Claim No: CHY09015 HELD AT THE CENTRAL LONDON COUNTY COURT

NOW IN THE COURT OF APPEAL REF B5/2010/2396

BETWEEN:

MS JO FLORES (NEE: GAVIN)(1)
MS CHANTAL CRACY (2)

Claimants

and

COMMUNITY HOUSING ASSOCIATION LIMITED

Defendant

CLAIMANTS ARGUEMENT

FOR PERMISSION TO APPEAL ON 16TH SEPT 2011

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1. In the trial at the Central London County Court July 2010 the Claimants succeeded on one cause of action, 'damage' and were awarded a nominal amount of £100.

All other claims were dismissed.

It was ordered by HHJ Cowell that the Claimants do deliver up possession of 104 and 106 Cromer Street WC1H 9PB, trading as Scarlet Maguire Art Gallery and spaceshift… a contemporary multi-functional space available for hire. Both venues social enterprises of New NAYPIC / Youth Parliament www.youthparliament.co.uk run by social entrepreneurs and investors Ms Jo Flores and Ms Chantal Cracy, the Claimants.

The Claimants were ordered to pay back £12,310.57 to the Defendant with interest per annum of £676.54 until payment with regard to 104 since the onset of proceedings in November 2008 and continuing interest at £1.86 per day until payment.

The Claimants were ordered to pay back £25,075 to the Defendants with interest per annum of £1,381.46 until payment with regard to 106 since the onset of the proceedings in November 2008 and continuing interest at £3.63 per day until payment.

The Claimants were ordered to pay the £387,000.00 legal costs of the Defendants plus interest at 5.5% per annum amounting to £21,000 per annum until payment.

The Claimants were ordered to pay half of the fees of the Single Joint Expert Mr Doug Hall of Smith and Williamson, as it had been stated in the order by HHJ

Cowell's of 22nd Sept 2010 that the fee had been paid by the Defendant. However the Claimants had already paid Mr Hall £8,500 in full before the SJE commenced working in his capacity as SJE, therefore this judgement and order should be disregarded as another error and struck out.

The amounts above mentioned were to be paid by 4pm on the 20th Oct 2010 giving the Claimants one month to pay nearly half a million pounds (a staggering amount) to the Defendants with the Defendants also being handed over possession of both the Claimants now fully re-furbished modern contemporary Central London businesses effective immediately a complete injustice and a tragedy.

2. The Claimants asked for permission to appeal but this was refused by HHJ Cowell on the grounds that there was 'no chance of success'.

The Claimants persisted and it was ordered that the Claimants pay for the, 'transcripts' of the trial including the Judgements at a substantial cost, a highly unorthodox request before they could begin to even ask for permission to appeal, the order making it in the Claimants view, the view of 'Liberty' and of the High Court 'Citizens Advice Bureau' (both whom had never heard of this condition before) as difficult for the Claimants as could be possible after being left ruthlessly penniless.

In the light of the Judgement against the Claimants, the Claimants asked that the 'transcripts' be paid for at public expense since they had paid over £200,000.00 into their two businesses as well as the court case to be compensated for their business interruption and consequential losses, so now having just lost everything they could not afford to continue at their own expense and would be at the time scale (9 months for just a part of one transcript of just 7 pages amounting to less than an hour of the hearing instead of half a dozen they should have received) and mercy of the public purse.

On the 13th Oct 2010 the Claimants applied for a stay of execution on both 104 and 106 businesses respectively as the Claimants stated that all payments ordered to be made by the Claimants, including mense profit and all of the Defendants costs may vary depending on the outcome if permission for appeal is granted immediately. Further they asked for an extension on the order that once the 'transcripts' have been received they be given instead of a mere 3 weeks to file a skeleton argument (which is not normal it should be 6 weeks) more time as 3 weeks seemed hardly enough time to prepare such a complex case. This especially when neither of the Claimants to date have had the legal reasons given to them as to why their claim was dismissed and once they do have the legal case arguments assessed to be correct by HHJ Cowell in his honours Judgment(s) in the form of the 'transcripts, since neither of the Claimants are legally trained, 3 weeks seems to be a harsh time scale to argue such serial complex arguments. For example why the Claimants believe Lord Millets judgement in the Southwark V's Mills case, often referred to regarding 'sound insulation' in low cost housing, where the consequences of having to put in sound insulation could have billions of pounds worth of effect on local authority budgets a matter for parliament not the courts bears no relation whatsoever to the Claimants case and as far as the 'Guild' case where the Defendant our landlord would be seen as a neighbouring occupier instead/or as well as our landlord, is concerned the Claimants believe this too does not apply or is irrelevant in any meaningful way to the landlords failure to

effect insurance claims with 'speed', preferring Hargrove regarding giving 'notice' on disrepair where the landlord then failed to repair (with the building insurance cover).

"The Claimants after 9 months received just one 'transcript' of 7 pages on the bank holiday weekend of Saturday 27th August 2011 at 12noon. This 'transcript' (of just an hour in the morning of the second day of Judgement) in part was a repeat of the 'EXPLANATION' (as his honour wrote it on the judgement) HHJ Cowell gave referring to the bank holiday weekend of the 28th – 30th August 2010, where his honour admittedly (a historically unheard of error) failed to read the Claimants 'Submissions On Liability' in the case of 92 pages, 245 paragraphs and the rest of this 'transcript' referred to his honours previous Judgement on liability made two days before with any changes that his honour may as his honour put it, 'wish to make' to that Judgement 'or not', having now given himself a day in between the two Judgements to now read the 92 pages, 245 paragraphs, 'Submissions On Liability On Behalf Of The Claimants', referring to a further 359 pages of exhibits from the 19 volumes of case file bundles a truly remarkably task given the days grace, to adjust any findings. It must be noted that if the full transcripts had been given to the Claimants the very end of the transcript of the 9th of September Judgement would read in the 'one' and 'only' sentence verbally asked by Ms Flores as this was the only one thing she asked at the end of the Judgement, "Did your honour read the 'Claimants Submissions On Liability' of 92 pages, 245 paragraphs?" to which his honours smiled at Ms Flores directly for his honour perfectly understood her 'only' question and replied, "yes".

For Ease of reference this is the 'EXPLANATION':

On Monday Morning at the start of the hearing 20th Sept 2010 I read out a statement explaining that 3 documents that I d received from the claimants before I gave Judgment on the 9th Sept 2010 had been treated by me as the claimants final submissions on liability. Those documents did not include a lengthy document containing 245 paragraphs which were the claimants final submissions which I saw for the first time during the weekend of the 18th & 19th Sept attached to the claimants application dated the 16th Sept 2010 which was for permission to appeal which application I have not yet dealt with. In all five attachments were sent to me at home at my address on the 7th Sept by my clerk. One consisted of two diary entries which I received another consisted of photographs, two further documents were the two attachments I refer to on the 20th of Sept and the fifth and last attachment was the claimants submissions. I can only assume that when I opened the last attachments which was the claimants submissions I thought it was a copy of the defendants submissions that is because the first page of them both have almost identical paragraphs 1's sub titles a and b on the first page and almost are identical as can be seen simply by looking at the first page of each. I realised on 20th of Sept that I'd inform the clerk of what had happened and I decided that the proper course was to attend to the claimants final submissions on Tuesday the 21st of Sept and consider and if so to what extent I should alter any part of my judgment on the 9th Sept and what further matters might call for consideration as mentioned and then that I should finally give this Judgment on Wed 22nd Which I now do."

Unfortunately after 9 months with no other additional 'transcript'(s) to the most important Central Judgement of two days before on the 9th Sept 2010, yet making

constant reference to that Judgement, in this now only available ‘transcript’ given to the Claimants after nine months waiting as paid for by the public purse. This situation has just made it further impossible to know legally the argument as to how and why are claim has been dismissed save for £100 in nominal damages.

It is argued by the Claimants in asking for permission to appeal that the trial was completely unfair in the sense of ‘a fair trial’ and thus we find this is not uncommonly accompanied by persistent judicial errors as this latest one ‘the missing transcripts’ just further clearly demonstrates.

3. The Claimants case has always been simple and consistent from 2004.

The ‘Claimants’ were ‘jointly’ insured for the two buildings with the ‘Landlord’ One Housing Group/Community Housing Association as set out in the lease, for all repairs. The landlord was the ‘policy holder’ the leaseholder was a ‘noted interest’ on the policy for commercial premises and as such paid a ‘premium’ as required to the ‘landlord’ for the building insurance.

The landlord ‘failed’ to make claims on the building insurance when repairs outside of the Claimants control and covered by the building insurance arose.

The landlord further, broke the terms of ‘our’ insurance by not mitigating their losses by repairing with ‘speed’, when they choose to repair themselves rather than to make a claim.

The insurers therefore would not pay the landlord the ‘policy holder’ to pay us ‘the noted interest’ for commercial leases for any consequential losses with regard to our loss of opportunity to trade and with regard to rent losses etc.

The landlord left us the commercial leaseholders in a position of ‘indifference’ with regard to disrepair with an inability to trade until the landlord resolved their own affairs with their insured, with the landlord threatening to sue their insured as they believed they “should be covered whether they did wrong or not” quote from OHG Landlords internal email as seen in court.

This too then exacerbated what were modest building insurance claims for repair and cessor of rent reimbursement by the Claimants to larger claims of lengthy periods of business interruption suffered as a result of the continuing disrepair and time taken in the landlords (behind the scenes) protracted dispute with their insured.

Further the landlord always had the ‘means’ (expressed term also in the lease) to repair at all times and whether they had a dispute with their insured or not that should not legally by the terms of the covenant of the lease have affected or even involved the Claimants as the insured can be viewed as a ‘third party’ of the landlord.

The Landlord who had separate insurance cover for ‘liability’ then instead of owning up to then simple issues of liability and paying a small amount of compensation to the Claimants used all its might to have the claimants compensation requests thrown out once they realised they had breached the terms of their insurance and would potentially have to pay the Claimants out of their own large scale budgets which would not look good for the management namely Chris Natt and Mick Sweeney CEO.

The Claimants small business people of no financial means save loans could not afford to have this happen to them financially and too knew they were in the right and had been substantially put out of pocket. They disputed the landlord all the way.

4. The insurance in the face of a growing claim on liability therefore cover had a 'conflict of interest' and took a 'Commercial Decision', likely to be based on re-insurance and politics, to back the landlord even though they had decided that the landlord had breached the terms of their own insurance. They all collaborated to take down the Claimants so as no one would have to pay. This incensed the Claimants who would not be taken down to save the landlord and their insured a claim for fair compensation and to be put back to the position but for these building problems had not happened.

5. Interest on loans put the Claimants in financial hardship and one of them sold her house to pay off the rising interest on debts. The two shops have too now been given landlord making the Landlord unduly enriched as if the Claimants had paid the landlord to refurbish their shops and pay the rent with no usage, giving them £100 off for the privilege. The social enterprise of the national voluntary organisation established in 1979 NN/YP (National Association of Young People In Care) is now relegated from two shops to a trading website to continue furthering the aims of establishing a Youth Economy www.onepercent4art.com instead but with no premises to work from. However the Claimants stand steadfast that they are still in the right.

