery of where it was from, the defendant as opposed to Thames Water knew where the leaks came from and the claimant's submissions paragraphs 150 to 172 read ... what I said on the 9th Sept.

The fire escape and the fix the lighting. the claimants inform me in paragraph in 173 how it came about that the service charge provision was omitted from the lease of 106-8 to which I mentioned the omission in my Judgment 9th Sept and they have helped me provided there explanation for that or other wise I have nothing to add to what I said in my Judgment 9th Sept and to what I have said above about the significance of 5 sub-clause 26 of the lease of 104.

The ventilation and airbricks and there absence from numbers 106-8. The claimants give a very full history for this matter as they see it in paragraphs 197-229 of their submissions. I do not accept the of many of the matters of primary fact for which they refer that the defendant was guilty of misrepresentation as suggested in paragraph 219 or that the defendant was in breach of duty and of negligence and so my reason in my judgment of the 9th Sept remains the same.

Finally in paragraph 230-237 the claimants argue that the defendant where under an implied obligation to repair the structure that is all the building other than the parts of it that are demised. I mentioned in my judgment of the 9th Sept Barrett and lounova 1989. . 1 and about correlative obligations. Thereby anticipating this argument the affect of which I accept as far as it is consistent with the law contained in Barrett and lounova but it seems to me that none of the complaints made by the claimant involve asking the defendant to repair the structure without which repair the claimants ... repair the demised premises are

futile and certainly not complaining about want to repair by the claimants the demised premises so that one issue in relation to the leaking pipes the leaks were identified had to be repaired and have been repaired and the extent of liability is as in Guilds case essentially that of a neighbouring occupier such leaks require special measures. The pavement lights have been repaired and are more simply to repair and have been repaired and this is not therefore a case of the claimants seeking to require the defendant to repair the structure. Lastly in relation to 238-245 I need only say that I took into account on the 20th 7th Sept all the appropriate submissions of both parties in a separate Judgment given on the 20th Sept in a ... in relation to mean profits the defendants asked me to accept.

Ms Bhaloo I suppose the next matter should be mean profits.. ..

MS Bhaloo: Well your honour we should deal with forfeiture now so your honour knows what the... so your honour doesn't readily have concerns about knowledge and error but I'd hate your honour to do that without actually realising (can't read notes)

HHJ Cowell: Yes can I just see what Ms Cracy has to say?

Ms Bhaloo Yes

Ms Cracy: I'd like to ask for permission to appeal and I understand that that is something that has to be done straight away?

HHJ Cowell: Yes normally one asks on what particular grounds which area of the Judgment if not all the areas you say you stand a chance on succeeding on

Ms Cracy: The area well its difficult because you went very quickly and our notes are not written

HHJ Cowell: Yes

Ms Cracy: but it would be based on the fact that you only seemed to have used one law and it couldn't be applicable to all the incidences in question And also I understand that we found out that for the procedure that you can give us permission and it seems that there are different possibilities that you give us permission in which case then none of what the... (interrupted)

HHJ Cowell: Yes Yes if I refuse permission you can go to the high court and.. (interrupted)

Ms Cracy: but which Judge?

HHJ Cowell: The appellant Judge!

Ms Cracy: We also need to ask for a stay in this trial pending appeal

HHJ Cowell: Yes

Ms Cracy: Because everything stems from the liability aspect

HHJ Cowell: Yes well (long silence)

Ms Cracy: and also only recently found out and correct me if I'm wrong but that because we are representing ourselves that we can ask the defendant counsel for the notes on the judgement

HHJ Cowell: Well what rather than anybody throwing notes your in a position to order transcripts of my Judgment and then because you.. the court would approve and then its made available to both parties and what I sometimes do if I receive them is I say that your time for the client to be ahead of time for permission to appeal can be extended until the particular time after the approved transcripts is received on the basis that you have to decide whether you want to apply for permission to appeal within say three weeks and you must make an application for the transcripts within the three weeks

Ms Cracy: And that?.. (interrupted)

HHJ Cowell: and that takes some time doesn't it?
But it means that you have to do your part of it within a limited time but it means so you have a period to decide and then if you do decide whether you want to get permission you must make an application for the transcripts say from the as it would be the transcripts of the 9th Sept and also today (long pause) I suppose the point of law is whether I'm right and find the test in Guild or whether there is a greater liability in the on the defendant only

Ms Cracy:" and the landlord having.. (interrupted)

HHJ Cowell: Well well well the landlord and a greater liability on the (pause) generally we're not encouraged to give permission to appeal but what I'm inclined to do is either of you, you can take it further and something Ms Bhaloo says it seems to me I should adopt the.. what I just said that we would have until 3 weeks from today in which to decide whether to order the transcript and if you do order the transcript any more time for me in that case in the court of appeal will run from say three weeks from this time you contact us

Ms Bhaloo: Please your honour my attitude to that will depend on pressure on the stay

HHJ Cowell: Yes I haven't come to the stay

Ms Bhaloo: So you see your honour I can't .. if there is no stay then to a certain extent that the time frames although of course there should be finality and the financial side and the same approval with the transcripts 3 weeks to decide then our attitude to that might be well.. (interrupted)

HHJ Cowell: Perhaps I better deal with umm can I come back to the stay later on as Ill be in a better position to see what the full ramifications of my decisions will amount to when I've gone into the opinions

Ms Cracy: Can I just ask one more question?

