



Neutral Citation Number: [2024] EWHC 1480 (Ch)

Case No: CH-2023-000425

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

ON APPEAL FROM THE ORDER OF HHJ DIGHT CBE DATED 7 NOVEMBER 2023
COUNTY COURT AT CENTRAL LONDON (CASE REFERENCE: K10CL048)

Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 19 June 2024

Before :

MR JUSTICE RICHARDS

Between :

**29 BUCKLAND CRESCENT MANAGEMENT
COMPANY LIMITED**

Appellant

- and -

ROJER TAYLOR WHITE

Respondent

Daniel Bromilow (instructed by Teacher Stern LLP) for the Appellant
Mark O’Grady (instructed by Keystone Law) for the Respondent

Hearing date: 17 May 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE RICHARDS

Mr Justice Richards:

1. The Appellant (the “Landlord”) is the freehold owner of a building known as 29 Buckland Crescent (the “Block”) which is divided into four flats. The Respondent (“Mr White”) is the lessee of a flat on the second floor (the “Flat”). The question raised by this appeal is whether the Landlord was entitled to take proceedings seeking forfeiture of Mr White’s lease, or whether that was precluded by the terms of a settlement agreement dated 26 April 2022 (the “Settlement Agreement”) pursuant to which the Landlord and Mr White had compromised an earlier dispute between them. In an oral judgment (the “Judgment”) given on 7 November 2023, HHJ Dight CBE (the “Judge”) concluded that the Settlement Agreement did preclude the Landlord from bringing forfeiture proceedings. The Landlord appeals against that conclusion.
2. Mr White’s rights to ownership and occupation of the Flat will be unaffected by the outcome of this appeal. That is because the Judge concluded that, even if the Landlord was entitled to bring forfeiture proceedings, Mr White should have relief from forfeiture. The outcome of the appeal to this court will affect only the question of costs. If the Landlord is successful then, although Mr White will still have relief from forfeiture, the Landlord considers that this should be on terms that he pays the costs of the forfeiture proceedings before the Judge on an indemnity basis. By contrast, if Mr White is successful, then the Judge’s order requiring the Landlord to pay 90% of Mr White’s costs of the forfeiture proceedings would stand.

The law applicable to proceedings to for forfeiture

3. Mr White occupies the Flat under the terms of a lease granted on 5 April 1980 to a predecessor in title (the “Lease”). It is common ground that the Lease is a “long lease of a dwelling” for the purposes of the Commonhold and Leasehold Reform Act 2002 (“CLRA 2002”). Accordingly, it is common ground that, by s168 of that Act, the Landlord is not entitled to serve a notice under s146 of the Law of Property Act 1925 (a “s146 Notice”) in respect of a breach of covenant or condition in the Lease unless one of the following conditions is satisfied:
 - i) it has been finally determined on an application to the First-tier Tribunal (the “FTT”) under s168(4) of CLRA 2002 that the breach has occurred; or
 - ii) Mr White has admitted the breach.
4. Satisfaction of one of the conditions set out in paragraph 3. would not, on its own, entitle the Landlord to bring forfeiture proceedings in relation to a breach of covenant or condition in the Lease. The Landlord would still need to serve a s146 Notice. Having served a s146 Notice, the Landlord is required to offer Mr White a reasonable time in which to comply with it. Once that reasonable time has expired, the Landlord is entitled to take steps to forfeit the Lease.

Background to the Settlement Agreement

5. References in this judgment to numbers in square brackets are to paragraphs of the Judgment unless I specify otherwise.

Leaks from the Flat

6. Clause 3(1) of the Lease contains a repairing covenant in the following terms:

At all times during the term granted to keep and maintain the demised premises and each and every part in good and substantial and tenantable repair and condition and in particular so as to support shelter and protect all parts of the Building other than the demised premises.