6. The Claimants believe that although the case is now so complex and unhealthily consuming financially on both sides that the 'cause' for all losses lies with the landlords original failure to disclose by blatant 'deceit' (using this word for legal reasons which throws the laws of Guild and Southwark V Mills used in the Judgement into serious question as they really do not apply) 'building regulation' failures as well as to with any 'speed' using the 'means available to them' to effect repairs when pipes regularly burst into the Claimants two businesses, which also had been built with 10 million pounds of public money of which £400,000 was specifically allocated for the six shops on the street in King's Cross, to the landlord in just 1999 which beggar's belief one could fail to put in air bricks with that much money by their contractors Kingsbury Construction just less than 7 years before (again a legal term) all hell broke loose with disrepairs, building regulation breaches and bad workmanship for which the landlord was amazingly further too insured by HAPM for structural defects but failed to effect any claim to this day making 106 shop still completely illegal to trade from. Further as was warned in our final Submissions on Liability this landlord is also attempting to pass it off to another unsuspecting potential leaseholder by 'deceit' advertised currently as "the shop is believed to have A3 planning" clever but deceitful words especially after this court case one would think this landlord would learn. The smell of damp in an otherwise plush space must be giving it away anyway as the shop has not been let in over a year.

7. All issues raised have been 'proved to be correct' in the courts at a trial of ten days however it would seem that the principle of law through the paid assistance of QC Ms Zia Bhaloo and her team for the Defendants in any event allowed this case to have gotten off lightly with a 'technicality' which the Claimants to date have still been left in the dark as to what law that is 'exactly' in detail and how that 'law' 'exactly'

applies as we certainly think it doesn't and this by any moral justification at least should be 'EXPLAINED' and backed up to be 'sound' judgement as is 'law'.

8. We ask that this case be dealt with now at convenient speed to allow us to legally or at least with the common sense that is clear in the argument put our position clearly as what has been judged is very arguable and the Claimants are far from naive about that so will not be fobbed off with legal jargon and authority from anyone.

9. It must be noted 'circumstantially' that on the last days of 'Judgement' and of 'Costs' Ms Flores had taken ill the day before with a serious abscess in the roof of her mouth swollen to the size of half a golf ball. Despite 'applying' for the day to be adjourned this was completely ignored by his honour HHJ Cowell and Ms Cracy very unfairly was forced unprepared to represent the Claimants.

10. The Claimants shall in the absence of the '9th Sept 2010 Transcript' refer to the 'notes' of Ms Flores on the day of His Honour Judge Cowell's Judgement, in order to with speed put our case forward at last to apply for 'Permission to Appeal' as technically we have by passed this unusual requirement by at the very least getting one transcript. For the purposes of ease of reference I shall write our reasoning for disagreement with this Judgement in italic and head this with, 'JF Comments' standing for Jo Flores ahead of what Jo Flores 'noted' as reasons the judgement was perverse:

<u>11. Notes on Judgement 9th Sept 2010 on what HHJ Cowell said and JF Comments:</u>

12. HHJ Cowell: The claimants have represented themselves in this case and at times have been assisted by various counsels.

Undoubtedly in this case the claimants suffered foul sewage from April 2004 – 2005 quite enough to daunt the bravest of spirit.

104 Cromer Street, WC1 known as Scarlet Maguire was let to one Ms Jo Gavin now Ms Flores on the 8th June 2000 for a term of 6 years. This was a ground floor and basement shop below a four stories residential setting owned by the defendants above. The lessor of the premises own's the left and right of 104 Cromer Street itself. G1 – 87,88, bottom of 87 front 104 left is an area not demised to the premise and the top is 106-108 Cromer Street left of 104 area retained by the defendant's. Left 106-8 is the spaceshift premise. Let is the ground floor and basement on a lease commencing 8th April 2004 for 2 years and further a lease dated 17th March 2005 until April 2014.

The defendant sought to forfeit entrance by peaceable re-entry on 29th Oct 2008.

13. JF Comment: There is no explanation as to why and on what grounds. However it is noted that the correct term 'sought to forfeit' is used, since the claimants have always contented this

was illegal, no legal forfeiture occurred hence they contend (although being often pushed to do so) there is no need to apply for relief. Instead the claimants went to the high court and obtained two injunctions to re-enter with the proviso for quiet enjoyment in that the landlord was to fix the issues that were currently rendering the Claimants incapable of trading and subject to all the issues of disrepair to be dealt with regard to liability at trial.

The (as this was not stated) landlord entered on the ground of non-payment of rent which the claimants believed not only was not owed and had anyway to the date of entry and beyond that been paid (disputed by the landlord as they say they lost the cheque paid by the claimants so then the claimants paid on-line and delivered 'evidence' of payment to avoid the second break and entry, which still took place) so constituted trespass and unlawful breaking and entering twice not withstanding that the cessor of rent clause (6iii) should have been in operation as stated by the claimants solicitors (shown to the courts) before both break ins. Further that there where in the past countless issues of disrepair that had delayed payment of rent (so lease clause for non-payment could not be invoked) on many occasions until the issues were resolved, (Guild) so there were historic examples of how the said current dispute in Oct 2008 and subsequent issue of a 'section 25 notice' and 'threat' to double the rent constituted 'harassment' added with breaking and entering were 'over zealous' and actions open to legal argument as to the 'history'. Further that the claimants believe they were 'actions' to 'conceal the evidence' and the 'breaching of building regulations' and or further evidence of disrepair.

It was stated at the hearing of 14th Nov 2008 by Justice Clarke that the claimants had 'always' paid the rent as a gesture of goodwill despite the claim by the Claimants that the landlord was holding £31,292 (the Claimants claimed was owed to the Claimants due to the cessor of rent clause 6iii in the leases when they building was not in use) representing part of £59,500 paid by the Claimants in 'trust' (until liability was established and partly because of 'fear' any lawfully actionable eviction as happened 'dubiously the moment the landlord gave themselves the chance on 'dodgy' grounds) until outstanding issues of repair had been resolved with the landlords being as it were that they were 'indemnified by their insured' so they should make a claim

under the clause with which they were covenanted to do so in terms of the lease for repairing obligations to the building insurers and all liable actions/inaction compensated under clause 7(ii).

14. HHJ Cowell: There was a court ex party hearing on 4th Nov before Justice Clarke and on the 14th Nov 2008, for the claimants to 'remain' and further the claimants should 'specify the nature of claims', which as such amounted to a 'counter claim', which would indicate 'no rent'.

15. JF Comments: No mention of two high court injunctions and that it was at the claimant's request that the full case of 'disrepair' on numerous issues be brought to the Central London County Court. Plus the way this has been said about indicating no rent is an error in the procedural way it is described.

16. HHJ Cowell: On 4th Nov 2008 part of the claimant's particulars seemed very difficult to obtain what the causes of action were.

17. No mention of an order by HHJ Cowell suggesting that the causes of action were better particularised because of a complaint by the defendants that this be done (the claimants had enlisted the help of a lawyer friend Ms Woods to date a specialist in immigration only, to help particularise their complaints to save cost and format properly as they could not afford lawyers so would fall foul in some administrative way to perhaps harshly be unable to proceed, with the case being highly likely to be thrown out on these administrative grounds at an early stage). It was then and only then that the claimants (already put to undue expense with the break in leading them to the courts) were forced to pay for 'specialist' landlords and tenants counsels assistance to 'satisfy' the courts.

In a judgment that HHJ Cowell himself described as 'surreal' the better and professionally clearer particulars were 'not accepted' and they were 'dismissed'. The claimants at times do plead for example in the new particulars, derogation from grant, harassment contrary to section 1 of the protection from harassment act 1997, by virtue of section 3 of the said act entitling the Claimants to civil remedy in respect of the harassment including damages, as well as various other relevant causes of action quiet enjoyment (which was allowed but too was in the originals), nuisance, expressed terms in the leases. They also state a breach of the 'cessor of rent' clause 6(iii)

with the single joint expert having further 'assessed' by that point, the amount as £45,365.00 owed back to the Claimants by the landlord if liability was established. Further and/or in the alternative, by virtue of sub-clause 5(12)(c) of the leases, there is an implied term that the Defendant had a 'duty' to examine decorate repair and rebuild the structure of the demised premises. Further, pursuant to section 4 of the Defective Premises Act 1972, such implied term places the landlord under an obligation to the tenant for that description of maintenance or repair of the premises. Further in breach of the said expressed term for quiet enjoyment and/or the said implied term the Defendant failed to keep safe the fire escape areas.

Finally the Claimants asked for an order that the Defendants take all steps to prevent further water penetration, to remedy the damage that remains to be repaired. For the defendants to install an adequate number of airbricks to ventilate (as planning cannot be obtained by the tenant) and to remedy such damage as remains to repair.

The claimants did all the above at a total cost of £22,000 for counsel. This has been overlooked by HHJ Cowell in his honours final judgment of the 9th Sept 2010 and suspiciously no real reference was made to this within the bundles made up by the Defendants solicitors for which only one copy was given to the Claimants on the day before trial with no time to assess any missing data of which there was a substainsial amount within the 19 bundles and no time to familiarise themselves with the rearranged order which had been changed from the original bundles in which so much had also been duplicated unnecessarily and as the judge became aware vital parts were missing too, including very suspiciously email evidence that the landlord has threatened to sue their insured and their insured threatened them to back down. Noted too was that all this was at considerable expense with several copies in the court to the many unknown people who were in there watching on the defendants side of the court. HHJ Cowell stated at the time 25th March 2010 that the more professionally particularised causes of action put together by specialist lawyer Vikram Sachdiva of 39 Essex were not in his view the 'relevant ones' (causes) anyway and so it was that our newer and very costly amended particulars were very early on in the case thrown out which is again the subject of why we feel we did not have a fail trial and

were nearly very well costed out or thrown out if we did not act on advice by the courts.

Judge Cowell said by way of justification at the time that he 'now understood the case better and that all leaks were outside of the building and out of our control'. His honour ruled to keep the 'original' particulars as he 'now understood' the claimants original particulars, which are now again the subject of strong criticism. One could say, 'you can't have it both ways' with justification as to say there are 'no causes of action' correctly particularised with this background properly stated leaves a lot to de desired in terms of fairness. This too gives rise to the fact that the issues are arguably 'not dealt with'. The previous causes of action need to be analysed by the court of appeal to check whether this first Judgment was either 'harsh' and/or whether we have been 'mislead' and that our original particulars of claim should not back then have been allowed to proceed wasting our time and money to proceed with particulars that would later be ruled as not good enough. We feel we assisted the court and the other side, which took a lot of time and money and were dismayed since this was done by us on the judge's advice/order that this issue was again brought up. There is something fortunately in law that does not penalise applicants on the grounds of how things are said or presented these days as used to be the case in the old days. They got rid of that. So using this 'particulars not formulated properly' but saying one 'understands' now is rather odd and maybe illegal to judge against us these days. We were also ordered to pay the other sides costs regardless of the outcome for wasting their time. This exercise amounted to an estimated further cost to us the Claimant of about £42,000 in total (borrowed money as we had lost far too much to get stopped in getting justice now) in being helpful to the courts, when in the end the courts preferred the original particulars which only cost us a few hundred pounds, yet would use them effectively against us in this judgement.