HHJ Cowell: Yes do ask

Ms Cracy: If there is ...although you have refused permission to appeal do we have to get permission with the right to appeal but if there is no stay as of today on the remain of the trial then... (interrupted)

HHJ Cowell: Well can I come to the stay later on because I want to see what the financial implications are

Ms Cracy: Ok

HHJ Cowell: Because I'll know as I understand it there's been peaceable re-entry by forfeiture and you are entitled to get the lease back on payment of arrears then ..

Ms Bhaloo: errr

HHJ Cowell: Not under section a hundred and.. (interrupted)

Ms Bhaloo: 139 is (7 or 11) months after re-entry and the re-entry was in Oct 2008 your honour they? ? Want the place they claim? 30 grand?? (Can't read notes)

HHJ Cowell: I'll have a look at that

Ms Bhaloo: Your honour I 'm sorry to interrupt

HHJ Cowell: Just a moment Ms Cracy can I, I'll come back to the stay make sure you mention it again but I want to see what the consequences are working out what my judgment against you says

Ms Cracy: Its just I m seriously worried that the consequences will be that the that we appeal will end up in that...

HHJ Cowell: I follow that but .. (interrupted)

Ms Cracy: Meanwhile....

HHJ : Yes we'll come back to it later I promise I'll come back to it later

Ms Cracy: Thank you

HHJ: Ms Bhaloo

Ms Bhaloo: We can discuss mean profits according to the Judgment that your honour gave, umm your honour has the evidence in relation to the amounts that the we would go for with forfeiture

HHJ Cowell: Well were are the amounts

Z.. Your honour if I just while I'm here I'll hand those up

C.. Oh yes I see now

Z.. if I just

C.. yes yes

Z.. If I just take your honour through the various things so start starting with as your honour knows the client forfeited on the 29th Oct 2008

C..And what was the arrears at the time?

Z..Your honour if I'll take you through the exhibits

C..I wonder if it's not time to take a cup of coffee there is something in D1 oh one of them..

Z..your honour if if...

C.. Its in the bundle statement ohh yes 85 -92??

Z.. Your honour that's the second one the first one is before that if you can see

C.. Oh yes yes..

Z.. Your honour I'm sorry I know your not I see you're not but your honour Tab 16 page 77

C.. B1? 77 have you got a copy

Z.. Yes your honour

Z.. Do you want the two of them

C.. No no no I'm fine

Z.. If you're sure

C.. Yes yes

Z (blab can't read notes)

C (can't read notes)

Ms Bhaloo If you look at the statement, which Monique Jamera confirms, and accept that as your honour sees.. (interrupted)

C.. Yes

(Ms Zia Bhaloo as 'Z')

Z... that there were in July that the applicant fell behind with their rent she sent out notice of arrears I'll take your honour through these

C.. Yes yes I see

Z.. On the 14th August and in response the applicant sought legal advice (on the 24th august 2008) which we may have looked at in the July trial and that stated the applicants had a different plan and that they would write further within the next few days and then the September quarter wasn't paid in relation to both and so further arrears sorry and so further notices were sent out and again your honour I can take your honour to those notices so 2625 in relation to 104 and 3500 in respect of 106 and those said that if rent arrears were not paid then bailiffs were instructed to re-enter and your honour in fact I will remind your honour of the covenant of not paying rent which your honour has set out in various and.. (interrupted)

C.. Yes, yes

Z.. and it's a covenant to pay by standing order by equal quarterly payments in advance on the usual day without deduction and then that clause 1 and I'll be quick time wise clause 6.1 relates to re-entry and we are entitled to re-enter if the whole or any part of the rent is unpaid for 21 days. You see some rent had become due in July and some of it was paid and some of it wasn't

C.. So what was the arrears in July?

Z.. Your honour

C... Perhaps it doesn't matter

Z... I'm not sure it does matter

Z... because if you read here the statement ... I've got here your honour has it really from I can show you I B2 tab 8' there's two lots of numbering

C.. 420

Z .. Yes

C... Yes

Z. and so your honour that's the order so your following the the the June report 104 arrears amounts to 1 thousand 450 your honour see that part

C.. Yes yes

Z.. and... then the next page

C.. Same for the other

Z.. Yes yes umm and then if one goes on your honour will see the letter from Steeles 27th August

C.. Yes

Z.. and then your honour the 20th Oct letters page 65 and 17 so on 104 2625 and on 106 3548.

