COLEMAN v Dundalk

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Finlay C.J.
Walsh J.
Henchy J.
Griffin J.
Hederman J.

THE SUPREME COURT
1980 No. 6902P

MARY COLEMAN AND JAMES COLEMAN

v.

DUNDALK URBAN DISTRICT COUNCIL

Judgment of Henchy J.
delivered the 17th July 1985 Nem Lieu

In February 1967 Dundalk District Council gave the second-named plaintiff a weekly letting of the house now known as No. 100 Oakland Park, Dundalk. The letting was made by the Council in exercise of their powers under the Housing of the Working Classes Acts, 1890 to 1948. Subsequently the house, which was what is commonly called a council house, was vested in the second-named plaintiff and his wife the first-named plaintiff. This vesting was effected by a transfer order made under s. 90 of the Housing Act, 1966. The transfer order took the form of a lease dated the 15 May 1978 for 99 years. The lease was granted in consideration of the payment to the defendants by the plaintiffs of the sum of £2,370 with interest at the rate of 7½ per cent for a period of

20 years. That sum for principle and interest was to be paid by weekly instalments over the 20 years. The lease contained a number of other covenants and conditions which are not relevant for the purposes of this case.

In 1976, two years before the grant of the lease, a number of cracks had appeared in the house. They were serious cracks and, according to at least one expert, were irremediable. They appeared in ceilings and walls. The ceiling in one bedroom fell down, doors refused to open and then would open without reason, frames of doors moved, and daylight showed through fissures in the outer walls. The root cause of those unfortunate defects - which were also to be found in varying degrees in neighbouring houses - was that this housing estate had been built on ground that was later discovered to be unstable. Subsidence of the foundations set in on an extensive scale and the defects to which I have referred were the result.

The present proceedings have been brought by the plaintiffs claiming damages against the defendants, primarily for breaches of certain terms or warranties alleged to be implied in the lease. In

particular it is alleged that, because the lease was granted under s. 90 of the Housing Act, 1966, there is necessarily implied in the lease, because of the powers and duties of the defendants under that Act, a term or warranty that when the lease was made the house was fit for human habitation. The authority relied on for that proposition is the decision of this Court in Siney v. Dublin Corporation 1980 I.R. 400.

In Siney the Dublin Corporation as housing authority had given Mr. Siney a weekly tenancy of one of a number of flats provided by the Corporation under the Housing Act, 1966. The flat in question was unfit for human habitation from the beginning. Mr. Siney who was the first occupier, found within a few months of going into occupation that water was oozing through the bedroom floor and that a fungus was growing on the walls. The dampness and the foul smell from the fungus were due to the defective design of the flat. Living conditions were so bad that Mr. Siney and his family were compelled to leave as soon as another flat became available. Mr. Siney then sued the Corporation for damages arising from the defective condition of the flat. His claim was laid in both negligence and contract. It was held by this Court that,

on application of the principles of liability enunciated in Donoghue v. Stevenson 1932 A.C. 562 and subsequent cases, in the particular circumstances Mr. Siney was entitled to succeed in negligence. It was further held that, in so far as his claim lay in contract, he was entitled to succeed, on the ground that there was to be read into the tenancy an implied warranty by Dublin Corporation that the flat was fit for human habitation. There was plainly a breach of that warranty.

It was the plaintiffs' submission in the High Court in the present case that a similar warranty should be read into this lease. The trial judge, Murphy J., on the application of what he conceived to be rationale of the parts of the judgments in Siney dealing with the claim in contract in that case, held that such a warranty fell to be implied in the present case. He found a breach of that warranty and, since it was only the issue of liability that was before him, he adjourned the question of damages.

I am of the opinion that the judge correctly construed and applied Siney in holding that there is to be implied in this lease a warranty by the defendants that at the time of the granting of the

lease the house was fit for human habitation. Counsel for the defendants has sought to distinguish Siney as being based on a factual and legal situation different from this case. But for my part, notwithstanding that the plaintiff in Siney was a tenant whereas the present plaintiffs are lessees (although referred to in the lease as purchasers), the governing considerations in both cases are essentially the same.