HHJ Cowell did however allow our 'schedules' in the amended particulars of claim, which are a coherent table of all the incidences, dates reported, dates repaired, description of damage and date resolved by the defendant. This Judge Cowell stated was 'very helpful' and it was also much closer to what HHJ Clarke had ordered on the 14th Nov 2008 too, rather than a list of 'events' as HHJ Cowell put it more like an inquiry which did not

serve the courts or make his honours job easier his honour said. The Claimants still now and back then too felt it was important to state the sequence of 'events' that lead to the 'harassment' and 'unlawful eviction' simply to save a claim and the potential to cause exposure for the large scale, very well known and politically and judicially connected (Their chairperson's brother is the Master of the Roles) social landlord 'One Housing Group' and all those associated with this claim behind the scenes. It should be noted that although Ms Flores is related directly to Edward I King of England her 24th Great Grandfather (and famous in law for he started the Chancery Courts hence how she happened upon this family information) and therefore she is of Royal Descent and now entitled to quarter the Royal Coat of Arms. It must be said though that that is a recent discovery of just a few months as Ms Flores was in care of the state so did not know this at all (as well as being also related to the French, Spanish, Mexican and Aztec Nobility) and as such cannot be construed as having those connections back then or even now.

A recent judgement although not necessarily relevant but could be potentially to the Claimant (as may explain such a costly and rigorous defence) said: that these social landlords were indeed 'to be viewed as public bodies' and therefore open to 'Judicial Review' due to their influential political connections. This case may well as it is highly likely to have had if we won larger consequences for the ('One Housing Groups' and probably why they took their real name out of the first hearing preferring to use CHA the old name) landlords funding which could be legally 'suspended' if found guilty as well as their public reputation in tatters letting excrement be allowed for nearly three months to run down our walls in the most beautifully refurbished space and as the Mayor of Camden 'our witness' put it 'how does this give confidence to the treatment of the residential tenants' which was giving the Mayor as well as the head of the residents association our other 'witness' grave concerns'. The Claimants say this because there are legalities involved too re public bodies influences.

It must also be noted that in 2003 Prime Minister Gordon Brown made an announcement to significant changes in the status and role of RSL's Residential Social Landlords in that they would be the 'preferred providers' as opposed to the 'local authority' to get housing Government funding to build new housing stock further

de-centralising local Government and worth billions to the RSL's in terms of public and private finances and although we are not any part of the landlords social do good-ing we may well have inadvertently as a commercial tenant exposed this huge social landlords failures which would not bear well for the political agenda of the day. It is very sad for the Claimants to have very well, potentially fallen foul of such a powerful dynamic. In which case we may need to go to Europe to get justice as there can be little trust with this politics/and or greed (insurance 'commercial decision') in this country.

There was one more counsel involved Mr Marc Beaumont who charged £10,000 and was double booked and ill prepared on the day he appeared for us (and also he later claimed to be best friend with the other sides QC's husband and told us to back down as it wasn't 'winnings on the lottery' and well known of Judge Cowell). We asked that a cause of action be 'Fraud' which was suggested to HHJ Cowell who said it was 'fraught with difficulties' so again 'deceit' as in 'fraud' that was left out.

Finally three extra amendments were also allowed they are:

The Claimants' business plan was:

(a) ***to use 104 as an art gallery***

(b) ***to use 106 as a multifunctional space available for hire***

(c) ***to establish an independent Youth Parliament economy***

(d) ***to develop a business model with Spaceshift which could be franchised by young people throughout the UK***

3(A) There were express terms of both leases that the Claimants should have quiet enjoyment of the 104 and 106 as against the landlord and all persons claiming title through the landlord.

3(B) The Claimants at all material times operated the businesses of an art gallery ("Scarlet Maguire") and multifunctional space available for hire ("Spaceshift") from 104 and 106.

18. HHJ Cowell: A broad outline:

Insurers to pay; -

April 2004 Glass Bricks Pavement let water through. Best to understand this look at G1.71 in fact shows repairs with gap at the edge of the paving, which let water in.

19. We disagreed as in our 'schedules' it is in fact stated that 'wear and tear' of the asphalt sealant on the pavement was NOT insured as stated by us in the trial and is proven in the insurance documents. The wording 'edge' of the pavement by HHJ Cowell is 'misleading' and fits the landlord's defence in that the defendants made an (bogus) insurance claim that BT lifted the pavement in order to cover this as an insurance job on the first occasion it leaked (April 2004 claim made in Nov 2004) and could not get cover on any other further occasion it leaked as the landlord was not indemnified for gradual 'wear and tear' of a public pavement. We believe the defendant lied about this to get the repair covered by the insurers after seven months delay when they accepted no liability and where they claimed and maintained even throughout the hearing that they did not own this pavement. It was proved by the claimant and ruled as such in this judgement that they did in fact own the pavement and they did not demise it to the claimants.

It can been seen and needs to be stated that the broken sealant was across the pavement and not just around the edges as can be seen clearly in the said exhibit.

20. HHJ Cowell: Sept 2004. Repairs to 'gaps' were done by Kingsbury Company, which originally inserted the glass bricks and dealt with.

21. JF Comments: There is no mention of the claimants assertion throughout trial and is as seen in number 7 Of their particulars that it was only after much denial from the defendants and protracted efforts by the claimants to find out who was responsible and therefore liable for fixing the pavement in what amounts to a 'very expensive' repair (they couldn't afford) which was not on the claimants premises but affecting them severely that it was the claimants (and never the landlord) who tried to mitigate their loss and to attempt to find out how to get the repair done at the cost of being forced in mortgaging one of the Claimants houses rather than go out of business owing £30,000 in small loans with growing interest as setting up capital expenditure. The claimants as seen in Jo Gavin's (Flores) witness statement got a quote from 'Luxcrete' the name on the glass brick area of the pavement of £20,000. Despite this extortionate quote the claimants had already put too much money into the refurbishment as well as bills, rent and business rates so they made a decision (with the advice of professional friends in the Dept of Health and City Lit who thought the place was a goldmine and we should not lose our capital at this early stage) it would be better to pay and argue about it later for the sake of their business. This is again similar to the claimant's attitude when paying £3,500 for the flooded ceiling to be replaced. It was stated throughout the case that when 'Luxcrete' (not Kingsbury as stated) then told Ms Gavin that they personally did not do the sealing of the asphalt they had just laid the structural part (sealing is a job involving a large lorry of burning asphalt and five professional builders) but would find for us the claimants the company who did the original job as they would be specialised and more local, it was only then that the name Kingsbury Construction was given to the claimants by Luxcrete, the claimants realised immediately was the defendants contractor who had converted the entire building as seen on a plaque on the building for the 'Kingsbury Construction' refurbishment 1999 recently completed with public funds. The defendant through Jaqui Greene then immediately 'admitted liability' which they had tried to conceal and the job was then done on instruction from the landlord in the next two days by the landlord's contractor Kingsbury and paid for by the assisted by the BT story (bogus) insurance claim.

22. HHJ Cowell: 20th Jan 2006 – Insurances paid £150 excess £100 briefly described as rainwater ingress, D3 75.

23. This issue which is the same pavement as above was not and still is not an insured risk it involves planned bi-annual maintenance by the landlord as it would breach the lease that 'we are to be protected from the elements' (much like a roof) as proved at trial. There is no mention of delays here or interestingly what exactly this payment refers to, nor as claimed in the Claimants particulars that led to trial no mention that the landlord 'failed to effect insurance claims' except for this tardy claim very much later on as complained by us as a cause of action for damages for breach of quiet enjoyment that it would seem is now completely overlooked as if it is just a mere fact without delay.

24. HHJ Cowell: The second matter this was in Sept 2004 – Waste stack sewage from the flats above entering to the rear wall demised at 104 leaked/damaged the wall with odour sewage permeates.

25. JF Comments: HHJ Cowell is stating it was Sept 2004 as claimed by us after looking at the evidence disputed by 5 months by the Defendants who said the repair took just a few days in Feb 2005.

26. HHJ Cowell: Jan/Feb 2005 the defendant's contractor replaced the rear wall.

The leak was stopped on the 31st Jan 2005 and replacements later.

Insurers paid £100- £150 somewhat misleading which is immaterial 27th April 2004.

27. JF Comments: Please clarify this point, as it is important. The leak did not occur from April 2004. However, there was another leak in April 2004 in the same location, where the wall had to be replaced, which was dealt with far quicker therefore no complaint was not made by the Claimants nor forms any part of this trial. Why then mention the insurance paid for something at a later date that maybe they did not. Did they ever pay for this repair or did they even know about it, this is not clear.

28. HHJ Cowell: No sooner had that leak been dealt with then another occurred on the 7th Feb 2005 with a small drop in the basement bathroom from the waste stack, which passed down very close to the rear wall. This leak was stopped on 26th April but we'll hear much more about then in due course.

29.JF Comments: No mention of which premises as it was the shop next door at 106 or the fact that the leak was of imminent health and safety danger as was foul waste excrement clearly showing and was stopped again with a delay (a breach of an expressed obligation for quiet enjoyment and hazardous waste) of two and half months. Repairs to put back the new walls were done much later leaving exposed sewage pipes visible.

30. HHJ Cowell: Insurers paid nothing in relation to that but this was the 3rd matter I dealt.

31. Our case states the insurers still did not know as the insurance was not triggered with speed an expressed obligation in the leases to insure and later we fixed the wall as the Defendants were too slow to do so and we were paid by the insurance later so above is incorrect.

32. HHJ Cowell: 25th June 2005 – Leak inundated the gallery one week before an exhibition. 14th Oct 2005- Cost after £100, eventually paid direct as were all to the claimants.

33. JF Comments: Major flooding from ceiling overnight so the description of leak really not accurate. The claimants paid for the ceiling replacement not merited or mentioned. Anything eventually paid was because the Claimants demanded it to be paid back by getting in touch with the insurers agent directly and made a lengthy complaint regarding business interruption save that the landlord may have never effected a claim or told their insured but for our letter to the landlord asking for compensation of £10,000 in total to be put back to the position we would have been had these delays not happened therefore the material damage claim was eventually put to the insurance and they paid material damage but then investigated liability and said that the landlord failed to mitigate its own losses and were therefore liable and/or had breached the terms of their own insurance so would not be indemnified to pay us through the landlord to get compensation as was normally covered by the insurance under the property owner liability POL therefore the landlord was breaching the leases to of clause 7(ii) and quiet

enjoyment and nuisance and building regulations and health and safety environmental health and not acting with speed to mitigate losses for which the claimants were entitled under the insurance to business interruption as it was a building issue not a contents one. It is expressed in the lease that we cannot cover the building separately with insurance cover. So us not getting covered were in fact due to the landlord's failures solely.

34. HHJ Cowell: 20th June 2006 - £3141.65p other sum £3,441.65p, which was sent by the insurer in the form of a cheque to the claimants.

35. JF Comments: This was exactly the borrowed money that had been paid out by the claimants to builders to fix the premises to mitigate further losses as history had shown the landlord would fail to repair making the claimants go out of business waiting.

36. HHJ Cowell: In view of the considerable arguments and many authorities referred to by Ms Bhaloo to determine what was demised to the claimants and what was: -

37. JF Comments: Unequal footing with claimants not legally trained in understanding of the authorities but common sense did prevail despite the length of the argument and the advantages to the landlord in terms of their QC paid for by the 'building insurers of the claimants and the landlord', (a commercial decision we suspect to save a now larger claim, re-insurance, conflict of interest etc). The demise was not the pavement as was argued by the landlords QC.

38. HHJ Cowell: Leases both are similar

39. Lease A 340 – 17th March 2005 106-8 term was 7th April £9,000 annual.

Demised premises are defined clause 1 sub clause 2 – Expression; Internal plaster, exterior and interior plaster.

40. JF Flores: All expressed so none can be implied

41. HHJ Cowell: All non load-bearing walls – boards served

42. JF Comments: Very important no structural walls

43. HHJ Cowell: Conduits – public systems

I've read that because the question is are the pavements included in the demise.