C yes

Z.. so if the court will look at the 29th Sept

C.. Yes

Z.. That letter is warning there, there is only 21 days thereafter and then we re-enter on the 29th.

C.. Yes

Z.. Your honour there is also if I may while we are here can I show you another letter that came just prior to re-entry

C.. Yes

Z..Tab 9 page 37 your honour this is the letter that came

C.. Tab 9

Z.. 469

C.. 469

Z.. that's dated the 24th Oct 2008 it is a letter with which we were told in oral evidence was drafted by Steeles but then the claimants sacked Steeles and sent the letter and your honour we can't really read all of it but on page 70 paragraphs 6,7,8, and 9 the claimants were saying look we shouldn't be paying any rent and you cancel any further demands

C.. hmm

Z.. Look your honour look not withstanding the fact the claimants say that they did in fact they did send the cheque the previous day the 23rd of Oct your honour that cheque didn't reach us and was never planned ever and assuming it was sent your honour which I don't think the landlord but it was stopped according to the claimants evidence on the 29th when they realised that re-entry had taken place

C.. Oh I see

Z... Yes

C.. The cheque was stopped at 471 B2 471

Z.. Your honour I should make it clear that if it were issued but I think indeed (can't read notes) that it is completely inconsistent with the letter so it wasn't that it was stopped and the re-entry took place on the 29th

C.. You mean that your client never went to the bank and paid it in

Z.. No it was never received

C.. It was never received yes

Z it was never that we went to the bank we just never received it

C.. Yes yes I see it was never received so you assume it was stolen

Z.. No we were told by the claimants that they paid it because of the re-entry we think that that's made up (can't read notes)

C.. The only thing that matters to me whether its in dispute that that was not paid

Z.. your honour if the claimant had had the payment stopped and then an on-line transfer was made we have that we have that too

C.. What, what is that?

Z.. Sorry

C.. How much was that?

Z.. All the amounts that were in arrears after forfeiture had taken place

C.. Oh I see and is there a reference to

Z.. Yes.. Well that's on the next page 432 your honour has the (interrupted)

C.. Fine..

Z..Your honour do you want to have a

C.. Oh this is the umm Ms Cracy's statement

Z.. Yeah and then the

C.. I see Paid out £2,500

Z.. and the

C.. Oh two six two five

Z.. For both July arrears and the Oct oh sorry the Sept quarter date

C.. And that relates to both properties

Z.. Yeah

C.. So apart from the point about forfeiture that brings the rent up to date

Z.. At that point yeah after that quarter.. And then your honour

C.. That's all that you had said that was in arrears

Z.. Yes..... And then your honour

C.. It was one two I see the July it seems for some reason it was the same figure

Z.. It had been part there had been part payment

C.. Oh I see so that was £2,500 in July

Z.. Yeah

C.. and

Z.. well err yeah

C.. and then .. well the figures that were transferred were the figures in the Oct letters

Z.. Sorry your honour were on

C..Not to the July

Z.. Yes your honours right there the July (family?.. can't read word) yes

Ms Cracy: They're the figures

Long Pause

Z: Your honour there...

C: yes
Long pause

Z.. I'm sorry there's I'm sorry

Long Pause

Z.. Your honour having seen these files of the debt that was outstanding at the date of forfeiture was paid on Fridays cancelled

C.. (a lot of umming but can't read notes)

Z.. Say say

C.. The July the July payment had been paid

Z.. Some of that was paid

C.. But you say that by the 21st Oct everything then outstanding was paid

Z.. Yep but

C..Then the July was paid

Z.. Yep but the at that point

Long pause

Z..Yes your honour how can I explain this fine if your honour looks at page 5 tab 8 then the whole confusion I've caused in the later figures I've showed you in Oct

C.. Ahhh

Z.. I think that's why I've caused confusion but page 49 does your honour have that

C.. Yes...

Z.. So that's in relation to 104 your honour the three quarterly rent in advance for the dependable date at the top

C.. Quarterly rent in advance yes....