7. The Lease also contained a provision entitling the Landlord to re-enter on breach of covenant.
8. The flat below that of Mr White has been owned by a Ms Yalgin from August 2019. Since she has been the owner of her flat, she has suffered six leaks from Mr White's bathroom which is located above her flat. In June 2020, a report from a firm called Aitchison Rafferty suggested that there were problems with the grouting and sealant between Mr White's shower screen and the tiling in his shower. They recommended that the shower screen be removed, together with the tiles and the interior of the shower cubicle re-tiled and re-grouted in the shower screen refitted and correctly sealed ([28]).
9. Loss adjusters to the insurers who wrote the buildings insurance for the Block instructed a firm called SOS Leak Detection to perform further investigations in June 2021 following the sixth and final leak. Their conclusion was that there was a visible fault in the grouting around the waste section of the shower floor. A failure in the junction between the area of the shower containing the shower tray and the tiles was identified and SOS League Detection concluded that the source of the leak was a crack between the tiles of the shower and the concrete area beneath it ([33] to [35]).
10. When Mr White instructed builders to do some work to enable the leak to be fixed, a further problem was revealed. The building company ("OTD") removed the plinth from the shower and suggested that the cause of the leak could be a crack in the concrete base to the shower, suggesting that this crack had been caused by structural work to the basement flat given the presence of other cracks in "second floor flats" ([38]). On receiving this judgment in draft, the Landlord argued that this must be a mistake as the Flat is the only one on the second floor. I am not in a position to decide that, but simply note that [38] set out a direct quote from OTD's report.
11. The Judge made it clear that he was not making findings as to what the cause, or causes, of the leaks were (see [28]). However, the Judge did find that OTD's work in exposing the concrete plinth made the shower unusable ([41]). Between October 2021 and the end of May 2022 the shower in the Flat was not usable (except that some temporary work was undertaken in December 2021 which meant that the shower could be used over the Christmas period). Works were completed in May 2022 which made the shower usable again and fixed the leak ([63]).

The FTT proceedings

12. Relations between the Landlord and Mr White were not harmonious. The Landlord issued three applications relating to Mr White and the Flat in the FTT. One such application was made on 24 May 2021 under s168(4) of CLRA 2002 for a determination that there had been a breach of the covenants in the Lease. The grounds in support of that application stated that ([31]):

the shower room in the respondent's flat is not in good, substantial and tenantable repair and has caused multiple water leaks into the flat below, and hence the respondent is in breach of Clause 3.1 [of the Lease].

13. The Landlord also issued proceedings in the FTT alleging breach by Mr White of his obligations to pay service charges and administrations. All of these proceedings were the subject of proceedings in the FTT under reference LON/00AG/LSC/2021/0187 (the “FTT Proceedings”).

The Insurance Claim

14. The Judge found that Mr White made a claim under the Building’s insurance policy “in respect of the works needed to put the bathroom back into good order” ([42]). Before me, the parties were agreed that the works for which the insurance claim was made included:
 - i) Fixing the leak (by, among other matters, addressing the problem caused by the crack in the concrete plinth referred to in paragraph 10. above).
 - ii) Having done so replacing the shower unit so that the Flat once more had a functioning shower that did not cause leaks into Ms Yalgin’s flat below.

The Settlement Agreement

15. The Landlord and Mr White entered into the Settlement Agreement on 5 December 2021. The Landlord was defined as “Party A” and Mr White as “Party B”.
16. Recital A to the Settlement Agreement recited various matters of background and referred to the following applications which were defined as the “Proceedings”:

Applications have been issued by Party A against Party B in the First-Tier Tribunal (Property Chamber) under Reference LON/00AG/LSC/2021/1087 to determine Party B’s liability in respect of:

1 Unpaid Service Charges,

2 Unpaid Administration Charges, and

3 Disrepair to the bathroom of Party B’s property.

17. Item 3 in that list was a reference to the application under s168(4) of CLRA 2002 referred to in paragraph 12. above.

18. Recital B recorded that:

*Party A is the holder of an insurance policy with Allianz for the Building (**The Insurance Policy**). Party B has made a claim against the Insurance Policy in respect of the repairs required to the bathroom of the Property (**The Works**).*

19. A source of difficulty to which the Judge referred in the Judgment was the lack of any comprehensive statement of what the “Works” consisted of. It was common ground that, for the purposes of this appeal, the Works are sufficiently understood by the description in paragraph 14. above.

20. Recital C recorded that:

The parties have settled their differences and have agreed terms for the full and final settlement of the Proceedings and wish to record those terms of settlement, on a binding basis, in this agreement.

21. By Clause 4:

[Mr White] admits the breach of Clause 3(1) of the Lease as set out in [the Landlord's] Application under Section 168(4) Commonhold and Leasehold Reform Act 2002 dated 24th May 2021.