In my judgement not part not mentioned, only coverings of ceiling demised, clause designed to demise as little as possible: Conclusion on that!

44. JF Comments: Very important point

45. HHJ Cowell: Importance of point – duty of repairing demised the rest to the claimants.

Under lease – No duty to repair gaps in pavement lights – not to say anyone does extent of duty defendants do but we'll come to that.

46. JF Comments: It is their pavement which leaks into us so it cannot be Caveat Emptor, as an 'expressed obligation' in the lease is to be protected from the elements i.e. rainwater stated in our final submission on liability and legal argument, admittedly the Judge did not read.

47. HHJ Cowell: It hardly needs saying the stack is not demised.

The defendants had a right to enter for purpose of repairing, lease enables or empowers – Also repair retained premises.

Plans one could be forgiven for concluding 106-8 where as ground floor is not in (availability?)

48. JF Comments: Need notes from other side which were requested as we have read that they 'have to provide' us with them as law since we are claimants in person but as per usual in this case the courts are trying to put us to more expense getting costly and time consuming transcripts and the other side are saying nothing when they know they have a duty to provide. The whole thing seemed tied up between them and we feel throughout very much treated as non-legal so therefore it is harder to argue even what we know to be correct making us

easier to take advantage of, which is again points of order and lack of fairness in this trial.

49. HHJ Cowell: Not demised stack / Pavement –

106-8, pipe encased, it couldn't be seen, in the wall plaster board casing G1 77-80-81.

The defendant's retained rights if pipes are on the demised premises to enter in order to repair it. Clause 2, A3 page 346.

Tenants covenant: Clause 5.12 c (vi) permits landlord and certain others to enter to repair-

50. JF Comments: However they don't have to use this unless there is an expressed obligation to repair (with speed), for which there was, for the contractors/others to be paid for by insurances to enter.

51. This is as gooder moment as any to mention the leases:

A3 143 – definitions expression the insured risks, loss of damage by fire risks etc etc etc

52. JF Comments: Throughout this trial the claimants bore in mind the directions of Justice Clarke to show which insurances covered which risks. Bundles D1, D2, D3 and F1 specifically deal with insurance and what was covered as directed by the high courts to include. This formed a substantial part of the trial so the use of the words etc etc etc is belittling the serious issues in exact and appropriate wording. Which is happening throughout this judgement, leaving points out completely as if they do not matter.

53. HHJ Cowell: It is evident that the insurers paid for four different leaks including escape of water- 343 5 sub-clause 3a – Tenant to pay landlord due proportion of the premium.

371. 7(2) Covenant by the landlord to insure the premises against insured risks, convenient speed – subject to lay out and apply rebuild etc.

54. JF Flores: 'Convenient Speed' important point and the fact that the defendant had a whole maintenance team (large scale contractors whose clients include the Ministry Of Defence MOD) at their disposal that provided for ceiling replacements for example are very relevant.

55. HHJ Cowell: Number of provisions in fact insurance money went direct to the claimants.

56.JF Comments: Yes as we chased were as the defendant sat back

57. HHJ Cowell: There is an oddity – 5 (1) Service charge payments clause 6 below nothing to do with service charges – so no service charges in this case.

58. JF Comments: This has been extensively referred to in our submissions on liability

59. HHJ Cowell: Clause 5 (6) Para 6 pages A3 356 – Covenant by claimants to repair and every part thereof:

A3 – 69 – Cessor of rent clause stress unfit for occupation of use. Suspended –fit for occupation.

60. JF Comments: Why stress but not justify? This point is worth the rent taken while we could NOT use the building. This is not a judgement we can either understand or has been explained with any reason and since it is the point of the whole reason it went to court needs some form of understandable Judgement needs to be put in place.

61. HHJ Cowell: In fact as I shall say now: There was not an occasion when the premises were not 'wholly' and therefore that clause did not come into operation. Odd fair proportion. There it is-

62. JF Comments: Nothing odd about a fair proportion it is our building insurers too as we pay a part. This is not judged or justified as to why it was not seen as unfit for purpose by his honour in what amounts to 5000 days of disrepair.

63. HHJ Cowell: For this judgment is divided into chapters: focusing on causes of action. The claimants are seeking to rely on covenants implied on the landlord to repair the demised unless statute provide to repair Landlords and Tenants Act 1985 –

64. JF Comments: No not true and HHJ Cowell had not read our submissions on liability making 'expressed terms' apply, which are never mentioned once in this judgment. Nor is the fact that our evidence was asked to be put into an email as QC Ms Bhaloo acting for the defendant was allowed to keep (under constant protest by Ms Flores to the Judge) Jo Flores in the witness box very unfairly for four days making the trial of 10 days 'run out of time' and it was not extended to let our evidence be aired in the court of law which can hardly be considered to be 'fair' especially when now HHJ Cowell is using terms that are completely inaccurate re our causes of action being implied when clearly they were not as implied is as is very well known is very difficult to argue and would suggest that the terms were left out which they clearly were not.

Insurance covered all repairs and neither party had to repair. Speed is the key, which is expressed.

The pavement the key is the 'element', which is expressed.

The fire exits are building regulations.

The electricity cupboard is nuisance and the key is 'notice'.

The air or lack of is not caveat emptor it is deceit and continues to be for a new tenant as advertised and it is a breach of building regulations in a building converted by less than 7 years in 2004.

The contract is 'void' from the start and all losses stem from that cause.

Hazardous substances are a matter for building regulations too as clearly they burst all the time.

So this judgement is surreal.

65. HHJ Cowell: Skeleton argument terms of lease and true construction, implied obligations on lessor's part.

Exceptionally – Implied exterior – maybe Barrell Nova or 1 all England reports 151, correlative obligations 357 a b demands it.

Similarly a lessor is not bound the insurance does owe duties – justice …… in the case of Vorell v's Security Archives 60 – 258-

66. JF Comments: This is not an insurance case (although the Financial Ombudsman Service FOS is investigating AXA's 'commercial decision' and partisan legal cover in backing the landlord as well a Royal Sun Alliance's actions through Anna Norrie of Plexus Law as well as other issues of concern re the satellite dispute between the two insurers) or we would be suing them, they are effectively a third party of the defendant. The defendant did, as time and time again submitted, breach the terms of his or her own insurance and breached in doing so the expressed terms of the leases 7(ii) to effect insurances with speed. So whom ever they used as an excuse it is still an excuse and the initial 'cause', which lead to all the other issues. Had they not breached the terms then, there would perhaps have been a smoother transaction. The initial cause is the 'breach' of lease covenants.

67. HHJ Cowell: In this case: Defendants in no way stood in the way.

68. JF Comments: They did they breached the terms directly 'standing in the way' of what back then would have amounted to a small claim which would have been paid had they raised their hands to POL property owner liability part of the policy cover instead of a protracted defence to date of facts and/or if they had been the ones who put it to their insured some other bogus story (not suggesting that they should but history shows that they do that) as they had done before instead of putting in 'my worded" claim which clearly was accusing them of being liable '(the truth') as I suggested to them when I wrote the draft they asked me to write, I said 'are you sure you want me to put this to your insured? They effectively made the claim blaming themselves by putting in my draft without my permission, not me when Tushar Shar the financial Controller of OHG sent off my draft which was only to them and (I specified that), when they could have just paid to put us back to our original position or used other methods of compensation by way of rent set off or cessor at the time seeing as they could see and knew they were clearly responsible because of mainly Mr UK their surveyor. They stood in the way through incompetence, harassment and fraud and further they delayed in providing reports from Jaqui Greene and MR UK through to the loss adjusters (In the witness

box Mr UK incredibly admitting in the end the meant to be independent loss adjuster Alan Hines wrote Mr UK's statement himself). Finally us the Claimants being in touch with the insured, the Prime Minister Gordon Brown, Barry Goodwin in the government, the Housing Ombudsman, The Housing Minister, the local MP, The local Mayor, the CEO of UKU (our building insurance) Paul Smith, the local press Camden New Journal, the Sun, the Mirror, the Guardian, The Times, The New York Times, Radio 4, Private Eye, The Housing Times, Community Care Magazine, BBC, Sky News, Press Association, Reuters, Dom Littlewood and other investigative journalists and social media sites etc and Alan Harris our professional counterpart and others was only part of the process of us exposing this and getting justice because we insisted and still do that we were being treated unfairly and the landlord could not stop that process. It is not for a Judge to then compliment them by saying they did nothing to stand in the way when clearly they did everything in their power to stand in the way and therefore escalated the small claim!

69. HHJ Cowell: The claimants enlisted the services of Alan Harris a loss adjuster who had direct communication with the insurers and agents.

70. JF Comments: Alan Harris was a further expense to the claimant once we knew we were being fobbed off, as the issues dragged on and on with still no acceptance of liability and Alan Harris said clearly that the insurers did not want to pay because 'the defendants breached the terms of their own insurance' which we the Claimants would never have known had we not enlisted his help in what seemed to be us constantly being left in the dark as to what was going on behind the scenes. The insurers were also as stated again and again having a satellite dispute, which they wanted to keep unexposed as to who would cover the landlord, who was just leaving us the Claimants in a position of 'indifference' with substantial interests accruing, for which the landlord was very aware, until the issues were resolved. However as now becomes clearer, on the suggestion of Anna Norrie the Lawyer for RSA they then all teamed up together with the defendant to get rid of us the claimant (clearly the weaker party) by firstly stating that we had not provided a 'proper presentation of claim' yet with no indication of 'what further we should provide' and then in very costly legal action, then with what was so obvious to us the Claimants at the time

this arrogant and brand new found confidence once they'd 'teamed up together' (especially the landlord's verbal condescending attitude on the phone) putting us to further cost with not legally required audited accounts and then section 25 notices and failure to effect the floor claim until the liability claim was sorted out nor to put in the ventilation and with trying to find clauses that we had to install airbricks ourselves, leaving us again 'legally' unable to trade (the then current disaster in these beleaguered buildings), the landlord further has no hesitation in breaking into our premises not once but twice successfully dancing us into the courts incurring more costs in further harassment hence the court case. With this issue now having taken everything from us and still drags on and on after 7 years.

71. HHJ Cowell; Start – concern – causes of action – Duke of Westminster V's Guild Lord Millet, Southwark vs. Mills, A bench + two components 25 f.g.

Guild 701 f.g. Lord Justice Slade – Hargrove's – 1 Kings bench 172.

Duty of Care, "we have now turn & submission general principle Hargrove Coburn & Smith' Landlords and Tenants; Where the lessor retains- Safe enjoyment obligation retained not condition to cause damages to tenant.

72. JF Comments: We need reasons why 'Hargrove' was not relied upon as the landlord in all of our case had the retained parts causing damage to the demise which were outside of our control and upon giving 'notice' which is the common theme in Hargrove as oppose to Guild which is more reliant on the 'implied' definition of rights to enter and repair, definition of demise, easement etc. Clearly as was proved with the majority of the trial concerned with those facts we gave 'notice' within days of any incident or immediately when we were aware so we are not looking for an implied term here in this case. The landlord's obligations and our own are clearly expressed in the lease as opposed to implied. Neither party overlooked the repairing obligations in the leases. We were both satisfied that all repairs were covered by the building insurance. The expressed covenants were 'speed' and 'notice' extremely clearly expressed in 7 (ii) and 5(xxii) leases.