Z.. On the 29th September your honour that's when the dependant quarter will be made unpaid and then if you look below on the 22nd Sept the balance brought forward that would be balance from July that had not been paid

C.. Oh yes

Z.. and that makes a total of two six two five

C: Ahhh

Z.. that wasn't paid and then we have the same calculation that wasn't paid

C.. I see

Z.. to 106 we have the dependant quarter and then brought forward the June balance not paid which makes a total of three thousand five hundred

C.. I see

Z.. So they the balance of.. (interrupted)

C.. Oh so that between 20th Oct letters are referring to the two of them

Z.. Yeah yeah

C.. I follow I follow.....yes

Z.. And those sums were then transferred

C.. (can't read notes) and they were transferred on the 31st

Z.. Yes after the forfeiture had taken place

C.. Yes.. ... Yes so.. Those are the facts that these facts were re payment can I just see if Ms Cracy wishes to add

Ms Cracy: Umm

C.. That on the 31st all the rent due was paid

Ms Cracy: Yes that all the rent was paid up to the end of September

C.. Yes

Ms Cracy: I don't agree with all that she says in the letter of July because in the gallery the floor had been taken out and that the floor had been covered by the insurance well I'm not going to go through the whole insurance

C.. I certainly don't need you to do all that ... but just at the moment I'm concentrating on only the figures when

Ms Cracy: I'm just trying to explain that we couldn't get the floor fixed and when we had all the very important bookings on top of all that instead of accepting that then they on top of that... (interrupted)

C.. The section 25 notice yes yes

Ms Cracy: Those are the reasons why we thought we didn't have to pay the rent

C.. yes yes

Ms Cracy: When we met with solicitors from a firm called Steeles Law it was them that wrote the letter and it was them that told us that we could trigger the cessor of rent clause

C.. Yes well you don't have to tell me what advice your solicitor gave you

Ms Cracy: Well it's important because it's the reason we wrote that letter

C... You can yes you can but I'm just telling you don't have to

Ms Cracy: I don't really follow, I'm not very good at speaking....(interrupted)

C... Well you don't need to worry about why you went to solicitors I can quite understand why you did just at the moment I'm concentrating on the figures it seems there's an agreement between the two of you as to what was paid and when and effectively you can bring matters entirely up to date on the 31st August ah October

Ms Cracy: Yes we actually sent the cheque and we actually heard from no one

C.. No one

Ms Cracy: No answer we sent that letter as we couldn't afford the solicitors they did very little work and charged us an exceptional amount of money and we tried to use the parts of the letter they showed us but we had very little confidence or trust in the defendant and so we took the advice in the letter and we just thought we'd approach it in a different manner

C.. And now your cheque you sent it was never attached

Ms Cracy: No it was never attached and there was a conversation between Ms Flores and

Ms Flores: Clarence

Ms Cracy: Clarence at the finance department

Ms Flores: Lots of cheques had gone missing

Ms Cracy: As far as that.. (interrupted)

C.. Yes yes what ever the conversation Ms Cracy was.. (interrupted)

Ms Cracy: Well the conversation was that he said that there was a lot of cheques that went missing recently and that there was a problem between reception and finances, which is when we decided to make a bank transferred to ensure that it couldn't go missing and yes it was after the bailiffs had got, the transfer

C. Sorry what was after the bailiffs?

Ms Cracy: this happen after the bailiffs had broken in we phoned

C.. The conversation between Clarence and yes...

Ms Cracy: Ms Flores yes and we delivered a couple of bank statements that showed the transfer had been

C.. The transfer

Ms Cracy: had been done. In actual fact that transfer was done on the evening of the 30th Oct but only appears on the statement the day after on the statement

C... Was that the day of the conversation between Clarence and Ms Flores?

Ms Flores: The transfer and the conversation was all on the same day

Ms Cracy: OK yes, (to Jo) yes, yes your honour and

C.. The same day

Ms Cracy: The same day and the bank statement and the proof of payment was hand delivered to the defendants office the following day

C.. So that's the bank statements

Ms Cracy: Yes, I would also like to say unless it doesn't make any difference but there was no hope of payment being allowed at the office

C.. Yes

Ms Cracy: and that hopefully that was for all

C.... Anything else?

Ms Cracy: No

C..Right Ms Bhaloo umm why doesn't that restore the lease on the basis of the equivalent of relief from forfeiture?

Z.. Your honour right can I hand of the?

C.. Yes yes thank you very much, Anyway the facts about payment are agreed

Z.. Yes they're agreed (are we agreed? Not to my knowledge but I was ill that day so just took notes)

C.. (Muttered can't read notes)

Z.. Your honour its my impression anyway that the forfeiture took place and the lease came to an end now what I've handed out first of all is an extract from Woodfall paragraph 17 of 194

C.. Yes

Z.. Relief within six months of peaceable re-entry so where the lesser has forfeited land for non-payment of rent by re-entry without action the leases may apply to the county court for relief at any time within 6 months of the landlords re-entry and on such application the court may get such relief that the high court would have granted..... Your honour there are cases where you can't really have courted to grant relief outside the courts processes and there are cases about that (which she doesn't mention) and whether that is.... possible or not but that's not what is happened here we were never able to grant relief we in fact the claimants ignored possession and broke back in and we... re-entered again on the... 4th Dec and then they went off to the high court so they've been in possession since then... your honour there has been no application before you in these proceedings there is no entry on the claim (apart from we took it to High Court!!)

