

## Noise nuisance

### *Fouladi v Darout Ltd* [2018] EWHC 2501

#### Background and decision

The facts of the case were simple and straightforward. The claimant Fouladi (F) was the lessee of a flat (Flat 62), which was situated in a mansion block development. The first defendant (D1) was lessee of a flat (Flat 66), which was situated above Flat 62. The second and third defendants (D2 and D3) occupied Flat 66. The fourth defendant, Darout Ltd (D4) was the landlord. F claimed that since 2010, living in her flat had become intolerable, on account of the noise which emanated from Flat 66. The noise in question was described as everyday noises which people made in their own homes and, additionally, noise which was attributable to the lifestyle of the second and third defendants. F claimed that the D2 and D3 also created noise by holding parties, where drums were played and ululations made. It was also claimed that additional noise was also made by D2 and D3 allowing their children to run around Flat 66 all day. It was further claimed, on the part of F, that some of the noise which was generated in Flat 66 was motivated by spite towards F and her mother. These allegations were denied by D2 and D3. Furthermore, the local authority had investigated the alleged noise nuisance, and after certain work was carried out in Flat 66, decided that there was no continuing nuisance.

In the County Court the recorder held, in a reserved judgement, *inter alia*, that the noise in question amounted to a nuisance in law. The recorder held that the nuisance was caused by renovation works, which had been carried out in Flat 66 in 2010. D1-3, incl. were liable for the nuisance. However, the judge dismissed F's claim against D4, *inter alia* in nuisance.

F's appeal to the High Court centred on the proposition that D4 was directly responsible for the nuisance, in that D4 had participated in the creation of a nuisance, by authorising the carrying out of the renovation works in Flat 66, which rendered the conduct of everyday activities in Flat 66 more likely to annoy F. In this context, the floor which was laid during the renovation was not suitable to prevent the transmission of noise. Morgan J re-iterated the well-recognised principle to the effect that a landlord is not liable for a nuisance which is created by his tenant, notwithstanding that he knows of the existence

of the nuisance and, furthermore, that he can take steps to abate the nuisance in question. Rather, a landlord is held to have authorised a nuisance by the letting of premises if the creation of the nuisance is the inevitable consequence of the letting. However, Morgan J held that the consequence of authorising a nuisance was not confined to a case of authorisation by letting. In the Supreme Court case of *Lawrence v Fen Tigers (No 2)* [2015] AC 106 it was also held that a landlord would also be liable for a nuisance, which was created by his tenant, if the former participates in the creation of the nuisance. Lord Neuberger said [at 18] that such participation required being active, or direct. However, his Lordship stated that the concept of authorising or participating in a nuisance was not confined to cases of landlords. Rather, it was a general principle of tortious liability. In the instant case, F claimed that the conduct of D4, in connection with the work which was carried out on the flooring of Flat 66, amounted to a participation in the creation of noise which was associated with the performance of those works. However, Morgan J went on to decide that the conduct of D4 did not amount to it participating in a nuisance. F's action against D4, therefore, failed.

### **Comment**

While *Fouladi* does not take the law further forward, it re-iterates the principle, which is now well-ingrained in the law of nuisance, to the effect that, subject to the limited exceptions, which Morgan J outlined in his judgement, a landlord is not liable for a nuisance which is caused by his tenant. In the author's opinion F's claim to the effect that simply by D4's giving permission for the renovation works to proceed in Flat 66, the latter had participated in the creation of a nuisance seems, in the author's view, rather fanciful. F was, in effect forced to appeal on such flimsy grounds it is suggested, because a landlord can only be liable for a nuisance which emanates from the premises if, at the time the premises is leased, it is either certain or highly probable that the use of the premises will result in the creation of a nuisance-see eg *Smith v Scott* [1973] Ch 314. However, this was not so in the instant case in that Flat 66 was not in such a state at the time the premises were leased. Flat 66 was not in such a state.

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