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ROYAL COURT (INFERIOR NUMBER)

Before: Sir Frank Ereaut, Bailiff
Jurat M.G. Lucas
Jurat Mrs. B. Myles

Timothy Michael Joseph Browne, Plaintiff

- v -

Premier Builders (Jersey) Limited, Defendant

Advocate G.R. Boxall for the Plaintiff
Advocate K.H. Valpy for the Defendant

In a prior action before the Royal Court (differently constituted from the present Court) the Plaintiff alleged (inter alia) that the Defendant had negligently caused structural damage to his property, Charlton House, First Tower, St. Helier, as a result of interference with the foundations of the gable. After hearing evidence, the Inferior Number delivered a judgment on the 2nd May, 1980, in which it found that the Plaintiff had proved that allegation. It went on to decide that the Plaintiff could recover damages under that head of claim as follows:-

"1. The cost of repairs to Charlton House;

2. Any depreciation in value being the difference in market value between the building as repaired and the building before the damage;

3. The expense of obtaining equivalent accommodation while the repairs are being carried out."

The Court then stated that it could not dismiss the possibility that some of the cracks and defects in Charlton House existed before the work in dispute had been carried out, and a survey was therefore necessary to establish whether this were so and the extent of the damage to the structure. The Court therefore went on to order as follows -

"1. A structural survey shall be carried out jointly by Messrs. Rothwell & Simkins;

2. The cost of such survey shall be paid for by the Company;

3. During the time it takes to carry out the survey the Plaintiff and his family will be housed temporarily at the cost of the Defendant - the cost incurred in doing so will include the taking up and removing of any of the Plaintiff's furniture and making good any damage to such furniture and belongings as may occur."

Mr. Rothwell, a Chartered Engineer employed by the Defendant, and Mr. Simkins, a Chartered Engineer employed by the Plaintiff, surveyed the property and prepared a joint report on the structural damage. The Plaintiff obtained an estimate from Mark Amy Limited of the cost of repairing that damage, namely £6,477. On the 27th January, 1982, the same Court, having examined the report and estimate and heard witnesses, awarded the Plaintiff the sum of £6,500 by way of general damages in respect of structural damage caused to 'Charlton House as a result of the Defendant's interference with the foundations of the party gable (referred to in the original judgment as "the cost of repairs to Charlton House") and adjourned until another day the assessment of damages in respect of two matters.

The first such matter was described in that Act of the Court as - "deterioration in the value of Charlton House caused by the Defendant as aforesaid". This was clearly intended to refer to the measure of damages described in the original judgment as -

"any depreciation in value being the difference in market value between the building as repaired and the building before the damage".

For the sake of convenience we will refer to this as "the first head of claim".

The second such matter was described in that Act of the Court as - "incidental expenses properly incurred by the Plaintiff by reason of any works of repair or redecoration."

For the sake of convenience we will refer to this as "the second head of claim."

This judgment relates to the hearing by this Court of evidence and argument concerning the above two matters.

Before the hearing of evidence began, the Defendant argued that the Plaintiff was not entitled to any damages in respect of the first head of claim, because it was for diminution in value and therefore any damages awarded for such diminution would be a duplication of the award of damages already made for repairs to the structure of Charlton House. We held that that was a matter for the Court of Appeal, and that the duty of this Court was to decide whether, as a question of fact, any damages were recoverable under the first head of claim.

As regards the first head of claim, there was a dispute as to exactly what the original Court meant by the words used, but we have concluded that the Court envisaged that, notwithstanding that repairs were effected in accordance with the proposed structural survey to be carried out jointly on behalf of both parties, the market value of the house after the repairs had been completed could be less than the market value of the house immediately before the date of the damage caused by the negligence of the Defendant, due to some permanent change in the condition or amenities of the house as a result of such damage, and that if such were found to be the case appropriate damages should be awarded in respect of such depreciation in market value.

In the pleadings and at the hearing before us the Plaintiff alleged only one head of deterioration in the value of Charlton House, and that related to -

> "the enforced demolition of the chimney situate in the eastern gable of of the property. As a result of the demolition two functional open fireplaces, one in the downstairs north-east bedroom and the other in the sitting-room of the property, can no longer be used."