22. By Clause 5.3 Mr White promised to remedy “the breach of Clause 3(1) of the Lease by 28 January 2022 by carrying out the Works”. It was common ground that, if Mr White performed the Works, he would be going beyond mere compliance with Clause 3(1) of the Lease. Fixing the leak was a necessary part of bringing the shower into “good and substantial and tenable repair and condition”. So was re-installing a functioning shower unit. However, by agreeing to perform the Works, Mr White would not only be installing a functioning shower unit, but one that was brand new and attractive and it was this aspect of the Works that involved more than mere compliance with Clause 3(1). Neither party challenges the Judge’s conclusions to this effect set out at [76].

23. Clauses 6 and 7 are at the heart of the dispute and are set out in full:

6 Release

This agreement is in full and final settlement of, and each party hereby releases and forever discharges, all and/or any actions, claims, rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to the parties or to the law, and whether in law or equity, that it, its Related Parties or any of them ever had, may have or hereafter can, shall or may have against the other party or any of its Related Parties arising out of or connected with the Proceedings.

7 Agreement not to sue

7.1 Each party agrees on behalf of itself and on behalf of its Related Parties not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other party or its Related Parties any action, suit or other proceeding concerning the Proceedings, in this jurisdiction or any other.

7.2 Clause 6 and Clause 7.1 shall not apply to any claims in respect of any breach of this agreement.

24. By Clause 5.1, Mr White agreed to pay the Landlord £75,000 in two instalments. That was clearly intended to compromise the aspect of the FTT Proceedings relating to service and administration charges. The Judge made no findings as to the amount of service and administration charges that were in dispute and, accordingly, it is not known whether this was an agreement for the Landlord to receive all, or part only, of the sums that it considered to be due.

The present proceedings and the question of construction of the Settlement Agreement

25. The Works were not completed by 28 January 2022. On 9 March 2022 the Landlord’s solicitors served a s146 Notice on Mr White alleging breach of the repairing covenant in Clause 3(1). They followed that up with a claim form seeking forfeiture of the Lease on the grounds of non-compliance with Clause 3(1) that was served on or around 26 April 2022 (the “Forfeiture Proceedings”).

26. At [56] and [64], the Judge found that Mr White was indeed in breach of Clause 3(1) both at the date of service of the s146 Notice and at the date of service of the claim form. More generally, it is common ground that, throughout the period from October 2021 to May 2022, Mr White was in breach of Clause 3(1) of the Lease.
27. The question raised in this appeal is whether the Landlord was entitled, pursuant to the terms of the Settlement Agreement to bring the Forfeiture Proceedings. Mr White's position is that Clause 7 of the Settlement Agreement precludes the Landlord from taking those proceedings. The Landlord's position is that it is entitled to the benefit of the exclusion set out in Clause 7.2.
28. The Landlord accepted before the Judge and continues to accept that, but for the exclusion in Clause 7.2, it would not have been entitled to bring the Forfeiture Proceedings because of the general release in Clause 6. The Judge pressed the Landlord on that concession as noted at [87]. I also explored the basis for the Landlord's acceptance of this proposition in my discussions with Mr Bromilow, counsel for the Landlord, not because I wished to call into question the Landlord's concession, but because I considered that, without understanding it, I would risk not fully understanding the Landlord's position on the Settlement Agreement as a whole. In essence, the Landlord's position is that the "Proceedings" as defined are the FTT Proceedings that include an application under s168(4) of CLRA 2002. That application was brought as a precursor to an application to forfeit the Lease for breach of Clause 3(1) as it applies to the shower in the Flat. Accordingly, any claim to forfeit the Lease because of defects relating to the shower is, in the Landlord's view, "connected with the Proceedings" and so, unless Clause 7.2 applies, within the scope of the release in Clause 6.
29. Given that concession, the narrow point at issue in this appeal is whether the Forfeiture Proceedings involve a claim "in respect of any breach of [the Settlement Agreement]" for the purposes of Clause 7.2. If they are, then the Landlord is not precluded by the Settlement Agreement from pursuing them. If they are not, then the Landlord is so precluded.

