

MARY MAVRIS v (1) MARINA XYLIA (2) MARIA XYLIA (2017)

Ch D (Sir Geoffrey Vos C) 01/11/2017

LANDLORD AND TENANT - CIVIL PROCEDURE - FRAUD (LTL)

AGREEMENTS : CREDIBILITY : FRAUD : FRESH EVIDENCE : POSSESSION
CLAIMS : TENANCIES

New evidence obtained by the appellant tended to show that the judgment in favour of the respondents in possession proceedings had been obtained by fraud, and the issue of fraud was remitted to the county court to be determined on the basis of proper pleadings of the fraud allegations.

The appellant appealed against a decision declaring the terms on which the second respondent (R2) held a tenancy of a flat belonging to the appellant.

All the parties were Greek nationals. The first respondent was R2's niece and was the person with whom the appellant dealt concerning the property. It was common ground that there had been a first tenancy of the property under an agreement executed in Athens. However, at trial the parties put forward different versions of the agreement. The appellant's version (A) was for a term of 12 months with a £1,200 deposit and the respondents' version (B) was for 30 months with a £2,400 deposit. Also the particulars dealing with the parties, the term, the rent and the deposit were handwritten in version A but typed in version B. It was common ground that a second tenancy had been entered into. The appellant's version (C) began after the 12 month term of version A expired and lasted for 24 months. The respondents' version (D) began after the 30 month term of version B had expired and lasted for 60 months. A joint handwriting expert was instructed but he was unable to determine which versions were genuine. The respondents' case was that version D had been executed in Athens at a meeting attended by two Greek accountants and at which she had paid the annual rent due under the tenancy in advance in cash. The appellant sought possession of the property on the basis that R2 had failed to pay the rent due under version C and had been unlawfully subletting the property. She also sought damages for the alleged loss or destruction of certain items in the property. The judge disbelieved the appellant and gave judgment for the respondents. He accepted the evidence of the Greek accountants, who gave evidence at trial about the Athens meeting. Accordingly he concluded that versions B and D were genuine and that there were no rent arrears. He held that there was insufficient evidence of subletting or of the loss or destruction of items in the property. During the trial the respondents had disclosed a bank statement to evidence a payment, but it also appeared to show the receipt of housing benefit from the local authority. The local authority supplied the claimant with a copy of the tenancy agreement from its files which was in a version (A1) similar to version A. The claimant then appealed on grounds that the judge had been misled and that the judgment had been obtained by fraud.

The appellant argued that version A1 satisfied the requirements of *Ladd v Marshall* and tended to show that version A was genuine rather than version B, since otherwise there would be no good reason for the respondents to provide version A1 to the local authority; if version A was genuine then version C rather than version D was likely to be genuine and it was improbable that the Athens meeting took place since the reason for it was undermined; if version A1 had been before the judge he would have approached the issues of credibility differently. The respondents argued that it was as likely that version A1 had been provided to the local authority by the appellant as by the respondents, that version A1 did not affect the

evidence of the Greek accountants which had been accepted, and that the appellant's evidence contained inconsistencies which had affected the judge's view of her credibility.

HELD: Version A1 did not incontrovertibly demonstrate that the judge had been misled and that the judgment had been obtained by fraud, but it did tend to show those matters, [Noble v Owens \[2010\] EWCA Civ 224](#) followed. It was possible that there was an innocent explanation for the fact that the local authority was in possession of version A1. However, if A1 had been supplied to the local authority by the respondents, that would indicate that it was genuine and not B and D. There was a clear prima facie case that B and D had been concocted to defeat the possession claim. That meant that the judge would have been misled and the judgment obtained by fraud. The allegation of fraud could only be determined at trial. It would be disproportionate to require a new action by the appellant. The case would be remitted to the county court for the fraud issue to be determined. The court would direct the fraud allegations to be properly pleaded. If the county court decided that there had been no fraud, then the appeal would stand dismissed. If the county court decided that fraud had been proved, then the appeal would be allowed and there would be a retrial of the claim. It would be a matter for the trial judge to consider the admission of new evidence relevant to the pleaded issues of fraud. In view of the remittal of the fraud issue, the appellant had substantially succeeded on the appeal and was entitled to a costs order in her favour.

Judgment accordingly

Counsel:

For the appellant: Zachary Bredemear (Public Access)

For the respondents: Jonathan Pennington Legh

Solicitors:

For the respondents: Landmark Legal LLP

LTL 2/11/2017 EXTEMPORE

AC5000567