C. Was it ever drawn to the court?

Z.. Your honour your honour they had Lesley Longhurst Woods actually and she said something actually (debated by Chan and I publically yes she did no she didn't!!) about a claim for relief and your honour said yes I wouldn't mind they.. they've.. They've... never but the county court can as standard the only and the only jurisdiction that we had to grant relief was under section 138 in association with 139 on the next page the next extract I've handed over your honour sees that 138 applied this section has effect where a lease sorry when a lesser is proceeding by action in the county court being an action in which a tenant has jurisdiction (can't read notes no extract handed to us) for non-payment of rent and in that case where we would proceed by action then if you pay the rent (never mentions order in high court not to pay rent by HHJ Clarke or if the fact had we applied in isolation 'from all the facts' i.e. harassment, extortion, bribery, cessor of rent and breaking an entry for relief she'd have tried to use just this technicality earlier on and hoped to close the case which they didn't manage as we brought it to the Queen's Bench court 37 in 2008) in then you get relief but page 139 sorry section 139 two which is section in a couple of pages over your honour and that is the perception that Woodfall the extracts from Woodfall refers to, where a lesser has enforced against a lessee by re-entry without action

C.. This is sub section 2?

Z.. Yes your honour

C.. I see..

Z Arrives at re-entry or forfeiture of the.. Any land for non-payment of rent the lessee may at any time within six months from the date on which the lessor re-entered apply to the county court for relief and on entry and such payment the court may in effect grant to the lessee such relief as the high court granted

(Now don't you think that that last statement 'such relief as the High Court granted' is her undoing?)

Your honour and in my view there's no jurisdiction to grant relief now and your honour it would because there's been no rent payment for the period of two years (as rent was asked for by her at the High Court and answered 'I don't think so' very sarcastically by HHJ Clarke' in what was said then by HHJ Clarke for everyone's benefit to be a speedy trial establishing all the issues at hand at the county court hence these proceedings) since the end of 2008 any relief would have to be on terms that those arrears those sums are paid with immediate effect

C.. Well it would be everything up to the date of the re-instatement of the lease

Z.. Which would be if there were jurisdiction, which I may remind you that there is none

C.. Yes yes there.. (interrupted)

Z.. That would need sorting out

C.. Yes

Z we can't have if we carry ... (interrupted)

C. Yes. There is an authority on... on that very point but... the relief must relate to the time of the hearing

Z. Yes

C..Relief indeed from

Z.. Hmm hmm

C..But.. It's more a statement than a (mentions law with no conference to our lack of knowledge and offers no common explanation as is just speaking to her, the legal family, and I am stunned at this) Stuart Collier.

Z.. Oh yes of course

C I believe

Z.. Your honour and we'll leave that but the purpose of relief would be to put the landlord back

C.. In the position that he

Z.. If he had been if he, which is why a regime of cost in that sort of circumstances its its obvious even if I may say so your honour with out the btt et er het er er that that ere that there is there is authorities all all and there is authorities that you can't just say pay it sometime before we'd have to be satisfied that it would be paid and feel pretty confident

C.. And it would have to be within a period of not less than 28 days (interesting we paid 24 hours after cheque confusion) under section 138 if it applies

Z.. If it applies emm your honour I think I should Another

C.. Yes yes well I can always change that once the umm

Z.. Your honour theres a clear statement in in Woodfall as to the requirement that the that the the tenant should be able ummm to paaay

Z.. Your honour so it not just j..t that can't just be suspended indefinitely there has to be a ... they have to pay there has to be a definite date

C.. Fine yes yes sure fine of course we have to fix them here (what is 'them'?)

Z.. Yes

Z... Your honour

C.. We can't fix a period less than 28 days

Z.. your honour I'm not I'm not sure about the 28 days

C.. umm on ..n Yes its .. subject to 138 the court will order them to pay if the court is satisfied that the landlord is entitled (interesting word) is forcified to enforce forfeiture its 138 the court shall order within the possessions made within the lessors subject to not

Z.. Yeah so not yeah

C... For release

Z..Yes sorry I'm concertrating on 139 because in my demission section 138 does not apply (carving it up!!!)

C.. I quite follow but if it were I .. would still yes

Z.. Yes

C.. Trying to see what the figures would be

Z.. Yes your honour

C.. unless of course the rent all the rent was in ..ah possible way yeah..

Z.. I'm also reminded that in high court in Nov 2008 the claimants were told to apply for relief

Ms Flores: We were not

Ms Cracy: Yeah

Ms Flores: We weren't were we?

Ms Cracy: Yeah

C: (mutters a lot to her so it won't get on transcript probably he knows that one!)
LOOONG pause....