The Judge's conclusion

30. The Judge concluded that the Forfeiture Proceedings were not a claim "in respect of" any breach of the Settlement Agreement and so fell outside the scope of Clause 7.2. The essence of his reasoning was as follows:
 - i) Clause 6 of the Settlement Agreement was broadly drawn by providing for a release of any claims "arising out of or connected with the Proceedings". The breadth of clause 6 was emphasised by what the Judge referred to as the "torrential style of drafting" which identifies numerous different ways in which a claim could otherwise potentially be brought. The breadth of the release in Clause 6 must be contrasted with a much narrower formulation of permissible claims in Clause 7.2 to those "in respect of" breach of the Settlement Agreement. The absence of any reference to claims arising under the Lease suggested that what was preserved by Clause 7.2 were claims directly concerned with breach of the Settlement Agreement, for example claims for damages or claims for specific performance of the Settlement Agreement ([96], [97] and [100]).
 - ii) That approach was consistent with Mr White agreeing to perform Works that went beyond the scope of Clause 3(1) of the Lease. Mr White could conceptually breach the terms of the Settlement Agreement without also breaching Clause 3(1)

of the Lease. It therefore made sense for Clause 7.2 to preserve rights to take action for breach of the Settlement Agreement as distinct from action for breaches of the Lease ([98]).

- iii) Had the parties wished to preserve the right of forfeiture under the Lease for failing to complete the works required by the Settlement Agreement they could have done so. The absence of such an express obligation suggested that the Landlord was not entitled to bring such an action ([99]).
- iv) The Judge's favoured conclusion was not obviously contradicted by other provisions of the agreements to which he had been referred, for example Clauses 10.1 and 10.2 ([101]).

The correct approach to construction

31. Both sides agree that all the guidance I need as to the correct approach to the construction of the Settlement Agreement can be found in the following extract from the judgment of Popplewell J in *Lukoil Asia Pacific Pte Ltd v. Ocean Tankers (Pte) Ltd* (The "Ocean Neptune") [2018] EWHC 163 (Comm), in the following terms:

The court's task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. The court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. The court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to the objective meaning of the language used. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other. Interpretation is a unitary exercise; in striking a balance between the indications given by the language and the implications of the competing constructions, the court must consider the quality of drafting of the clause and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest; similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated. It does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each.

Discussion

32. I order my analysis by reference to the various headings under which the Landlord made its arguments.

Natural reading of clause 7.2

33. Mr White argues that a claim “in respect of” any breach of the Settlement Agreement should be understood as a claim “for” any breach of the Settlement Agreement. Thus, his position is that a claim for specific performance of the Settlement Agreement, requiring him to perform the Works, would be a claim “in respect of” a breach of the Settlement agreement, but the Forfeiture Proceedings were “in respect of” breaches of the Lease.
34. He submits that this can be seen clearly by considering a hypothetical claim form seeking forfeiture of the lease. Such a claim form need not mention the Settlement Agreement at all and, accordingly, a claim for forfeiture cannot reasonably be read as being one “in respect of” the Settlement Agreement. By contrast, a claim for specific performance of the Settlement Agreement would need to reference that agreement and the provisions said to be breached and so would clearly amount to a claim “in respect of” a breach of the Settlement Agreement.
35. I quite accept that this is a reasonable way of reading the words “in respect of”. However, it is not the only reasonable reading. It is just as possible to conclude that the Forfeiture Proceedings are “in respect of” Mr White’s failure to ensure that the Flat had a functioning shower both when the Landlord served the s146 Notice on 9 March 2022 and when the Landlord served the claim form in the Forfeiture Proceedings on 26 April 2022. Since that failure involved a breach of the Settlement Agreement, it is quite possible to conclude that the Forfeiture Proceedings were “in respect of” a breach of the Settlement Agreement.
36. Mr White argues that Clause 6 set out a “broad” release of possible claims which should be contrasted with a “narrow” preservation of the right to bring claims in Clause 7.2. However, I consider this sheds relatively little light on the matter. Certainly Clause 6 contains more words than Clause 7.2 and follows a style of drafting that Mr White characterises as “torrential”. However, I do not consider that this necessarily makes Clause 6 “broad” and Clause of 7.2 “narrow”.
37. Clause 6 and Clause 7.2 proceed from different starting points. Clause 6 is concerned with the connection between possible claims and the “Proceedings”. Clause 7.2 is concerned with whether a claim can be characterised as being “in respect of any breach of” the Settlement Agreement. Therefore, even if the concept “arising out of or connected with” (in Clause 6) is regarded as being broader than the concept of “in respect of” (in Clause 7.2) that does not advance the debate greatly since the Clause 6 formulation is applied by reference to the Proceedings and the Clause 7.2 formulation is applied by reference to the Settlement Agreement. Making impressionistic comparisons between the perceived “breadth” of Clause 6 and Clause 7.2 risks comparing apples with pears.
38. Even if Clause 6 is characterised as conferring a “broad” release of claims, it does not follow that Clause 7.2 is narrow. The only constraint on the breadth of Clause 7.2 is that it cannot preserve a right to bring a wider category of claims than those that are released by Clause 6. Subject to that constraint, there is no reason why Clause 7.2 could not also conceptually be “broad”.
39. Both sides pointed to alternative formulations that could have been employed in Clause 7.2. The Landlord argues that, if the parties had intended that only claims for specific performance, damages or similar in relation to breach of the Settlement Agreement were preserved, this could have been spelled out clearly or at very least Clause 7.2