73. HHJ Cowell: Rainwater -the defendants failed to clear-, -duty of care-, Coburn & Smith – similar – defects roof landlord-retained control-

74. JF Comments: No mention of our lease clause that is an 'expressed' term that we 'should be protected from the elements'; our submissions on liability have not been read or referred to again here. This case is again not relevant to the contract/covenants in leases of 'expressed' terms. The Pavement cannot be caveat emptor (to rent/sell a tumbled down is legal even if dangerous house or we took as seen and anyway there are degrees of that too ie if you can see) as firstly it has been made clear it belongs to the landlord and not us and secondly it acts as a roof that requires notice to fix if it leaks.

75. HHJ Cowel: Ryan & Flector – Where he retains Lord Justice Banks & Sergeant – instances 'duty' obligated, obligation 'duty' existed: 2 K b 119 / 130/ 134 Woodfall-

Guild 'duty' – for short;

Essential point was waste stack pipes & was occupied by the defendants the fact the defendant is the lessor is incidental as occupier defendants under a 'duty' that nuisance remedy defect without delay.

76. JF Comments: Without delay important word and back to lease where they had a major maintenance team at their disposal

77. HHJ Cowell: Many cases neighbour: landlord Woodfall: Approve Justice Slade Gill.

78. JF Comments: If HHJ is referring to Woodfall again it does not apply as the landlord built or converted the building in 1999 so building regulations apply and a 'Duty of Care'.

79. HHJ Cowell: 703-6- Dominant, Serviant, forcing serviant to repair.

If an exterior has been demised that Barrett Lewnova if exterior not demised regard – Occupier or neighbouring premises Coburn 7 Smith 355 b/c Barretts case, liability – crucial feature – Neighbouring Occupiers.

Authorities 701 c/n Gill case Justice Slade – REMAINS- has this been affected by 2 other cases by Gordon & Celico 1976 – relied – Implied term – Elaborate Service Charge

80. JF Comments: There should have been no physical interference with the Claimants quiet enjoyment. Again neighbouring or dominant does not apply, as there is an expressed obligation to not interfere with our quiet enjoyment.

The landlord does not define the use of neighbouring premises as 'ordinary use' by way of defence, if the neighbouring premises are causing us the Claimants a lack of quiet enjoyment by way of a hazardous nuisance from the neighbouring occupiers flat but it is that the premises are unfit as a result of disrepair after the landlord or neighbour as the Defendants wish to put it having been put on 'notice' to be repaired and are not repaired with any speed then 'neighbouring' word proves no advantage in use of the word neighbour for this landlord as that has nothing to do with anything. Landlord or neighbouring landlord is not relevant to a defence in this situation.

This constitutes an actionable nuisance and especially with stack pipes, which omitted foul and hazardous substances, it also falls under several health and safety clauses, regulations and laws. It must further be said even that it was not that they did not cause the nuisance as they claim it was an insured accident or that they did nothing about it once they were put on 'notice' but that the laws so very clearly states that hazardous substances cannot be left in continuance. Which is why Guild and others always say except for hazardous substances. Clearly this also makes either premises at the time these hazardous substances were being allowed to enter the premises 'wholly' unfit for purpose to the claimants, triggering the cessor of rent clauses and activating a personal injury claim or further damages for nuisance.

81. HHJ Cowell: -Jackson v's J.H Watson 2008- Para 52 – Defect faulty construction I was also referred to: - Janet Rogers International LTD 2006 D W H C 174 Chancery- MAINTAIN – COVENANT-

Para 59 – Judgment & Guilds case not even mention and….

Guilds – RELEVANT LAW-

Condsulared – After he know's – is he liable before he knows, does he know?

82. JF Comments: Yes the landlord knew

83. Clerke & Lindells Tort 19th Edition 21-42

Footnote. 99 – HARGROVES COBURN & SMITH…

When a Landlord lets a flat to a tenant – proof of negligence –

-Omitted to clear on notice he will be liable-

84. JF Comments: Yes and the 'blocked gutter case' where 'notice' had been given, was just a few days causing consequential damage, the Claimants case lasted months and damage was ongoing. Also there are foreseeability issues in our case and the fact that the repairs often reoccurred in the same places. Is it also not good enough as a defence to say that you could not find a pipe that was then leaking profusely for 4 years, as in the electricity cupboard and further that when private contractors (paid for as should have been following the insurance terms in the lease) were brought in, the leak was immediately found!! 'Trace and remedy' a leak is an item covered in the insurance (adverts for insurance are now saying they will pay for the damage in finding a leak so this is well recognised to take walls down and then repair fully) policy which is what HHJ Clarke directed us to state therefore it follows that a leak causing nuisance for 4 years in the neighbouring property but having an effect on our property in terms of seepage and smell also fire risk according to the Fire Brigade should have been traced far earlier to avoid nuisance, comply with health and safety and give us quiet enjoyment.

85. Particulars of claim – No part of any particulars are sufficient

86. JF Flores: Again the particulars were changed and dismissed old particulars said then to be fine this is now misleading. Once again too the Judge admitted that he did not read our submissions on liability which pointed to the legality of the situation more so in terms of our words making 'legal sense' (and it was not legally required for us lay people to us case law) which can be interpreted if read to apply legally. As law cannot be made or referred to as a 'law' unto itself, without these 'careful words' being what sets one law, apart form another and creates up to date precedent, which are then and only then relied upon. For want of a better word the laws applied in this judgement in our case do not strictly apply therefore our case has not had our variables applied and does not therefore fit the case law applied at all, if there is any precedent at all.

87. HHJ: Failure to allocate particular set of facts bedevilled this case & made it difficult to try: Judgment that was given before looked at this case;

88. JF Comments: Originally perhaps it did as this is a serial complex case but many costly efforts were made to then be accurate and very simply clear especially in the schedules, which were accepted as very helpful and easy to understand.

89. HHJ Cowell: Looked at: Callaghan – Knowledge – Knowledge or means of knowledge of neighbouring land, may qualify the broad rule: which appears to indicate is the actual feature and that delay knowing is a breach of duty-

Many cases – defendant remedied problem, admittedly after damage suffered. --When gave judgment 25th March on amendments – obligation that no damage should arise & occur.

If defendants had not remedied the defect the claimants would have a claim.

90. JF Comments: Ventilation at 106 and floor still not remedied at 104 so how can this apply? Other cases are the subject of delays in remedying causing further damage as in Hargrove.

91. HHJ Cowell: If damage continued.

Defendants were well advised to repair- doesn't follow: Crucial matter

- Cause origin of leak
- Defendant became aware
- What did they do
- When did they take such action

Should the defendants repair sooner this exercised my mind so much: - Easement

92. JF Comments: Easement is if the owner gives you permission to use part of his demise and/or similar things. We were in 'title' the leaseholder subject to contract of the leases.

93. HHJ Cowell: Owner dominant repair/Serviant no duty at all

94. JF Comments: Not true. It was our 'duty' as the serviant to report or give notice under the expressed terms of the lease 5 (xxii) so as to mitigate ourselves in term of insurances covering repairs. If we failed to report we would fail to be covered. The dominant owner had the same duty under the leases 7(ii) to effect claims but added to that he was to effect repairs by way of insurance monies laid our or by his own repair team (his choice depending on the excess) with speed, rebuilding etc.

95. HHJ Cowell: Pipe if leaks

Casing trespass &

Nuisance

Does knows & fails to remedy

96. JF Comments: No he the Defendant as the dominant fails firstly to 'report' as is conditional under the insurance policy and secondly he 'fails' to repair as in his choice but choice or not (which is not under scrutiny) he does firstly fail to report the 'same' expressed lease obligation as the serviant. Neither have a 'duty' to repair but both have an expressed 'duty' to 'report'. Failure to report is the original cause!!

97. HHJ Cowell: Strange if law provided different pipe adjoining leaks onto neighbouring land & leaked into it

Damage: liability two different cases determined by same.

GULID CASE - LAW -

Footnote: Great deal of concern:

- Not lawyers- referred by them, great sense of grievance on their part – did not assist me determining the law.
- Early stage – 3 large bundles of doc's prepared by the claimants in an attempt to save cost C1, C2, C3 – more documents then were produced by the defendants and the claimants. A number of documents then were unfortunately reproduced D1, D2, etc – having recourse to jump from one bundle to another.

  98. JF Comment:
  The bundles were rearranged too and not given to the claimants until the day before trial leaving Ms Flores flummoxed as to where the exhibits were causing delay and finding that some were missing more worryingly.

99. HHJ Cowell:

Footnote: Duplication either B2 exhibits concerns by spoke for themselves, unnecessary costly exercise, suspicion not dispelled by that the solicitors had prepared – what if anything the witnesses should add in what he did or saw – not from documents.

100. JF Comments: This last part about witnesses refers to the fact that solicitors also wrote the witnesses statements to concur with their case put forward, clearly orchestrating/directing the case and not using witness statements as evidence to the point where witnesses would have to effectively rehearse the story and

had no real recollection of events since they were made to be puppets to the defence story as constructed by the legal team and insurance agents. Hence the witnesses when questioned by Ms Flores often tripped up with the truth rather than the prepared statements.

101. HHJ Cowell: For example; Para 4 witness statement Jim Gorman JG-54 B2 leak to the electricity cupboard – he says this; Ed Coster emailed me: etc HHJ Cowell reads statement.

- 1st: Exhibits email
- 2nd: Perfectly proper – feature, helpful
- 3rd: Intended as helpful – but is it – of any consequence?
- 4th: What in document
- 5th: Rises only evidences witnesses can give.

A proper sentence would have been in accordance then I inspected and found…

Anyone who finds me over critical – drafting of particulars – perhaps a history of events, with no purpose suffering with purpose blaming the defendants for them conclude criticism of witness statements prevalent amongst local authorities-

18th May 2005 B2 – 105-106

Concerns about first three or four events. Stack pipe 104 & 106-8. Emphasis on delay in remedying those things merely mention 12th August 2005 – she is seeking compensation a minimum of £10,000 from the defendant-

102. JF Comments: Always trying not to fight with this landlord and being respectful, helpful and fair in asking for exact 'out of pocket expenses' that had been laid out by the Claimants. This was so as the landlord was not unduly enriched with rent to them and overheads for us the Claimants including forced loans continuing to be paid by us the claimants whilst interruption continued without any urgency in stopping it by the landlord as they were getting paid by the Claimants anyway.

103. Referred to D2-375- D2 376-7

Cheque

Reference to detail: 388

One stage August 2005 – quantum of claimant to the insurers for the fear of putting up the premium. Not making any claim on her insurance – not a criticism in any way. Jan 2006 – claimants made further claims.

104. JF Comments: It's a building claim that we are insured for with the defendant through AXA and are 'forbidden' as set out in the lease 'an expressed term' to get our own building insurance and or further we had considered the joint insurance as 'our' own as is right but we were not aware that insurers can put a commercial descision before the interest of two joint parties under one building insurance cover. A claim on contents and public liability insurance was simply not relevant to a building issue so will not be covered by fine art and antiques insurance cover at all. It may simply put up a premium if it is known that the building is likely to endanger/damage ones stock or the customer's safety as in public liability insurance for which we held cover.

105. HHJ Cowell: I will have at hand: Particulars of claim:

Early stage – Schedule prepared with assistance.

106. JF Comments: Exactly so it did not bedevil the case as now used and stated here that it was prepared at an early stage.