C.. Yeahh

Z.. Your honour so it appears on my submissions on forfeiture

C.. So in terms of money claim under your counter claim

Z.. Yeahhhh

C.. What does it come to..

Z.. In terms of mean profits rather than

C.. The mean profits would run from the 25th of Dec because you get your quarterly

Z.. well your honour I'm not sure that that's a matter of law that may not

C.. That may not be right

Z.. Errr so so there may not be

C.. it brings it literally too

Z.. well that may not be what the law allows

C.. Look I don't suppose that because the law allows (can't read the notes) you can only get the higher amount (feeding it to her)

Z.. (sheepishly) yes

C.. (and then mutters a lot of what ever it is that old trick again can't catch it)

Z.. your honour shall I give you the figures we've got?

C.. Yes

Z...and we can we can adjust them I do believe that we've handed up a schedule

C: Yes yes you did

Z.. So your honour will see that we've adjusted it from the 29th umm umm so we can deal with that but in relation to what the total figure to what we've paid now is 13 thousand

C.. Just let me understand the system you are taking that first period of 57 days and you make it one o six nine eight nine on the basis of what I've signed on Monday and got and past since you received the payment at a different rate (Outrageous!) I could have attended the differences

Z... May I just checkyour honour I think

C.. the rent was 5 thousand five hundred

Z.. yes your honour the way to deal with your honours point is simply to give credit for the sum we received on thee on thee 31st

C.. well provided it was thee it's a quarters worth five thousand five hundred divided by four that's one three seven five

Z.. one three seven five yes your honour

C.. one three seven five

Z.. Your honour that would hmmm

C.. well that's a bigger figure than ..

Z.. ummm

C... But it ran from

Z.. yes it ran from September yes your honor we have to take a proportion of off the one three seven five and your honour we can do that we can do that calculation

C.. Yes yes

Z.. then we have to take the amount of one three seven five which applies to the seven days so we need something less than one three seven five on

C.. Yes well you better wipe that out

Z..and similarly your honour with one o six we would have to give credit with a proportion of the part of the amount paid and take that off the 26 48 1 on the last page we, we will do those calculations

C.. Yes so your bringing it in quarterly amounts

Z... Yes I'm not sure we're obliged to do but that's just a change to do

C.. yes its sensible

Z.. I think there's a slight advantage there

C.. And this comes up to ?

Z Yes .. (very long pause) right so your honour if one takes 57 days off the 5500

C.. Yes

Z.. That is eight hundred and 58 pounds and 99 pence

C.. Eight five eight

Z.. 99

C.. 99p

Z..and if one takes that offff the one o 69 89 that leaves you with a figure of 483.19

C.. What

Z.. and if one takes that off a seven days period 483.92 four hundred and eighty three ninety

C.. You deduct from 1 o 6 9. 89 from that period

Z.. Err

Z Your honour I think I make that

C.. Oh well I didn't

Z.. two hundred and ten

C.. Divided by 265

Z. err

C.. yes well and then you muliple by 6 or 7?

Z.. (bated breathe) yeah.. divided by two six five

C. eight five nine nine o

Z..and one o 6 9.88 minus

C ..89

Interuption by me about Oliver clearly filming and recording the procedures I saw him do it many times grab it off him but the Judge does not care at all.... He simply says:

HHJ Cowell: Can you take that outside...

Ms Bhaloo: I make that two hundred and 10 99

(long pause)

Z.. That's two hundred and ten 99

C.. (almosts sings) two hundred and ten 99 (he's nervous though about what I just said to Oliver as he has in no way addressed it and Oliver has left the court with his machine still left on the table)

Z.. and so the 13, 169 and 47 pence at the end what I think comes out to

C.. Whats the size of interest (very evilly said)

Z (very serious and teacherly annoyed too) may I just give you the figure for the rent before I COME ONTO (quietly) interest...

C.. Yes yessss

Z.. Umm Your Honour the 13 thousand is just been arrived it doesn't include the interest (she's speeding up now as only just got off her high horse and realised what he said and wants more cash for her clients so sounds more begging)

C.. 31

Z thirty one fifty nine

C.. Yes

Z.. If you take the eight five eight ninty off that it become 12 thousand 300 pounds and fifty seven and we can we can go over those to double check them

C.. Yes

Z.. I'm sorry my instructing solicitor makes it three hundred and ten may we just check and we may have to redo that and your honour I will make sure we do the same calculation

C.. Well I think it might be a good idea if umm... I adjorn for a short time err it may that Ms Cracy wants to be satisfied how this is worked out, I think that's the answer but lets see ...

