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Is a landlord breaching quiet enjoyment covenants by failing to prevent nuisance by other tenants?

This was the issue considered in a recent decision of the High Court of England and Wales (called Fouladi v Darout Ltd). The Court in that case held that the landlord was not liable, but the answer has not always been the same. This issue could easily arise in a Cayman context, where there are numerous instances of buildings owned by single landlords which have multiple tenants.

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1. The facts

In the latest case, a tenant (T1) had a long lease of a flat in a block of flats. T1 occupied the flat below another tenant (T2). T2 carried out works to his flat, including relaying his floor, which generated significant noise to T1's flat. T2 failed to comply with regulations about floor coverings and noise reduction. As a consequence, T1 successfully sued T2 in nuisance.

But, T1 did not leave it there: he also sued the landlord (L), claiming that L was also liable for the noise nuisance on the basis that L had breached its covenant of quiet enjoyment under its lease with T1. L's consent for the works to the floor, although required under the terms of T2's lease, had not been obtained.

At first instance, the County Court found that T2 was liable to T1 in nuisance, but it dismissed T1's claim against L. T1 appealed to the High Court, arguing that L had participated in the creation of the nuisance.

2. Held

The High Court dismissed T1's appeal against L, even though L could have taken steps to prevent T2 from carrying out the works, as L knew that the works were being carried out without its consent.

The judge relied upon a 1916 decision (which has been approved by the UK's highest court, the Supreme Court) which held that a landlord is not liable for a nuisance caused by his tenant merely because he did not take steps to prevent what was being done. The judge disregarded inconsistent statements of a 1997 Court of Appeal decision, because of the endorsement of the 1916 decision by the Supreme Court.

This is not to say that a landlord can never be held liable for the nuisance caused by one tenant to another. The judge noted that a landlord can be liable for the nuisance of its tenant if the landlord actively or directly participates in or authorises the nuisance. However, there was no finding that L knew that the works involved a nuisance, and it followed that L was not liable for that nuisance by participation. Accordingly, he held there had been no breach of L's covenant for quiet enjoyment.

3. What is the lesson for landlords?

If a tenant is proposing to carry out works that may cause a nuisance to another tenant, the landlord needs to act with care, lest it be held to have actively or directly participated in or authorised the nuisance. The landlord should also review the terms of its leases with other tenants who may be adversely affected by such works; for instance, such leases may include an express obligation on the part of the landlord either to prevent such conduct, or to require the landlord to give its consent before such works are undertaken.

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