The Plaintiff assessed the estimated deterioration in value at £6,000, and called a valuer and estate agent, Mr. A.S.J. de Gruchy, as a witness in support of that view. The Defendant called two valuers and estate agents, Mr. T.J. Williams, and Mr. R. Stone, to express contrary views.

The relevant evidence forming the background to the allegation of "enforced demolition of the chimney" was as follows.

Before the work done by the Defendant to the east of Charlton House which was found by the original Court to have caused structural damage to the Plaintiff's property, Charlton House possessed a functioning chimney which enabled

the Plaintiff to have a live fire in the fireplace of the lounge and in the bedroom. In practice, the only fireplace used was that in the lounge, and the Plaintiff and his wife were much attached to a live fire in the lounge.

When Messrs. Simkin and Rothwell inspected Charlton House in order to prepare the survey report ordered by the Court, they found cracks in the chimney breast and the chimney to be blocked by rubble. There are various references to this in their joint report.

In their general remarks they state -

" The centre of the chimney breast was exposed and it was found that the bricks and mortar are loose. The chimney is blocked by rubble."

They then recommended that the following work (inter alia) needed to be done -

"Ground Floor - NE Bedroom

Open up the face of the chimney breast, remove debris and inspect flue for serviceability. Repair flue if necessary.

Lounge

Examine horizontal cracks on south side of chimney breast. Repair as necessary. Repair vertical crack at wall junction.

First Floor - NE Bedroom

Cracks in East wall, SE cupboard, chimney breast and NE to be exposed. Repair cracks and wall as necessary. "

It was apparently the view of both Messrs. Simkins and Rothwell that the chimney breast and flue had only minor damage and could be repaired, and Mark Amy Limited allowed a PC sum of £200 for this repair work. As we have said, on the basis of the estimate of that firm of the cost of repairing all damage to the property caused by the negligence of the Defendant, the original Court awarded the Plaintiff a total sum of £6,500.

Following that award, the building company began in March 1982, to carry out the repairs recommended by the survey and in accordance with the estimate. Within two days they found, having opened up the chimney breast, that the East gable wall of Charlton House behind the chimney breast, and which formed the back of the chimney, had a hole in it, measuring some four feet by two and a half feet. Mr. Smith, the Building Manager, informed

the Plaintiff who asked him to contact Mr. Simkin, which he did. Mr. Simkin inspected the property and advised that the hole must be repaired and that this could not be done without first demolishing the chimney breast. The Plaintiff was informed. He had no option but to instruct Mr. Smith to demolish the chimney breast. He would have liked to have had the chimney breast re-built after the gable wall had been repaired, so that he could continue to have a functioning fire-place, but he and his wife felt that they could not afford the extra cost of re-building, it would probably have meant returning to Court to seek further damages and they would have had to stay in alternative accommodation for a longer period while the extra work was being carried out. Mr. Smith was therefore instructed to demolish the chimney breast and stack and not to re-build it. The fireplaces themselves were to remain, but would no longer be functional.

Mr. Simkin told us that he had no doubt that the hole in the gable wall was due to the negligent work of the Defendant. The probable cause was a temporary interference by the Defendant's workmen with the stability of the foundations on which that wall rested.

That would have caused a crack in the wall and the crack then developed into a hole, probably following building work by the Defendant on the adjoining site.

Mr. Simkin was asked why he and Mr. Rothwell did not ascertain the presence of the hole in the wall when carrying out their joint survey. He replied that because of building work next door they had to survey Charlton House from inside. If they had made a hole in the chimney breast they would have seen the hole in the wall, but that would have weakened the breast and they had no reason to suspect damage to the gable wall.

The Plaintiff and his wife told us that they assumed that Mr. Simkin, on being told of the hole in the wall, would have informed Mr. Rothwell, in view of their joint survey report. However, Mr. Simkin did not inform Mr. Rothwell, with the result that the defence were never given an apportunity to see the damage nor informed of the dilemma in which the Plaintiff found himself or of the decision to demolish the chimney and stack.