could have been expressed to apply to claims “for” any breach of the Settlement Agreement. For his part, Mr White says that if claims for forfeiture of the Lease were to be preserved, Clause 7.2 could have referred to the Lease and not just the Settlement Agreement. Both the Landlord and Mr White make valid points in this regard. However, the fact that both points are valid simply emphasises that the language used in Clause 7.2 is consistent both with the Landlord’s and Mr White’s interpretation.

40. A consideration of the “natural reading” of Clause 7.2 does not provide a strong indication in favour of either the Landlord’s or Mr White’s interpretation.

Clause 7.2 would otherwise be otiose

41. The Landlord argues that, on Mr White’s interpretation, Clause 7.2 would be otiose. Parties are always entitled to sue for breach of an agreement and there would be no utility in a clause that does nothing more than preserve a right to sue for breach of the Settlement Agreement.
42. If a proposed interpretation of a clause in a contract would make that clause entirely surplus, then I quite accept that this is a pointer against the interpretation being correct: see, for example, the judgment of Whipple LJ at [46] of *Nord Naptha v New Stream Trading* [2021] EWCA Civ 1829. However, the strength of any such pointer will vary from case to case.
43. In *Nord Naptha* itself, the proposed interpretation of the clause in question would have resulted in it preserving a right that did not exist, a clearly counterintuitive conclusion. By contrast, in the present case, Mr White’s interpretation reduces Clause 7.2 to a statement of the obvious. It might be observed that contracts drafted by lawyers not infrequently include statements of the obvious. Indeed, Clause 7.2 might not, even on Mr White’s interpretation, be as much of a statement of the obvious as the Landlord suggests. One can quite envisage a reasonable, but pedantic, reader of the Settlement Agreement asking whether the general exclusion in Clause 6 prevented any claim from being brought for breach of the Settlement Agreement itself and finding nothing unusual about that query being addressed expressly in Clause 7.2.
44. Therefore, while I accept that the Landlord’s argument based on the perceived redundancy of Clause 7.2 does point slightly away from Mr White’s interpretation, I regard this indication as being relatively slender.

Clause 4 and considerations of factual matrix

45. The Landlord points out that, by Clause 4, Mr White admitted the breach of Clause 3(1) of the Lease that had been the subject of the Landlord’s application to the FTT under s168(4). The breach that Mr White admitted concerned the shower in the Flat specifically. The Landlord argues that the only conceivable reason for Clause 4 is to preserve the right to seek forfeiture of the Lease. It would, argues the Landlord, make no business sense for it to bring a s168(4) application, obtain an admission of breach from Mr White but then forgo any right to rely upon that admission by releasing any right to bring forfeiture proceedings.
46. As part of the “iterative approach” referred to in paragraph 31. above, it is appropriate to test the strength of that argument by considering whether Clause 4 would strike a reasonable reader as having some purpose other than to preserve the right to bring Forfeiture Proceedings connected with the shower in the Flat at a future date.
47. The Judge considered at [81] that Clause 4 served two purposes:

- i) it explained why there was no longer going to be any determination of the application to the FTT concerning whether Mr White was in breach of Clause 3(1); and
 - ii) it served as a “peg on which to hang the obligations to remedy the breach which follow in Clause 5.3”.
48. I accept that these are possible explanations of Clause 4. However, they strike me as much less plausible than the explanation the Landlord advances.
49. First, the reason why there was no longer going to be any proceedings in the FTT concerning the breach of Clause 3(1) was because those proceedings were compromised by the Settlement Agreement. Therefore, no explanation of this matter was needed beyond the Settlement Agreement itself. Moreover, if the parties thought it useful to record why the FTT Proceedings would no longer go ahead, this might more naturally have been done in a recital to the Settlement Agreement, rather than in an operative provision which involved Mr White making certain acknowledgements.
50. I can understand the points the Judge was making about the “peg”. Clause 5.3 obliged Mr White to “remedy the breach of Clause 3(1) ... by carrying out works”. Since Mr White acknowledged that there was such a breach, it might be said that there is no longer any scope for a reasonable reader of Clause 5.3 to ask “what breach of Clause 3(1)?”
51. However, I regard that as being a less forceful indicator of meaning than did the Judge. The parties had chosen to define the “Works” by reference to Mr White’s claim under the insurance policy for the Block. Therefore, the definition of what “Works” Mr White needed to perform pursuant to Clause 5.3 did not depend on whether he admitted previous breaches or not. Moreover, Clause 5.3 is concerned with the state of the Flat after the Works are completed: the Works had to be done in such a way that at that point there was no longer any breach of Clause 3(1). That obligation also makes sense whether or not Mr White admitted to previous breaches. In respectful disagreement with the Judge, I do not consider that the obligation in Clause 5.3 was in need of a “peg” as, on its own, it set out a perfectly intelligible obligation.
52. Mr White argued that Clause 4 can be explained by “human factors” namely a wish on the part of the Landlord to compel Mr White to “hold up his hands” and confess to previous breaches of Clause 3(1). However, if that were indeed the objective purpose of Clause 4, one would expect the admission to contain more detail. As it is, Clause 4 refers to a specific application under 168(4) of the CLRA 2002 suggesting that the point of the admission was to be found in CLRA 2002 rather than in the specific nature and extent of Mr White’s previous breaches.
53. In a similar vein, I am unpersuaded by Mr White’s explanation of Clause 4 as being directed at the possibility of future forfeiture proceedings entirely unconnected with the shower. If the Landlord truly was seeking to lay a solid foundation for obtaining forfeiture of the Lease should Mr White breach his obligations in the future, it might have been expected to require Mr White to admit to specific breaches and how long those breaches had continued.
54. Overall, I conclude that Clause 4 points firmly in favour of the Landlord’s interpretation of Clause 7.2 for two reasons.

55. First, Mr White has identified no legal consequence of an admission specifically tied to s168(4) other than that admission conferring entitlement on the Landlord to serve a s146 Notice in respect of the breach so admitted. That raises the obvious inference that, viewed objectively, the parties agreed that if Mr White did not comply with his obligations under the Settlement Agreement, and if the breach of Clause 3(1) therefore persisted, the Landlord could bring Forfeiture Proceedings.
56. Second, that interpretation is supported by the relevant factual matrix. Mr White and the Landlord did not enjoy a harmonious relationship. Leaks from the Flat had caused Ms Yalgin considerable difficulties. At the time of the Settlement Agreement, the Landlord only had Mr White's word that he would perform the Works as he had agreed to. There is no suggestion that Mr White and the Landlord had reached a complete reconciliation of their difficult relationship. The Settlement Agreement had simply compromised particular disputes between them.
57. In those circumstances, it is not straightforward to understand why, viewed objectively, the Landlord would give up the right to invoke the powerful sanction of forfeiture if the Works were not performed. Before the problems with the leaks commenced, the Landlord had the right to seek to forfeit the lease for breach of Clause 3(1). The fact that the Flat had been identified as a source of leaks that caused considerable disruption to the flat below made it more, not less, desirable for the Landlord to be able to threaten forfeiture should those leaks continue.
58. For that reason, I attach less significance than the Judge to the fact that Mr White's obligations went beyond bare compliance with Clause 3(1). I do not consider that provides much of an explanation as to why the Landlord would give up the possibility of forfeiture if Mr White did not achieve even that bare compliance.
59. I accept, of course, Mr White's submission that it would be perfectly possible for he and the Landlord to compromise their dispute on the basis that the only remedy for any breach of the Settlement Agreement would be a claim for damages, specific performance, or other contractual remedies. However, for the reasons that I have given, Clause 4 especially when considered in the context of the wider factual matrix, provides a firm indication that the parties did not agree a settlement of that nature.

