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1983 No. 1053  
THE HIGH COURT

1554  
14 JUN 1984  
DUBLIN

BETWEEN:

THE NORWICH UNION LIFE INSURANCE SOCIETY

Plaintiffs

and

GESTENER DUPLICATORS  
LIMITED

Defendants

Judgment of Mr. Justice Hamilton delivered the 14<sup>th</sup> day of February, 1984.

This is an application brought by the plaintiff for liberty to enter judgment against the defendant company for the sum of £65,239-03 being alleged to be due by the defendant company as the balance of rent and service charges in respect of the application by the defendants of premises situated on the ground floor of Apollo House, Tara Street, in the City of Dublin.

The defendant company does not contest the entitlement of the plaintiff company to judgment in the sum of £44,682-12 but seeks to defend the plaintiffs' proceedings herein in so far as they relate to a claim for £20,546-91 being claimed by the plaintiff company as the balance due by the defendant company in respect of a service charge in respect of the said premises for the year 1981.

The premises are held by the defendant company pursuant to the terms and conditions contained in an Indenture of Lease made the 13th day of April,

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1971 and made between FOS Investments (Dublin) Limited (whose interest therein is now vested in the plaintiffs of the one part) and Addressograph-Multigraph Limited (whose interest is now vested in the defendant company) of the other part.

The premises are held by the defendant company subject to the terms and conditions contained in the said Indenture of Lease including the covenant to:

(a) Pay during the said term the said reserved rents and the further and additional rent hereafter mentioned at the times and in the manner aforesaid without any deduction except as aforesaid.

(b) Pay to the landlord without any deduction by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the landlord in the repair, maintenance, renewal and insurance of the building and the provision of services therein and the other heads of expenditures the same are set forth in the fourth schedule annexed to the said lease such further and additional rent (hereinafter called "the service charge") being payable subject to the following terms and conditions.

(1) The amount of the service charge shall be ascertained and certified annually by a certificate (hereinafter called "the

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certificate") signed by the landlord or its agents and verified by the landlord's professional accountants so soon after the end of the landlord's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned".

The manner in which the annual amount of the service charge payable by each tenant, including the defendant company, is calculated is set out at Clause 9 (e) (b).

By letter dated the 10th day of August, 1982 from the Property Manager of the plaintiffs, the defendant company was informed that the service charges for the year ended 31st December, 1981 amounted to £20,546-91.

This letter stated that:-

"An Auditor's Certificate in the total amount £220,543.00 is attached.

This figure includes an amount of £143,519.00 for the replacement of two lifts, as notified to you on the 30th October, 1981.

You pay in relation to the space occupied as follows:

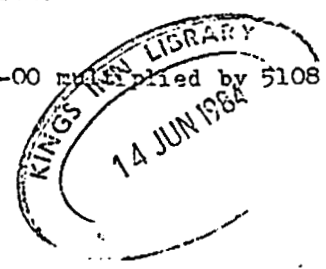
Total Amount multiplied by space occupied.

Total area of building equals £220,543-00 multiplied by 5108 divided by 49,964.

Equals £22,546-91.

Less Amount paid on account £2,000.

Balance Due £20,546-91.



The defendant company seeks to maintain that it is not liable for the said amount for the reasons set forth in the affidavit of Mr. Dan Rosen, Secretary of the defendant company, and sworn on the 22nd day of June, 1983.

In this affidavit he avers as follows:-

6. I say that the defendants portion of the said building is on the ground floor only, in an area thereof a considerable distance from the said lift. I say that to get to the said lifts from the defendants said portion of the premises requires a person to leave the said building and re-enter the building elsewhere.

7. I say and believe that because the defendants portion of the said business is situate on the ground floor, it or its staff and customers, has no use or need for the said lifts and have never used or required to use the said lifts. I say and believe that the lifts were installed purely for the convenience and use of those tenants in the said building who are in occupation of floors above the ground floor.

8. I say and believe that the lease under which the defendants are tenants in the said building impose a duty on the defendants to pay a share of the service charge in so far as it relates to passenger

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lifts, entrance of stair cases, passages, landings and all other parts of the building enjoyed or used by the tenant in common with others. I beg to refer to a copy of the said lease when produced.

9. I say and believe that because the defendants have no use or enjoyment of the said lifts, they cannot be held responsible for service or maintenance charges in so far as they relate to the said lift.

10. I further say and believe that the plaintiffs have always been aware of the fact that the defendants have never used or had reason to use or enjoy the said lifts

11. I beg this Honourable Court for an opportunity to defend these proceedings in so far as they relate to the said claim for £20,546-91."

The fourth schedule to the said lease which deals with "landlords expenses and outgoings and other heads of expenditure in respect of which the tenant is to pay a proportionate part by way of service charge" includes at paragraph 2 thereof:

"The cost of periodically inspecting, examining, maintaining, overhauling and where necessary replacing any and every part of the building and the appurtenances thereof referred to in extenso in the said sub-clauses".

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This obviously includes the costs of periodically inspecting, examining, maintaining, overhauling and where necessary replacing any lifts in the said premises and it appears to me to be irrelevant as to whether or not the defendant company actually uses the lifts or not.

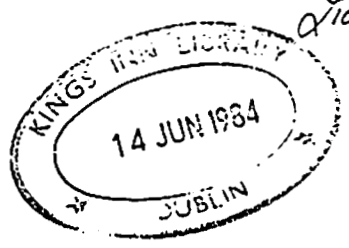
They are part of the overall services provided in the building and in my opinion the defendant company are bound by the terms of the covenant contained in the said lease to pay the rent reserved thereby and "the service charge" referred to therein.

I am satisfied that the defendant company are liable for this charge and that they have no defence to the plaintiff company's claim for the said sum of £20,546-91.

The said sum has been calculated in accordance with the manner provided in the lease, as being duly certified and the defendant company was duly notified of the amount of the said charge in accordance with the provisions contained in the said lease.

Consequently there will be liberty to enter judgment against the defendants for the sum of £65,239-05. The plaintiffs are further entitled to interest thereon at the rate of 11% as provided in the Courts Act 1961.

*Liam Hamilton*



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LIMITED

Defendants

JUDGMENT

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21 JUL 1984  
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