Ref. L00SR200

IN THE COUNTY COURT AT NEWCASTLE UPON TYNE

Newcastle Civil and Family Courts and Tribunals Centre

Before HIS HONOUR JUDGE FREEDMAN

IN THE MATTER OF

MS LYNNE FISHWICK (Appellant)

-v-

GENTOO GROUP LIMITED (Respondent)

MR G EXALL, instructed by Legal HD Solicitors, appeared on behalf of the Appellant
MR D COMB, instructed by Muckle LLP, appeared on behalf of the Respondent

JUDGMENT
8th MAY 2025
(AS APPROVED)

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JUDGE FREEDMAN:

1. This is an application for permission to appeal the decision of District Judge Gribble made on 5 November of last year whereby she allocated this claim to the small claims track. It is said that she fell into error in doing so; and that the claim should properly have been allocated to the fast track.

2. This hearing is a rolled-up hearing in the sense that the first question is whether permission to appeal should be granted, and if permission to appeal should is granted, the matter will proceed to a substantive hearing, the appeal itself. I say straightaway that, having considered all of the papers, I do grant permission to appeal, on the basis that this appeal stands a real prospect of success.

3. The background is that the claimant - I shall refer to the claimant and the defendant, rather than the appellant and the respondent - claims damages for the costs of repairs, and general damages for distress and inconvenience arising out of the alleged disrepair of the property which she rents from the defendant - 128 Gartland Street in Sunderland, a two-bedroomed bungalow.

4. In July 2019, she entered into an assured shorthold tenancy agreement. The rent was £83.98 per week. That converts into about £4,500 per annum, or thereabouts. It is her case that, in or about the winter of 2019, she complained specifically about damp and mould in the bathroom and in the hallway, and other matters of less concern – for example, an extractor fan in the kitchen was broken. Subsequently, she made complaints about other problems with the property including missing rooftiles and other defects. Requests were made for repairs, but they appear to have fallen on deaf ears.

5. Eventually, in June 2024, the claimant issued proceedings. It is fair to say that, by that time, a report had been obtained by the claimant's expert surveyor, Mr Lawson. It seems that that report, when served, did cause the defendants to undertake quite a lot of the repair work that was required. It is worth observing at this stage that the costs of repairs valued by Mr Lawson were in the order of £2,654. By the time proceedings were issued, the defendant's expert, Mr McArdle, had visited the property, and whilst acknowledging that the property had been in a state of disrepair, he considered that only decorative work was now required. He estimated a cost of £215 for the outstanding repairs.

6. The claim form, which sought specific performance in relation to the remedial works, limited damages to £5,000. That sum was to cover the costs of repairs and the diminution in the claimant's enjoyment of the property and the inconvenience which she suffered as a result of the state of disrepair. It was suggested that her health had been negatively impacted by the presence of damp and mould in the property, albeit that no medical evidence had been provided.

7. The matter came before District Judge Gribble on 5 November for allocation. She heard brief argument from both parties and concluded that because damages were likely to be under £1,000, the small claims track was the appropriate track for this case.

8. The governing provisions for a claim arising out of disrepair of a property in a landlord and tenant situation appear at CPR 26.9(1), where it is provided:

> "The small claims track is the normal track for—
>
> (a)any claim for personal injuries where—

> …
>
> (b) any claim which includes a claim by a tenant of residential premises against a landlord where—
>
> (i) the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises (whether or not the tenant is also seeking some other remedy);
>
> (ii) the cost of the repairs or other work to the premises is estimated to be not more than £1,000; and
>
> (iii) the value of any other claim for damages is not more than £1,000".

It is plain, therefore, that if either the estimated costs of the repairs or the potential value of the claim for general damages exceeds £1,000, the small claims track will not be the normal track. That does not mean that it is compulsory for the claim then to be moved to the fast track, but the small claims track will not be the normal track and, generally, that will mean there will be a departure from 26.9(1), and the claim will be allocated to the fast claims track.

9. The judge was taken to those provisions and she sought to apply them in the instant case. Her conclusion was, on the strength of submissions made on behalf of the defendant, that the costs of repairs at their highest would be no more than £600 and that general damages - or diminution in rent as she interpreted it - were likely to be under £1,000. She specifically said:

> "On the evidence, it would seem that both heads of damage are likely to fall below the £1,000 threshold".

10. Before I go any further, I should acknowledge that the decision made by the district judge was a case-management decision; and that, in deciding which track the case should be allocated to, a district judge case managing a case has a wide discretion. I should also bear in mind that, at any stage in the course of proceedings, a claim can be reallocated from one track to another.

11. It is of course also important to bear in mind that higher courts have made it very clear that an appellate court should be very slow to interfere with a case-management decision. That is because the judge dealing with case management, generally speaking, has the experience and knowledge of how cases of this type should be case managed. In the majority of cases, District Judges are provided with the relevant material, they hear brief submissions from lawyers on both sides and come to a reasoned and reasonable decision. It is not in the interests of the overriding objective for an appellate court to interfere with what is a discretionary decision. But, of course, if a judge has fallen into error such that it cannot be said that the decision was within the bounds of reasonableness, then an appellate court is bound to interfere and to re-exercise the discretion which otherwise was conferred upon the district judge.