Z... Perhaps we'll explain your honour

BREAK OVER

Z... (some blabbery about her writing) Perhaps I can explain my writing sorry on 104 what I've done is 5500 divided by 3 hundred and 65 times six or seven to get to an appropriate amount

Z.. a proportion of the amount of rent and that Comes to 858 92

C...Yes

Z.. and if you want to take that off the amount that we were putting

C.. You get 2 ten 99

Z.. Yes and we were putting the total amount in the end it becomes 12 3 10 67

C.. Well 12 310 67

Z.. Then on 106 9,000 divided by 365 times 54 and its around 1405

C.. 1405

Z.. and one takes that off the one four seven 19 that is the vat figure of 741 pounds and seventy one pence

C... Yes I'm inclined to agree

Z.. and then

C.. I'll Write in 741 721 (?)

Z.. and then right in the end 5 thousand and seventy five and 88pence

C Right that s five thousand and seventy five and 88 pence

Z.. that's my instructions depending on (can't read notes)

C: Yes Ms Cracy have you anything to add I don't know if you happen to agree that

Ms Cracy: Can we deal with the first part (interrupted)

C..Yes

(longish pause)

C.. Can I tell you how I see it that because you never made an application for forfeiture its too late now plus even if you had made an application to appeal against forfeiture the only order I should make is too within 28 days or possibly a bigger period but not much bigger you make payment to the total of err 12 thousand 310.57 and 25 thousand 75 88 you could get absolutely one or the other of them ,back together also with some costs if it would be impossible in practice to pay that then you haven't got to the stage of bankruptcy???

Ms Cracy: Really? Can I talk to you about that law

C.. Yes (can't read word) that will be at the end???

Ms Cracy: That will come at the end of the trial

C.. Yes that comes to an end at the end of the trial

Ms Cracy: And wouldn't you at the end of the trial see that that was the appeal?

C.. If You get it and you were to appeal then .. at a time of ... your claim ... because of the (counter claim?) you would have to ... pay and if you have nothing to pay

Ms Cracy: I'm not sure????

C...I don't know what do you want to do

Ms Cracy; Well I believe we have been (can't read note)....

C... and that's what you wanted to say?

Ms Cracy: Yeah and the (can't read note)

C... Yes well just before I finish have you got some other points you want to raise (he is mean now) can I just ask Ms Bhaloo your view does include the total (can't read note)

Z (can't read note) your honour etc

C In terms of that (can't read notes)

Z Well your honour I would seek a declaration that it has been forfeited and ... (can't read notes)

C Yes Yes

Z And that it absolutely had come to an end and ... the effect of that that despite the injunction blah Law blah blah (can't read notes.

C Yes Yes and that would be the end of the case

Ms Cracy In relation to mean profits taking into consideration the valuation on Monday (blah blah can't read note) and that mean profits would be over the valuation of rent that was meant to be paid.. (blah can't read note) ... fit

C Well one can ignore completely the..

Ms Cracy But what I mean is that from the period of forfeiture right to the time where the rent was due for ... does that mean you are raising the rent

C Yes I m raising the rent to what was established on Monday I m taking into account that your payment at the beginning of Oct covers the rent till Dec not all that's why the .. (blah Can't read note)..

Ms Cracy Over £9,000 because that's why we are not satisfied that the rent is over .. (can't read notes Bla blah...)

C Yes I'm afraid it's a matter of the law that follows that that's the rent note (can't rbla bah) yes sadly it's a case that follows the case of forfeiture the fact that you have no arrears .. (blab la can't read note) and if there is anything else you want to say

Ms Cracy Well the lease (can't read notes blah..)

C Well that has come to an end (Can't read note Bl blah)

C The only thing I could do is if you are able to make some form of payment... (can't read notes Blah blah) at least something that seems reasonable £12,000 or £25,000 that might that might impose (blah blah can't read note) some sort some sort ... yes... The trouble is you see I have to assume that you cannot pay and in fact you the premises ... Have you been able to use the premises why would you want them back etc

Ms Cracy (Blah blab la blab la ... very long explanation on use of premises with leaks etc but can't make out the notes)

C Back to his Judgement on the 9th Sept I won't repeat the question of appeal still stands. At the date of peaceable re-entry by the defendants on the 29th Oct there was er rent outstanding the only thing that can be set against it unfortunately

from the point of the claimant is the Judgement of £100 which I gave on contemplation in the Judgement of Monday 20th Sept. The amount of the rent in arrears on the date of the 29th Oct was transferred by the claimants to the defendants on the 21st Oct ordinarily an application for relief by the defendants would have resulted in an order of the up to date sum to be paid under which relief was granted under the section 138 woodfall, unfortunately in this case the claimants did not make an application for relief from forfeiture and so when I am reminded that when they appeared at the county court that one of the instance they would be here and in accordance with 138 and 139 with sub-section 2 enable which to make an application in six months and because there has been no application I then don't have any jurisdiction to grant relief but I comfort myself by saying that today the amount that today would be by way of mean profit if I had done anyway that's to see.. In the case of 104 that's £12,310.67 And 106 £25,075.88 and if I granted relief on the basis that the rent had been paid up to date there would be something roughly in the region of about £30,000 altogether owed and that they may not have that kind of money by which some kind of stay while appeal could be drawn... so the order it seems to me I'm bound to make is that the defendants recover possession of the property now and that they are entitled to the two sums to be paid less the £100 I gave judgement ... So that is the order that I make on the basis of my .. Judgement....