Whatever may be the position as to implied warranties when a housing authority enters into a lease or a tenancy at common law or under the provisions of some other statute, a lease or tenancy granted under the Housing Act, 1966, must, unless the contrary intention appears, be given a reading that is compatible with the powers and duties of the housing authority. As is stated in s. 88(1) of the Act:

> "Any land acquired for the purposes of or under this Act or appropriated to the purposes of this Act by a housing authority may be sold, leased or exchanged subject to such conditions as the authority may consider necessary having regard to the purposes of this Act."

It would seem to follow that where the lease or tenancy (I do not refer to a sale because it does not arise in Siney or in

this case) is silent as to the subject matter of an alleged warranty, such warranty should be implied when its inclusion may be said to be necessary having regard to the purposes of the Housing Act, 1966. The judgments in Siney explore the purposes of the Act, as evidenced by the duties imposed and objectives laid down in the Act. For instance, a housing authority is required to plan, control, oversee and provide for the supply of adequate housing in its area. S. 53(1) (now amended by s. 2 of the Housing Act, 1984) imposes a duty on a housing authority to inspect at specified intervals the houses in its functional area and to ascertain to what extent there are houses in the area which are "in any respect unfit or unsuitable for human habitation." S. 55 (now amended by s. 3 of the 1984 Act) makes it a duty of a housing authority at specified intervals to prepare and adopt a housing programme. The section sets out as the first of seven specified objectives of a building programme "the repair, closure or demolition of houses which are unfit or unsuitable for human habitation."

It was provisions in the Act such as those that led this Court in Siney to the conclusion that, since the letting in question there was silent on the matter, it should be deemed to include a

warranty by the housing authority that the house was not "unfit or unsuitable for human habitation." To hold otherwise would be to impute to the housing authority a disregard of one of the primary objectives of the Act, namely the elimination, by repair, closure or demolition, of houses which are unfit or unsuitable for human habitation. This Court in effect said in Siney that the tenant was entitled to assume, having regard to the declared objectives of the Act, that the housing authority was tacitly warranting that the house was fit for human habitation, for such a warranty was wholly consonant with the carrying out of the duties of the housing authority under the Act.

In my opinion the same considerations apply in this case. The fact that the plaintiffs got a lease rather than a tenancy makes no difference to the duty cast on the housing authority by the Act. They were debarred from using the provisions of the Act for selling, leasing or exchanging housing property unless the transaction was in line with the purposes of the Act. If the effect of the transaction were to put into human habitation a house which in fact was unfit for human habitation, one of the primary purposes of the Act would be breached. It is entirely proper, therefore,

to import into the transaction a warranty by the housing authority that the house was at the date of the transaction fit for human habitation.

Having regard to the decision of this Court in Siney, the only defence to the plaintiffs' claim that might have been open would have been that the house was in fact fit for human habitation. But such a line of argument was foreclosed by the facts as found. The implied warranty was not that the house was habitable but that it was fit for human habitation. The distinction is a very real one. A house may be habitable in the sense that people may manage to live in it, but the physical living conditions may be so unsatisfactory that the house may properly be said to be unfit for human habitation. Whether the latter is the correct conclusion is always a matter of fact and of degree. Because in this case damages remain to be assessed in the High Court, I do not wish to elaborate on the evidence given in the High Court as to the extent of the defects in the house. I have earlier in this judgment referred briefly to that evidence. For present purposes it is enough to state my opinion that the judge's conclusion that the house was in fact unfit for human habitation was amply supported by the evidence.

I would dismiss this appeal and affirm the order of Murphy J. Under that order, damages will be assessed in the High Court in a separate hearing.

Approved
S. H.
18-7-85