"The dog that barked": Court of Appeal holds that licensor is liable for nuisance caused by her licensee

The Court of Appeal has held that a licensor was liable for the acts of nuisance of her licensee in *Cocking and Cocking v Eacott and Waring* [2016] Civ 140.

Mr and Mrs Cocking, the Claimants, lived next door to Ms Eacott. Ms Eacott's home was owned by her mother, Mrs Waring. Mrs Waring did not live at the property, but had granted a bare licence to Ms Eacott to occupy the property. Ms Eacott caused nuisance to Mr and Mrs Cocking because her dog, Scally, barked excessively "*between 5 and 10 months from August 2008 onwards*".

The issue in the appeal was whether the first instance judge had been correct as a matter of law to hold that Mrs Waring was liable for the barking nuisance.

Mrs Waring argued that her position as licensor should be equated with that of a landlord for these purposes. As is well known, a landlord is only liable for the nuisance of her tenant where the landlord has either participated directly in the commission of the nuisance by herself or by her agent, or must be taken to have authorised the nuisance by letting the property; the fact that a landlord does nothing to stop a tenant from causing the nuisance cannot amount to participating in it: *Lawrence v Fen Tigers Ltd (No.2)* [2014] UKSC 46. The landlord's limited liability in nuisance reflects the principle of law that a landlord has neither control over nor possession of the property from which the nuisance emanates.
Mr and Mrs Cocking argued that a licensor is not in the same position as a landlord. It was argued that Mrs Waring, as the licensor, was the *occupier* of the property, notwithstanding that she did not physically occupy it. An occupier of a property may be sued for nuisance emanating from that property. This is because, as a matter of law, the occupier has possession and control of the property: *Sedleigh-Denfield v O'Callaghan* [1940] AC 880.

The Court of Appeal held that an occupier becomes liable for the nuisance if she continues or adopts the nuisance by failing to abate it without undue delay after she became aware of it, or with reasonable care should have become aware of it.

Having set out the principle of law, the Court then needed to resolve the question of fact: was Mrs Waring, the licensor, correctly regarded as an occupier of the property? On the facts of this case, she was an occupier of the property: she had allowed Ms Eacott to live at the property under a bare licence.

However, the Court observed that each case will turn on its own facts; in each case it will be necessary to determine whether, as a matter of fact, the licensor is in possession and control of the property: "*It would, perhaps, be possible to imagine cases where an arrangement called a licence was either held to be a tenancy, or found to be so much akin to a tenancy that the licensor could not properly be regarded as an occupier in the relevant sense. This was certainly not such a case. Accordingly, further examination of the position in such a situation can await a case in which such facts arise.*"

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