12. Here, as it seems to me, there were two fundamental errors. The first is this, and it is no fault of the judge at all, but she was not referred to the CPR practice direction at 7A. She should have been referred to that practice direction, because I have no doubt that it would

have strongly influenced her approach to the allocation of this case. The practice direction in question provides this, at paragraph 3.6:

> "If a claim for housing disrepair which includes a claim for an order requiring repairs or other work to be carried out by the landlord is started in the County Court, the claim form must state—
>
> (1) whether or not the cost of the repairs or other work is estimated to be more than £1000, and
>
> (2) whether or not the claimant expects to recover more than £1000 in respect of any claim for damages.
>
> If either of the amounts mentioned in (1) and (2) is more than £1000, the small claims track will not be the normal track for that claim".

It seems to me that that is the proper starting point. It may not be the end point, but it is a starting point.

13. Here it is plain that the claimant, in the statement of case, is looking to recover more than £1,000 for costs of repairs - I will come back to that in a moment - and more than £1,000 for general damages, because the claim form was limited to the sum of £5,000. At its highest, the costs of repairs were £2,000 or so, so there was clearly a claim in excess of £1,000 for general damages and, indeed, I should be surprised if that was not the case, bearing in mind that the Claimant is to be compensated for inconvenience and loss of enjoyment of the property over a period of approximately four years before the mould and damp were eradicated.

14. As I say, it is regrettable that the judge was not referred to practice direction 7A, because that would have put it firmly in her mind that if the claimant was claiming sums in excess of £1,000, then that would be the basis for saying this claim should go into the fast track. It is not conclusive, but it is certainly an important starting point. Of course, if a claimant exaggerates, in an obvious way, the amount that is being claimed and it bears no relation to what in fact is the measure of loss, then no doubt a judge would be entitled to say, "Well, that's what the claimant is saying the claim is worth but, in reality, that is far removed from what the true value of the claim is". That is not the situation here. Nobody could say that a claim limited to £5,000 in these circumstances was an unreasonable way to value the claim. To the contrary, it seems to me to be reasonable and realistic.

15. So the judge was not afforded the opportunity to consider that part of the CPR. She was of course taken to the provision to which I have already referred, but that is to be taken in conjunction with the practice direction in determining what is the correct track.

16. In relation to the cost of repairs, the judge was also disadvantaged because she did not have a joint statement from the two surveyors. However, she did endeavour to come to some kind of assessment of what the costs of repairs were likely to be. She was obliged to undertake that exercise in a very general way. I do not in any criticise her for concluding that the costs of repairs were likely to be under £1,000; whether that proves to be so or not is for another day. She did fall into error in finding that there was no ongoing claim for specific performance, but that does not matter in the context of this appeal.

17. But where I do say that she fell into error was in her conclusion that any claim for distress, inconvenience and loss of enjoyment of the property was likely to fall under £1,000. That seems to me to be inherently improbable such that it is frankly wrong to come to the conclusion that the claimant would not recover in excess of £1,000.

18. I have looked at the photographs. It does not matter that perhaps the Judge did not do so, but there is abundant evidence of damp and mould in the bathroom and hallway. It had persisted over a period of about four years. The evidence would suggest that it was all due to the state of disrepair of the property. Mr Comb submits that that in fact may not be the case; the tenant may have failed to heat or to install fans. That may be right - that may be an argument for another day - but on the face of it, the most likely explanation was that the damp and mould in the property were attributable to the landlord's failure to maintain the property in a proper state of repair.

19. That being so, when one looks at this state of affairs continuing over a period of approximately four years, in the context of annual rent of about £4,500, it is, to my mind, inconceivable that general damages would fall below the threshold of £1,000. It was not for the judge to put a figure on it. I do not put a figure on it. But, I am just very confident that the award would not be limited to £250 per year, which in effect was the judge's finding. To that extent, it seems to me that the judge did fall into error.

20. No authorities were cited to her, and I am not surprised about that. For the sake of completeness, I have been referred to *Wallace v Manchester City Council* [1998] EWCA Civ 1166. That gives some guidance about the level of damages that might be awarded in these circumstances. It is no more than guidance, but it makes it plain that anything of the order of £200 per year over a four-year period is far less than what a judge should award.

21. I have concluded, therefore, that there were two errors - one not of the judge's making at all, and the other only because she had accepted the submissions of the defendant, whereas she should have looked at the matter herself in the round. Those two errors entitle me to exercise my own discretion in relation to the allocation of the case. I conclude that this is a case which should be allocated to the fast track, as opposed to the small claims track.

22. I am conscious of Mr Comb's submission that at some stage it could be reallocated, but that is untidy. We are here for an appeal. The question is: was it wrong to put this case into the small claims track? In my view, it was and, therefore, it should be re-allocated to the fast track. There should be a trial date as soon as ever possible. Mr Comb did have a compelling argument that the trial date would be lost if it was reallocated to the fast track, but I am afraid that argument has fallen by the wayside because of the inevitable delay in the appeal being heard. It had been listed for hearing on 4 February. Had this appeal come on before 4 February, it may be that different considerations would have arisen because it would have meant the loss of a trial date. Those considerations no longer apply and so what needs to be done now is for this case to be reallocated to the fast track and for there to be directions for trial.

This transcript has been approved by the Judge