107. HHJ Cowell: A20, A3, paragraph 4, 5 & 6 of the particulars of claim disclose no cause of action: amendments by adding paragraph 3 – though it in itself was not in dispute.

108. JF Comments: It is relevant to give a historical reference of events. A letter was sent to the defendant prior to grant expressly asking that the new premises comply with the 'standards' of the other shops. Since Ms Gavin (Flores) has previously suffered business interruption at the defendant's hands at 104, which she had had for 4 years, she knew how the landlord could be stubborn and unhelpful. She had resolved the previous issues by way of exposing them on a national TV. Programme prompting the landlord to act and was compensated effectively with this approach. This 'standard' letter send prior to grant was one of three essential documents Ms Gavin used in this court case as she stated at the opening of trial she would.

To make reference in paragraphs 3. 4. 5. 6. In the particulars of claim as having no cause of action with regards to the floor, the shutters, the ventilation and the usage in terms of the new space at 106 as a social enterprise available for hire, is not looking at Particulars vi and vii in terms of the claimants 'intentions' clearly spelt out for the demise of 106 and iv in terms of remedial action to reinstate a floor, security shutters and

ventilation (referring to the standards letter prior to grant) all of which could be claimed for under the insurance as 'theft' since monies had been laid out by the public purse to the previous tenant for these 'standard' fixtures the same as the other shops and to be expected as 'standard'. 'Structural remedy' was too covered under the 'HAPM' Housing Association Property Management insurance for structural defects in construction, in that no airbricks had been put in therefore there no air whatsoever, which should not have been a problem in remedy since the defendant held as is legally required in a new construction of less than 7 years (but it is actually cover for 30 years) and as 'covered' it is easy to simply claim for and is a must since building regulation were actively being breached. Ms Flores states this at the opening of trial as her second of three documents relied upon, as she had asked for ventilation to be claimed for very early on in the tenancy.

109. HHJ Cowell: Remedy of derogation from grant – none of those matters arises –

110. JF Comments: In our submissions they do derogate from grant and in our amendments to particulars that were refused we put this, as a cause of action, as the property is not A3 as does not comply with the planning for A3, which would include ventilation. All this is in our submissions on liability but as we know was not read or referred to. So the matter does arise but has been dismissed early on.

111. HHJ Cowell: Lord Millet & Southwark & mills

Bases stack pipe 104 – 15 – 19 Particulars of claim –

Paragraph 50 (13) (14)

Defendant dealt with this 20, 24 schedule 21 – hint what cause of action

112. JF Comments: Hint not explained what hint in which cause of action and how is it relevant? Paragraph 50 is very clear in stating causes of action. Breaches of the lease agreements, negligence, unlawful breaches of statutory duty, nuisance, harassment, unlawful eviction and/or unlawful trespass and by reason of it the Claimants have suffered immense losses and damage, damage to reputation, loss of goodwill, depression, distress, stress, inconvenience and injury to feelings.

113. HHJ Cowell: Paragraph 5 (i) (b) in breach of the said leases but word 'negligence' is referred – not is expressed!!!

114. JF Comments: Particulars of Claim "PARTICULARS" (i) quote: 'The defendants have breached their express obligations under both leases in that they have prevented the Claimants' quiet enjoyment of the two premises. How then is that not expressed as expressed?

115. HHJ Cowell: Leak stopped 31st Jan 2005, early Feb, casing.

G1-Tab page 3 – location stack shows

Point made by the defendant – report – ascertain its source –

116. JF Comments: Which point? This is very flimsy for a judgment. What also is the claimants point? Claimant's case rarely mentioned except maybe once in a derogatory way about us always seeking to complain using 'implied obligations', which is inaccurate in itself.

117. Claimants B2 – 105 complain – months of suffering – was reasonable action taken, should cause of leak discovered earlier.

118. JF Comments: Incompetence is not a defence professional contractors are paid for by insurances and are their to give the leases its proper 'business efficacy'. If we were to rely on bob the builder we would have put him in the lease and not insured. This is not an old fashioned case it is a modern case that simply requires a landlord to inform/'put on 'notice' an insurance company the minute an accident or incident with a building occurs much like with car insurance or any other insurance cover. It is within the terms of the policy and it is expressed in the leases. There is no need to ponder some old law that is of no modern relevance about easements, repairing obligations, duties, neighbouring occupiers or the like. The landlord simply failed to inform their insurers end of!

119. HHJ Cowell: Job card issued by B2, 184 27th April 04' leak affected leak below, Mr UK.

5th May 2004 – Flat 3 Cromer House where leak originated B2 187

12th May 2004 – Due B2 187 to be.

Repair – wall tiling 14th Oct 2004 tiling would cure it.

Mr UK Jan 2005 – Attended 24th Jan – pinhole –

31st Jan – looked at stack pipe after ascertaining no leak from flat 3 – before leak

Repaired 7ft rubber plant during artist A.R.s show, should not been seen – pinhole promptly remedied by the defendants with jubilee clips after casing removed

Jan – 3rd Feb 2005 –

One item in insurance claim-

Claimants 'crack discovered' 24th Jan – remained 3rd Feb fixed –

Guilds defendants not in breach of 'duty' flat above bonafide source lay there.

120. JF Comments: As proven, jubilee clips etc the cracked pipe was on the claimant's premises so the source lay there.

121. HHJ Cowell: Fortunately the defendants had insured against physical damage –

122. JF Comments: Yes so did the Claimants fortunately. This is very pro-landlord wording.

123. HHJ Cowell: 106-8 – Particulars of claim – 20-23 – Dates are arie paragraph 20 20th July – but 7th Feb that year –

124. JF Comments: At the end of January 2005 the claimants claimed tat the drop of water was found on the ceiling this simply fell in line with Ms Gavin's memory at the time that the two leaks one at 104 and one at 106 happened one after the other. It was established in the case that the claimants reported the second leak at 106 on the 7th Feb and that was agreed with telephone record evidence. The stating that the repairs were not carried out in full is correctly stated as in July when the wall was put back by the claimants after waiting for the defendants who failed to put the wall back. It was however established again with repair record evidence that the leak itself of hazardous waste in the form of excrement was stopped only at the end of April.

125. HHJ Cowell: Para (50), (15), (16) – Defendants (25-27)

Schedule 22

Part of insurers claim – G1 35/36

Feb 2005 – Claimants did works in the bathroom new boiler – first drop of water 7th Feb, diary entries 7th, 8th, 14th –

Visit 28th Feb Mr UK

Works orders flat above

Doesn't matter flats above works or not the trouble 29th March reported again resulted in visit by Mr UK 1st April – 4th April, Easter weekend before that, Damp on wall Mr UK anxious to ascertain weather the leak had come from above –

Optimistic belief if staining spread or decreased –

126. JF Comments: How can Mr UK's anxiety be implied how about he was busy drinking tea, could that be implied equally?

127. HHJ Cowell: Result further complaints by the claimants he decided to issue a works order on 2nd April – 11th April that he did on 6th April – Removal of duct casing & replacement C1 629 C1 170.

15th April 2008 – Claimants took photo's G1 77 – Brown staining on duct etc G1 80-81 – Pencil mark.

Benefit of hindsight he had a naive belief that the stain would dry out and would not spread –

128. JF Comments: Naïve look up the word in a dictionary we are talking about well-paid professional surveyors here again very pro-landlord use of wording. To paint over shit is ridiculous in the extreme! We have no faith in this judgment it is perverse in its wording.

129. HHJ Cowell; Carpenter 8th April – he left

Plumber 11th April – he left

Order not result in cure

Plasterer arrived – Except Ms Flores evidence on this; I find 25th April – Ms Flores and the plumber took off the casing and removed filthy material.

25th/26th/April – Flood foul material.

26th April quote: 'One can see the state of ……'

G1 73/9 82/83

Show by 29th April – Jubilee Clips

G1 728 – Secured

26th April 2005 – reporting on case

D1 / 130 – Course of that email

Reference 'last week there was a really bad smell'

130. JF Comments: No reference made to the fact Ms Flores was contacting these contractors directly and also catching them in the street and going out of her mind chasing anyone who could fix the problem. Such was the distress with this problem that she even assisted a hesitant contractor in taking the wall down which was so sodden they took it down by hand.

131. HHJ Cowell: 20th Feb 2006 – Loss adjuster – C1 337/8

Apparent from that email that smell was really bad before visit to Mr UK & pencil markings which to my mind makes it clear there was a very bad smell –

Paragraph … "really bad smell"

Description of visit refers to pencil markings-

"The smell was really dreadful" phone calls to Mr UK 6th April when her …

…..ordered ….. – 8th & 11th April – didn't stay.

Ms Flores oral evidence – casing removed 27th April not before.

Mr UK last visited 8th April, cure 26th April, renovations very much later –

As this was an insurance matter …..

Leo installed central heating system.

2nd April / 30th May –

132. JF Comments: What are these dates Leo did the central heating over two weekends and one was a bank holiday. The ceiling in big office was installed as there was not one ever but this was not a health and safety issue like the shit! The ceiling was a designer improvement to look like the base of a spaceship with specialist lighting for an executive boardroom style meeting room as advertised a large meeting room.

133. HHJ Cowell: Chronology: Letter of claimant 18th May 2005 – some decoration of basement done June already mention 2nd August 2005 £10,000.

134. JF Comments: £10,000 offer made to put us back on track with rent paid, bills, business rates and to save the landlord from what turned out to be deemed as failures on their part by their own insurers. Claims made then were accurate and no amount of friendliness helped these bully's and con merchants even when we were 'a good tenant' as stated in Chris Natt's the commercial Manager's evidence and Jaqui Greenes email where she implores repairs to act quickly for this commercial tenant 'who is putting thousands of pounds worth of improvements into our buildings'.

135. HHJ Cowell: Emails as to wisdom of making a claim; D1 154/5 – D1 185/7 – Estimate

136. JF Comments: From the claimants point of view and not explained by his honour as such as to how many times and right up until the end and even with a great loss adjuster Alan Harris and expensive mediation through Lynne Brooke of Veale Wansborough and Matt Kelly of 39 Essex did the claimants so often attempt to settle and not fight with the landlord. This is a very valid point as the claim could have been reduced if we all spoke about it in 'mediation'. When we did eventually a few days before trial which the landlord did to save face the landlords only wanted to save the cost of the days in court as reflected in their offer being directed on the phone by the insured.

137. HHJ Cowell; Eventually polish builders did work ground floor.

138. JF Comments: Paid for by the claimants.

139. HHJ Cowell: Oct 2005 – Insurance paid Jan 2006.

Judgment – Sufficient alerting of Mr UK

(1) Only 2 months before 104 stack

(2) Leak flat 1 if ever there was one cured

(3) Despite evidence that he didn't smell anything – sufficient was a smell & photos state of premises 15th April support evidence there must have been smell even if Mr UK did not smell it.

Jaqui Greene – impressed on Mr UK urgent!

