Noise Nuisance

Cocking v Eacott [2016] EWCA Civ 140

Background and decision

The facts of the case were simple. The claimants (C) lived next door to the first defendant (E1). The house in which E1 lived was owned by her mother, the second defendant, E2. C claimed that E1 had created two types of nuisance. The first consisted excessive dog barking. The second comprised abusive shouting. The dog barking took place from 2008 onwards. The case concerns simply the nuisance comprising the dog barking. At first instance E2 was held liable in nuisance to C in relation to the dog-barking nuisance, in that E2 had done nothing to abate the nuisance after she had become aware of it as early as 2009. However, E2 was held not to be liable for the nuisance consisting of abusive shouting, since she was unaware of it until shortly before it ceased, following the grant of an ASBO against E1. The trial judge found that E1 had a bare licence to reside in the house which E2 owned. E2 paid all the bills and maintained the house. E2 appealed against the judgement, essentially claiming that a landlord is not liable for a nuisance which is created by his tenant, except in relation to certain circumstances which did not arise in the instant case. These were that the landlord had expressly authorised the nuisance, or, that the nuisance arose as the certain result from the purposes for which the property had been let.

Vos LJ (with whom the other judges agreed) reviewed the case law on the liability of landlords for nuisances which were caused by their tenants. In his Lordship's opinion, the law relating to liability of landlords for nuisances which were caused by their tenants was relatively clear. Landlords were liable in nuisance only if they directly participate in the commission of the nuisance, or they have authorised the nuisance in question. Furthermore, a landlord's doing nothing to stop the nuisance, did not render the landlord liable. However, on the authority of *Sedleigh-Denfield v O'Callaghan* [1940] AC 880, an occupier of property would become liable in nuisance if he refrained from taking steps to abate the nuisance once he became aware of it. Vos LJ rejected E2's contention to the effect that the law simply demanded that E2 take only reasonable measures to abate the nuisance.

Vos LJ went on to decide that E2 was an occupier of the house in which E1 had lived. E2 had control of the property, notwithstanding the fact that she did not live there. In turn, she had allowed E1 to live there. E2 knew of the existence of the nuisance and had failed to take steps to abate the nuisance. E2 was, therefore, liable in nuisance. Her appeal was, therefore, dismissed.

Comment

Cocking does not take the law forward. Indeed, it is well-settled law on both sides of the Border, that a landlord is not liable for a nuisance which is caused by his tenant, unless the landlord has either authorised the tenant to create the nuisance, or, if the creation of the nuisance is the highly probable result of the tenant's occupation of the relevant property by virtue of the lease.

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