Now the next point could be that the claimant could should, that there wasn't any rent outstanding on the 29th Oct even so they would still be obliged to pay the rent. It is a tragedy that instead of using the premises (Ha cheek which were unusable) it seems they have spent all there time and effort pursuing the defendant and a tragedy that it may be more that what they now find (in other words and now he is finally showing his true colours in carefully chosen words but you can see his face says exactly what he means, we should not have even dared ever to complain let alone get this far with this case and now the penny has dropped clearly that it has been deliberate that we were constantly being sabotaged by this court to give up and accept defeat with delays and no answers , with cost orders during lead up to trial, and no orders or even answers when it suited them and one sided trial with me in the box for 4 days and no chance to put my case across so told to put it in an EMAIL, then admitting he does not read even our legal submission until I caught him out so he had to put the record straight what in just one day and changes nothing and now all this today was a brutal and patronising slap from on high! It was corrupt!!! £100 off.. joke)... So I should with permission from Ms Bhaloo that I should extend the permission time from the appellant judge to three weeks after the receipt of the claim of the approved transcripts of my..... but provided that the application was made by the claimants for the transcripts within 3 weeks of today...

So the difficult question is if you are entitled to a stay, its implicate in what I've said that I don't think you are entitled to stay so it would seem to me that to grant a stay would only mean that the defendants would be kept out of the premises unless the amount mentioned in my judgement today.. in my judgement that I shouldn't allow a stay.

Ms Cracy How long will we have to...

C Well its not really a matter... if you were to provide in terms of money something in the region of several thousand maybe more you could always ask to reconsider the question of a stay as I have to balance the interest of the parties

Ms Cracy (Blah bla can't read note re time

C Sensible thing is if there is money to speak to Ms Bhaloo but I'm not being optamistic because I can only decide what should be paid when I know what the situation is

Ms Cracy In terms of my other question if there isn't the money then how long...

C Well I'm afraid that the order is forthwith

Ms Cracy Which means?

C NOW...

(no note ...but I remember she said to him 'You Can't do that' and he smiled in her face)

Ms Cracy Isn't that something you can consider in you Judgement

C They are concerned that the matter is forthwith and they may want time to remove the goods (he speaks to Ms Bhaloo with an empathsis on the 'Goods' as he puts it! With slight smile between them.)

Ms Bhaloo blah if the matter is stay... more money.. (na na na) happy you honour

C Just trying to answer (unclear note blah bal) out of my juristiction (again unclear bla word)

Ms Bhaloo Well that just seems to leave the matter of costs

C Yes

Just to add that at one point the judge when he was explaining about the error of his ways again not reading our 90 pages, 245 paragraphs legal submission I did shout out, 'Yes of course you were so confused because one had the word CLAIMANT on it and the other had the word DEFENDANT!!!!!!!!!!!!!!!!!!!!!!'

Also at the end of the costs hearing I read out an important thing in response to his outrageous TRADEGY comments and his point that we had never asked for ventilation which was ridiculous as we did from the start and clearly with good common sense reason as early as 2005 to Chris Natt about banging out a door...

Plus when I started the case I said we would rely on three important documents..

Banging out a door letter to Chris Natt was one of them!!!

I said, to the Judge finally ' We would like expressed permission (from you) which has to date been withheld, ignored to put in ventilation...

(as we can't do it without permission from them which they won't give and can't get planning permission they have to, to go through the structure or we'd get sued by them catch 22 which is nicely convient for them while the trial was going on..)

Expressed permission to honour the high court Judgement to allow 'Quiet Enjoyment' of the claimant in both businesses to be able to short/long term hire as set out in request letter for the lease as a place for hire'..

(Again one of the only three documents as set out at start of case to use the place for hire so if we got a block booking they would do us under the terms of the lease not to licience hire which may have saved us if we could have got a hiree to long term on the condition that we take their deposit to put in the ventilation.)

I also say that the Judge has tied us up in what will now be a lengthy appeal process something his honour is ('famously') well known to have done to claimants before with no regard for their further losses.

I finally say I was someone who was in care, I had a good project going, I did not take any public money unlike the defendant yet this so called social landlord has done everything in its power never to mediate but to go all out to wreck me and that this court has just knowingly assisted them in doing so in this pro-landlord judgment.

They take our fully refurbished (to the tune of ten's of thousands of pounds) shops at 5am the following day as it was too late that evening to order a bayliff.