140. JF Comments: Health and safety and no law mentioned by HHJ Cowell on this nor reference to our submissions.

141. HHJ Cowell: Pencil – dry out!

Ms Flores it is suggested is 'Prone to exaggeration' – prefer Ms Bhaloo on this –

142. How dare this assertion be put here! If the defendants had a defence they would not need to lower themselves to use slander or character assasination!! This needs to be justified, as is slander now from HHJ Cowell too. Its one thing the other side trying to put down a claimant but to be accepted but a Judge without any justification seems very odd and uncalled for. Is his honour suggesting our very solid submissions or case is exaggerated with reams of documentary evidence and photographs? Have they been read? This is a joke! Twenty-two months and representing ourselves in person should be praised for its bravery and sheer skill, which would have been better, placed doing our normal jobs, fighting for children's rights and running business. This case has its own merits and stands alone without slanderous allegations as to the state of Ms Flores who is extremely angry and stressed with justification, this was covered in our submission but has not been referred to. Ms Flores has acted reasonably at all times albeit with absolute anger stating her true losses. At a mere 3 bookings a week at £500 each that is not exaggerated The word is not used by accident either as the 'only way' the defendants can have their

costs met by the insurers, as it is in the small print of their policy, is if one exaggerated a claim. I don't think it is co-incidence that this was said in Judgement and that numerous references to the insurers not being liable are also made when the case was not even against them but they were they payees of it! All loose end here are sublimely tied for the legalities necessary for the benefit of all but the claimant but that slander is further salt in the wounds however necessary it was for them all to use that word and we will rigorously defend such slander in the court of appeal to have that self serving statement revoked.

143. HHJ Cowell: Ms Flores should have asked about the smell –

Mr UK should have raised an order renewal of the casing and …..

Had that been done by the end of that working week a delay of 3 weeks would have been avoided, claimants claim is good for that 3 weeks.

144. JF Comments: Where is the math? 7th Feb to the 29th April? That is 11 weeks in a hazardous waste repair which should be dealt with within 48 hours.

145. HHJ Cowell: Difficult to determine: Means of knowledge was with Mr UK 1st/4th April

Do not find the defendant is not in breach of duty by the leaking – In my Judgment time that it took – Information location of stack known to defendant.

No breach of 'duty' on insurances

146. JF Comments: They failed to effect insurance claims to notify their insured how then are they not in breach of the leases under the covenant to insure and the insurance policy, which stated that they breached the terms this is contradictory to the evidence and states no case law to back up the contradiction.

147. Next event: 24th / 27th – Flood –

-Schedule 22 – 24 –

Insurance Paragraph 32

7 (i) (5) In breach of the leases negligence –

Sub plot: Floor tiling to floor damaged to

Particulars 29 – 32 50 (19)

D 3 ? 36

Schedule 24 -26

HHJ Cowell: Flood unforeseeable accident, Mr UK's understanding gleaned from others, whether claimant no cause of action repairs of done very promptly. After insurers paid complaints about floor –

148. JF Comments: How is a foreseeable accident justifying a two years outstanding repair, which both our landlord and our own surveyors both say is an insurance job that the claimants proved and was then even accepted by the material damage policy now not being accepted? Again a contradiction to the evidence with no law to say what has made this decision held.

149. HHJ Cowell: No liability attached by defendants & because they persisted to say any more – not to go on except – 45/53 Ms Bhaloo's submission…

150. JF Comments: Defendant's submissions always referred to

151. (Lunch break from 1.05pm we arrived back at 2.08pm and Judgment had already commenced in continuation without us so we don't know yet what was said…)

HHJ Cowell: June 2008 – Cause of action….

Reply breach of lease –

Negligence –

Building regulations –

Pavement not demised to the claimants

Possession and control defendants

Difficult to argue in Guilds case cannot apply – Having knowledge should repair it-

152. JF Comments: As in Hargrove.

153. HHJ Cowell: In its very nature may leak, unlike pipe –

If pipe does leak clearly alerts occupier to repair it –

Degree & smell – jubilee clips.

But because a tenant could so readily reach the pavement lights – Tenant could easily mitigate its damage.

154. JF Comments: How can it be said that the claimants should touch, never mind fix something that is on a public path and is not in their control or demise, should we for example fix the roof as well because we can see it? In Oct 2004 there is no mention that after exhaustion and mounting debts where now having to mortgage a fully paid for house by one of the claimants and we did attempt to mitigate all our losses within our control to continue with our business. So we did make an attempt. It was only then we found it was the defendant's contractor who had installed the pavement and the defendant repaired in two days after repeated denial of liability. Further at later stages we were 'forbidden' see email Jaqui Greene and later Oliver Barnett to contact Kingsbury directly when the leaking reoccurred. It would further be then illegal if we employed our own contractors to touch their pavement and we could be held liable to them for any damages. We did not at any stage 'adopt' the pavement as our own or the repairing of it as is right and proper. 'Accessibility' does not imply or refer to the legality of it.

155. HHJ Cowell: Tenant is more aware –

Short answer by defendants – Caveat Lessee

156. JF Comments: Caveat Lessee cannot apply for reasons to do with conversion in 1999 and of the breaching of expressed obligations in the leases to have protection from the elements including rainwater. The whole issue lay on whether the pavement was the landlord's and it was as was defended by them that it wasn't and proven by us the claimants that it was.

157. HHJ Cowell: Defect – 8th April 2004 – 106-8-

Reason I find defect there at time of grant, claimants say first time it rained – oral evidence satisfied – May 2005 – reported

158. HHJ Cowell: This is outrageous it is not a structural 'defect' it is a water ingress. This is a misleading judgment using the defendants very hard pushed stretched argument of caveat emptor and never putting claimants case forward once in summing up which is also imbalanced.

159. HHJ Cowell: Response landlord not responsible –

1st written evidence from defendant

15th Oct 2004 125

28th Oct D1 126 – after she had written those emails – works been done by Kingsbury – works done 1st Nov 2004 – oral evidence established that date though particulars of claim suggested Sept emails show after that Ms Flores accepts 1st Nov 2004.

Defendants point about caveat lessee is correct –

If wrong about that:

The test in Guilds case 'doubt has been expressed about the defendants responsibility' this repair is simple in comparison to waste pipe.

160. JF Comments: It is not a simple repair and can only be carried out by Kingsbury. It takes 5 professional builders, a lorry full of molten substance and is undoubtedly expensive. We fulfilled our internal repair obligations extensively see submissions on liability. To now be told we should have filled the 'gaps' in a public pavement 'demised' to the landlord and that if the judge is wrong then the test is 'was it simple' (as opposed to is it legal?) is again misleading, belittling and down right outrageous. Had we touched their property they could sue us! The same can be said if we cut into the structure of the building without permission to install air bricks a subject which to date all requests to repair have been since 2005 ignored. We are far from stupid to touch what is not ours and is on a public path or to diamond drill holes into the defendants building without firstly planning permission, which we cannot obtain, and secondly the right to do so as it belongs to the landlord.

161. HHJ Cowell: Claimants remedy matter later could have paid and paid later – Insurance –

No question under Guilds case –

-Not extraordinary work –

162. JF Comments: The following is the next leaking of the same area in 2006.

163. Oct – attempt to remedy FWA

3rd Oct – useless material used trodden on brought into space, remedy Kingsbury 16th Oct

164. JF Comments: The guest attending the magazine launch sponsored by Waitrose walked the useless material referred to be bitumen a sticky black molten substance, which damaged our wooden floor as, into 106 premises. There is no comment here that the leaking was reported in June 2006 and that a botched repair was made the day before the sponsored magazine launch. The repair was delayed, foreseeable and the claimants suffered material damage and loss of reputation.

165. HHJ Cowell: 3rd Oct G1 40-44-52

G1 70-74- 16th Oct –

B2 151-2 Email 5th August B2 150 3rd Aug

Claimants repeatedly phoning –

Delay – understood insurance might pay for this particular matter Jaqui called insurers 7th Aug C4 215 19th August – Thames Water not fault of defendant –

166. JF Comments: It was nothing to do with Thames Water. The word 'might' is very interesting here as this was not an insured risk.

167. Insurance not liable to pay anything – appears reasonably clear the defendants fixed Guild principle 'no culpable delay on part of defendants.

Defendants…….

Claimants could have paid Kingsbury and argued about who paid –

Defendants not in breach – liability – Not the defendants –

168. JF Comments: Again same problem as two years before and this pavement leaking reoccurred again another two years later, which just shows it, needs bi-annual maintenance. Evidence was shown that the previous tenants had the same leaking in of rainwater from this pavement. If it is that the defendant wanted to improve by way of conversion the premises by installing a glass ceiling effect to the basement than rather the same as any roof it is foreseeable that the sealant will need maintenance but more so for a public pavement.

169. Electricity room – June 2005 – Nov 2005

Schedule pg 27 also deals with second……

Jan – May June 08 – Reply 11 (i) (v) hint of cause of action-

Again no covenant in lease which assists the claimant but particulars never formulated.

170. JF Comments: Submission on liability extremely clear but admittedly clearly not read by HHJ Cowell. Also xxii in the particulars states the defendant unlawfully failed to ensure that there were effective fire exits, again this is also a breach of building regulations and statutory obligations.

171. HHJ Cowell: Breach of statutory duty: Typical all allegations made!

172. JF Comments: Derogatory to claimant in language used here.

173. HHJ Cowell: Not demised –

C3 Tab 4 131/4

August 2005

Work was done by Thames Water-

"Did not know where leak came from – cannot be failing to remedy it"

174. JF Comments: How many surveyors and how many years does it take to find a leak on their own premises? No insurance effected after notice was given. Breaching expressed terms in the leases to notify insurers as the seepage of leaking pipe in the electricity cupboard permeated both premises in terms of water and of smell. The repair took 4 years to find the leaking pipe, which was in a plywood suspended ceiling and stop the water ingresses. This was only after the insurers were alerted and the defendant brought in a competent private contractor.

175. HHJ Cowell: OTHER PROBLEMS

176. JF Comments: These are not other problems and should not be lumped together as such as all the issues are serious or why would we take the time and expense of court proceeding to add them in.

177. Paragraph 31 wiring, fire panel, smoke detectors, security shutters & fire panel.

178. JF Comments: The wiring, on open spurs and not ring wired so as such was dangerous. To save a claim on the building insurance the landlord told us The Claimant we would have to fix the wiring ourselves to make it safe, which was not true. The smoke detectors are also covered by insurances, as was the fire panel as these are landlord's fixtures. We had other duties under fire precautionary action such as having fire-fighting equipment again the landlord put us to the expense of fixing, that which was not ours to fix. The security shutters were as seen on all the other shops a standard requirement and since we did not them we were very early on broken into via the window. We had asked for the shutters 'prior to grant' and although verbally agreed we also have in writing our request in the letter requesting the grant of lease. The expensive security shutters were paid for by the public purse so they were insured.

179. HHJ Cowell: No airbricks –

180. JF Comments: Airbricks were a major issue and were extensively covered in our submission, which has not been read. Clearly this breaches building regulations and is derogation from grant of A3, which makes the who claim on 106 a total constructive loss until 2014, on a then ten year lease, so effectively any other problems (which can be subsumed apart from harassment) are overshadowed by this essential first 'fraud'. If this were judged correctly then the whole case of 106 until 2014 would be a victory for the claimants as is asserted throughout.

181. HHJ Cowell: Defendants improved fire exit –

182. HHJ Cowell is implying that the landlord went out of their way to 'improve' the fire exits and not that this did not comply with building regulations and give business efficacy where there would be none if it were not in the leases as an expressed obligation. It is a case of 'it goes without saying' that the premises required a means of escape from fire as the law and building regulations require. There is no mention of claimant's case or our submissions on liability on this either. Improvements are misleading they were not up to regulation and subject of a lengthy complaints procedure by the claimants lasting 4 years before they were made safe.