Clause 10.1 and Clause 10.2

60. The Landlord also relies on Clauses 10.1 and 10.2 which provide as follows:

10 Indemnities

10.1 Party B hereby indemnifies, and shall keep indemnified, Party A against all costs and damages (including the entire legal expenses of Party A) incurred in all future actions, claims and proceedings in respect of the Proceedings which it or its Related Parties or any of them may bring against the other party or its Related Parties or any of them.

10.2 In the event of a breach of this agreement by Party B, Party A shall be entitled to recover their costs of enforcement of this agreement on a full indemnity basis (including the entire legal expenses of Party A).

61. The Landlord argues that Clause 10.1 contemplates the possibility that there might be "proceedings in respect of the Proceedings" which do not consist of proceedings for

breach of the Settlement Agreement. Otherwise there would be no need for both Clause 10.1 and Clause 10.2.

62. If Clause 10.1 unambiguously required Mr White to indemnify the Landlord if the Landlord subsequently brought “proceedings in respect of the Proceedings” there would be a good degree of force to this point. Such an unambiguous indemnity would tend to suggest that the parties contemplated that aspects of their historic dispute might lead to further proceedings that were not in the nature of proceedings for breach of the Settlement Agreement which might point in favour of the Landlord’s interpretation of Clause 7.2.
63. However, in my judgment, the force of the Landlord’s point is diminished by a distinct lack of clarity as to what Clause 10.1 is addressing. The “proceedings in respect of the Proceedings” identified in Clause 10.1 are specified as being those which “it or its Related Parties” may bring without identifying whether the “it” is a reference to the Landlord, Mr White or both.
64. It is possible to read Clause 10.1 as including the situation where, despite the “Proceedings” having been compromised by Clause 6, Mr White brings “proceedings in respect of the Proceedings” such as an application for his costs consequent on those proceedings being discontinued. If Mr White purported to do so, the Landlord would doubtless argue before the FTT that, since the Proceedings were compromised by agreement between the parties, no costs application should be entertained. However, making that argument would itself involve the Landlord in cost which could be recovered by the indemnity in Clause 10.1. If that is the kind of situation at which Clause 10.1 is aimed, it would shed relatively little light on the meaning of Clause 7.2.
65. That said, there remains some force to the point, that Clause 10.1, whatever it means, appears intended to add something to Clause 10.2 as, if it did not, Clause 10.2 would be redundant. Moreover, the reference to the “other party” towards the end of Clause 10.1 appears to suggest that Clause 10.1 is a “two-way” obligation that applies if either the Landlord or Mr White brought “proceedings in respect of the Proceedings” against the other. Those matters provide a pointer, perhaps not much stronger than the pointer summarised in paragraph 44., that the parties were envisaging that proceedings could, in the future permissibly be brought that were “in respect of the Proceedings” but were for something other than breach of the Settlement Agreement.

Conclusion

66. I have not found the point to be straightforward. An approach to the interpretation of Clause 7.2 that focuses only on the “ordinary meaning” of the words produces an inconclusive result since that ordinary meaning is capable of supporting both the Landlord’s and Mr White’s interpretations.
67. The potential redundancy of Clause 7.2 on Mr White’s interpretation is, as I have explained, just a relatively slender pointer against his interpretation. The indications provided by Clause 10.1 and Clause 10.2 are similarly oblique but also point against Mr White’s interpretation.
68. However, following the iterative approach outlined in paragraph 31. above, I consider that Clause 4, when analysed in the context of the factual matrix as a whole, points firmly in favour of the Landlord’s interpretation.

69. On balance, therefore, in respectful disagreement with the Judge, I prefer the Landlord's interpretation as being more consistent with the cumulative impact of the indications set out above. The Landlord's appeal is allowed. The Settlement Agreement did not preclude the Landlord from bringing the Forfeiture Proceedings.
70. I would invite the parties to agree an order in the light of this judgment. If they cannot, a further hearing will be needed to finalise the terms of the order.