Before assessing the amount (if any) of the depreciation in the value of Charlton House by reason of the fact that the fire-place in the lounge can no longer function, we must be satisfied that this is a matter which falls within the parameters of the first head of claim. It is obvious from the judgment itself and from the context of the first head of claim that the factor which is alleged to have caused the depreciation in value must have been the fault of the Defendant, a result of the negligent act of himself or his workmen before any damages for depreciation can be considered. The negligent act alleged here is the causing of the crack in the East gable wall which resulted in the hole which the builders found. That in turn, it is alleged, led to the "enforced demolition of the chimney", and hence to the absence of a functioning fireplace.

We have come to the conclusion that it is impossible for us to find that the Plaintiff has proved that the demolition of the chimney breast was due to the fault of the Defendant.

The Court ordered a joint survey. That survey disclosed the need for repairs to the chimney of a supposedly fairly minor nature, but it did not disclose the hole in the gable wall nor the need to demolish the chimney breast. The Court made an award, which in our view must be treated as a final award, in respect of all structural repairs. If Messrs. Simkin and Rothwell had had doubts about the thoroughness of their survey consequent upon their inability to see the East gable wall, then it seems to us that they should have expressed those doubts in their survey, and the Court might then have made provision for a further award if necessary. That was not done.

Nothwithstanding that, we feel bound to say that Mr. Simkin should certainly have reported the hole in the wall to Mr. Rothwell, and there should have been joint consultations about the effect of that unforeseen damage. It may well be that the award already made by the Court could not have been re-opened, but if it had been agreed that the fault lay with the Defendant then some solution might have been reached. Instead, the Defendant was, it appears, left wholely in ignorance of the hole in the wall and the subsequent decision to demolish the chimney and not re-build.

In these circumstances and with regret we have to say that we cannot find that the Plaintiff has proved that the "enforced demolition of the chimney" was the result of a negligent act of the Defendant. Counsel for the Plaintiff argued that the Defendant had not denied responsibility for the hole in the gable wall. In fact in his pleadings the Defendant denied liability in respect of any costs or damages incurred by the Plaintiff in relation to the demolition of the chimney, and by implication at least denied responsibility for that damage.

It follows that we dismiss the first head of claim.

We might add that if we had found it possible to proceed to the stage of assessing the diminution in value of the property as a result of the demolition of the chimney, we would have awarded only a very small sum. We do not in any way dispute that the Plaintiff and Mrs. Browne have greatly missed being able to have a live fire in the lounge and that, in the words of Mr. Williams, it had a "special value" for them. However, on the evidence before us we have concluded that only a small minority of potential buyers would find the absence of a functioning fireplace to be significant, and it follows that because the first head of claim relates to "market value" and not to the loss felt by the Plaintiff and Mrs. Browne, which is largely a "special value" loss, any damages for diminution of value would have been very small.

As to the second head of claim, during the hearing we dismissed a claim by the Plaintiff that the cost of the demolition of the chimney was covered by the words: "incidental expenses properly incurred by the Plaintiff by reason of any works of repair or redecoration." We were satisfied that the Court made a final judgment as to the damages to be awarded in respect of all work, whether structural or not, made necessary by the negligent acts of the Defendant, and that those words were intended merely to recite the third measure of damage in the original judgment, namely: "The expense of obtaining equivalent accommodation while the repairs are being carried out."

We have deferred until now our decision as to the length of time (which was in dispute) which should form the basis of damages under this second head of claim.

Mr. Smith said that the work which was the subject of the estimate following the joint survey report would have taken eight weeks. He also said that the demolition of the chimney breast and stack and the repair of the East wall would have taken another four weeks, making a total of twelve weeks. The Plaintiff and his family stayed in hotels for a total of fifteen weeks, but this matter is complicated by the fact that they took the opportunity to have a considerable amount of improvements done to the house at their own expense, and all three areas of work proceeded fairly simultaneously.

The only point at issue is whether the Plaintiff should receive damages on the basis that he had to use alternative accommodation while the chimney was being demolished and the East gable wall was being repaired. Because we have rejected the Plaintiff's first head of claim, the answer must be in the negative.

Having said that, however, we have sympathy with the plight of the Plaintiff at the time of the repairs, and giving a liberal interpretation to the estimate of Mr. Smith as to the time necessary to carry out the work described in the survey, we order that damages should be paid on the basis of an approximate nine week period, namely, the period of the stay at the Egremont Hotel from 26 February until 3 May.