183. HHJ Cowell: Defendants answer – caveat lessee

184. JF Comments: Building regulations and fire regulations plus lack of business efficacy cannot be defended by Caveat Lessee. In this trial it was exposed that the entire residential block also has no fire certificate. Perhaps if a death occurred this would be the point where the landlord would be seen as liable in negligence or would this residential landlord still claim Caveat lessee.

185. Ventilation – Airbricks

FAIR!!!!

186. Is the word 'fair' a judgment and accordingly then to what law is the word 'fair' legally applied.

187. 25th July 2010 difficulties…. Mr Hines came on scene C4 292, 8th August 2006-

188. JF Comments: No mention that the loss adjuster Alan Hines of QuestGates was bias and wrote the defendants witness statement as stated by Mr UK. "Difficulties' falls much more in line with the 'commercial decision' the insurance took to collaborate with the defendant and anyone else it would seem to save a claim. The solicitors paid for by the insurance (solicitors who were also writing the witness statements as stated by his honour) had a total conspiracy from the start to pervert the course of justice with legal might resulting in a miscarriage of justice, with a very one sided and law wise weak argument and ineffectual judgement in its obvious sweeping errors.

Further there is a conspiracy to stop the claimants now in appealing this Judgment (that is said by all accounts to be highly unusual that we have been asked to provide the transcripts) and more so the fact we have been given just three weeks to put together argument without any recourse to funds so no legal representation whatsoever as everything has been taken from us and we have been put into nearly half a million pound debt, proves to the Claimants that a conspiracy of the powerful people involved is afoot.

We could give up at this stage because of the conspiratorial nature of this behaviour by all the law people involved but we will attempt to try to be judged fairly having no more faith that this could happen again and again. They say "God give me the strength to change the things I can change and the wisdom to know the difference" but there is much more at stake than for these two individual claimants than can be seen. That sort of

passion and belief system cannot be toyed with easily even despite now severe hardship and major children and young peoples issues of national concern that could be being helped by the Claimants instead of wasting the Claimants time and energy on these building issues and robbery of what belongs to them without any recourse to public funds as is the case of the Defendants. The attempts to stop us appealing and lack of acknowledgement in stopping the quantum hearing which took place despite fierce application to stop it, as well as a section 25 and the proposal that we supposedly needed to be relieved from forfeiture when it is our case that it was trespass are corrupt and designed to crush us.

By the lunch hour the day after the 9th Sept 2010 Judgment a green BMW drove onto the pavement nearly running over two of the neighbours now witnesses and a guy jumps out saying that our/the Claimants shops were now his shops. How does that happen? How did he by that evening even know? Attempts to pass off the shops, as A3 are still happening to date although a full year later both are still empty probably due to the damp smell and active condensation especially being empty there will be huge mould growth again and again as it grows fast.

189. HHJ Cowell: C4 246

The claimants made a claim for £280,540 from the defendants & £164,??? From the insurers for delays water damage, unable to assist…

C4 208 £400,000 – Gordon Ward –

Not provided sufficient evidence –

190. JF Comments: Providing more and more evidence with added time delay and cost was the most genius strategy adopted by Anna Norrie of Plexus Law the RSA insurers. Anna Norrie is, as one would imagine well versed in how to deal with insurance claims as she works for the biggest insurance agents. Anna Norrie never made the 'nature' of the 'exact' 'evidence' she needed clear as to what the Claimants could 'further' provide that they had 'not' already. Further time and expenses was then put on the claimants in making them pay (£2,000) for audited accounts. This was a two-pronged approach by Anna Norrie, as seen in 'satellite dispute' letter she wrote to the building insurers. It was 'who was going to pay' that was Anna Norries concern, 'UKU' UK Underwriters CEO Paul Smith based in Leeds (now

Eagle something or other but some kind of 20 years old company based in Leeds covered by AXA that the insurance broker FARR PLC brokered with to cover the building) building insurers or RSA liability insurers. Evidence hi-lighted as one of the three documents that Ms Gavin (Flores) would rely on, proves this was the new approach adopted and directed by Anna Norrie. Her next strategy was to beat us the Claimants down in a quantum game to attempt to reduce the claim and all this lets not forget as is most important point was at the willingness and compliance of the landlord the Defendant to be seen back then not to be liable and to save them and their insured a claim. Luckily for them all Mr Hall the Single Joint Expert was fantastic for the job of reducing quantum as he holds a major conflict of interest in that he is the Defendants solicitors firm Bircham Dyson Bells 'auditor' and his evidence should be struck out despite the fact we paid £8,500 for it. We did put him on notice as a joint expert not to attend the Mondays quantum hearing but he did not even replied and as he has a closer relationship as is obvious with Bircham Dyson Bell solicitors than we could imagine. The legal compliance department really should have picked up on this and Alan Harris the Claimants loss adjuster said he had never heard of such a conflict of interest to be allowed.

The QC Ms Zia Bhaloo of Enterprise Chambers is understandably giving the Judge what he needs to make decisions and justify them but to use laws that do not apply and to ride rough shot over our claims in this judgement leaves a lot to be questioned about the courts themselves and the administration including the clerk Pushkar Kapole who frequently replied to the defendant but not to the Claimants, especially when asking for disclosure where we had to wait 4 months and yet the Defendant got there disclosure in one week or our case would be thrown out. The whole episode was unbelievable.

191. HHJ Cowell: Claimants made threats –

192. JF Comments: Press threats were made but still we have attempted to remain respectful although we are still at liberty to expose this perhaps because of its length in a film, not something we relish just an option available still if justice does not prevail. We can call it "£100 off"!!

193. HHJ Cowell: C4 164 Plexus Law 27th Nov 2007

Proper presentation of claim 2008

C4 133

Ultimate point stemming from that-

194. JF Comments: That is a bit 'subliminal' as those are the Royal Sun Alliance lawyer's Anna Norrie of Plexus Law's exact words.

End Notes.

195. The appellant notice delivered to the courts on the 13th Oct 2010 also had a skeleton argument and for ease of reference and in case any other points were missed out in this document are be copied next.

196.

Claim No: CHY09015

Appellants: Ms Jo Flores (nee Gavin) & Ms Chantal Cracy

GROUNDS OF APPEAL

1. We, the Claimants, do not believe we were given a fair trial in accordance with Article 6 of the Human Rights Act 1998 for the following reasons:

1(a). There was no recognition by the Court of the fact that the Defendant and ourselves were at no time during the course of these proceedings on an equal footing, despite us pointing at it on several occasions. This was mainly due to a difference in financial resources of each party and resulted in significantly unequal representation in Court. At no point was there any order made with regards to ensuring parties were represented on an equal

footing or that fees ought to be capped. The final schedule of costs of the Defendant disclosed on the last day of trial shows an astronomical figure amounting to approximately £387,000 of legal costs alone. We on the other hand have ended up spending approximately £55,000, as this is all we had left after Ms Cracy was forced to sell her house and all we could afford to obtain partial legal representation at times throughout the proceedings. In the end we had no choice but to stand at trial to represent ourselves.

1(b). On several occasions our applications were refused or ignored and/or delayed by the Court (whereas the applications made by the Defendant were always promptly answered):

- We were advised by HHJ Cowell in August 2009 to amend our Particulars of Claim; this resulted in the instruction of further counsel and solicitors and the bearing of great costs for us; when our amendments were eventually heard in Court in March 2010, they were simply refused and the initial Particulars of Claim were retained.
- On 11th may 2010 we filed an application for disclosure from the Defendant due to them ignoring our formal requests for disclosure since December 2009 – our application was left unanswered by the Court until the first day of trial on 13 July 2010. Had the disclosure been then ordered to be provided we would have been ill-prepared to use it efficiently. Although some of the documents requested were very simple, eg floor plans, it was judged that what had already been disclosed by the Defendant was sufficient and the trial could start there and then. On the other hand when the Defendant made their own request for disclosure, it was done with fierce means including the potential threats of further hearing costs and of our case being dismissed if we did not agree to provide such documents as copies of all personal and business bank accounts, loans (including house mortgage) and credit cards statements for the last 6 years - which we had no choice but to provide and which in the end were not even used for the proceedings.

- The majority of the trial time was spent with the cross-examination of witnesses for the Defendant and that of Ms Flores (nee Gavin) who was the Claimants' chief witness and also the one representing the Claimants. While being cross-examined, Ms Flores did not have access to the trial evidence files in order to counter-argument the evidence brought up by D's counsel and could only rely on her memory of the facts; there was not enough time left to complete the hearing of facts during the trial window so HHJ Cowell ordered that both parties were to file written submissions so that he could make a first judgment on liability.
- When this judgment was made on 09/09/10 HHJ Cowell did not refer once to our written submissions. These included a strong effort on our side to clarify the relevance of the causes of action used in our claim in relation to the issues at stake, the unclearness of which had been criticized in our initial Particulars of Claim. HHJ Cowell kept referring to our Particulars of Claim and to the written submissions of the Defendant. So much so that at the end of the judgment we had to ask if he had read our written submissions: the reply by HHJ Cowell was that yes, he had. The liability put on the Defendant resulted in a mere three weeks, compared to a total of a four years Claim for business disruption made on our behalf.
- On 16/09/10 we filed an application requesting permission to appeal this judgment on liability together with an application for the following hearing listed on 20/09/10 to be adjourned, pending on permission to appeal. Our case was that the 20/09/10 hearing intended to deal with questions of quantum and mesne profits, both of which were depending on the first judgement on liability. The answer we received was that the hearing listed on 20/09/10 would take place and all applications would be dealt with then.
- On the morning of 20/09/10 HHJ Cowell announced that despite what he had previously said he had now realised that he had not read our written submissions prior to his judgment on liability and that he would therefore make a second judgment on liability on 22/09/10.

- Despite that fact the quantum and mesne profits issues were dealt with as planned on the same day (20/09/10), straight after HHJ Cowell's announcement.
- On 22/09/10, HHJ Cowell made his second judgment on liability, which resulted in no changes in comparison to his first one.
- On that same morning, it was swiftly judged that both our businesses had been forfeited on 29/10/08 (regardless of the fact that we had paid rent until December 2008) and that they were to be repossessed with immediate effect (they were in fact repossessed at 5.55 am on 23/09/10). It was further ordered in the afternoon that D were to be awarded all their costs on an indemnity basis (see attached order for all details).

NB: all evidence relating to the above points in the form of applications, orders etc. will be provided as part of the appeal bundle if permission to appeal is granted.

2. The 'Guilds principle' was mainly applied to each and every issue of our Claim, making, so far as we understood it, the D being looked at as a neighbouring occupier rather than as the landlord of the premises; despite the fact that we could not get access to the details of the Guilds' case we felt it did not apply fairly to all issues at stake in our claim and that some of these issues were not addressed adequately.

NB: this last point can be addressed in further details once the transcripts of the judgment are obtained.

3. The Defendant was given an undertaking in the Order by Mr Justice Christopher Clarke in the High Court on 14 November 2008 not to interfere with the enjoyment by the Claimants of the premises until trial or further order in the meantime. The Defendant simply continued to ignore the Claimants' requests to

have repairs carried out during the time of the proceedings, which would have made the premises fit for trading. This was not recognised by HHJ Cowell in his final judgment, when he stated that it was a shame that the Claimants had spent all their time on the proceedings instead of trading from the premises. We feel this mis-represented our position, when it was made clear at the trial that one of the premises was illegal to trade from because it breached building regulations and the other one had a damaged floor which was covered by the insurance but left un-repaired because the D continued to refuse to effect a claim.

Signed:

Ms Jo Flores for the Claimants.

16th September 2011.