IN THE COUNTY COURT AT CENTRAL LONDON

Case No: B04CR398

Courtroom No. 56

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 30th November 2018

Before:
HIS HONOUR JUDGE FREELAND QC

B E T W E E N:

VADHER & VADHER

and

PROPERTY ARCK LIMITED
& NOAH

MR J NEWMAN appeared on behalf of the Applicant
THE RESPONDENT appeared In Person

APPROVED JUDGMENT

HHJ FREELAND:

1. In this case the claimants Mr Vishal J Vadher and Mrs Nikita Surendah Vadher claim damages including aggravated and exemplary damages for unlawful eviction from their residential home for a very substantial period of time, namely 372 days. The second defendant Mr Pierre Noah counterclaims quantified special damage in the sum of £25,327.03, see page 27 of the bundle paragraph 23 of the amended defence and counterclaim.
2. The claimants were represented at trial by Mr James Newman. The defendant first appeared in person. The trial was fixed for two days commencing on 27 November 2018. Mr Noah, the second defendant, arrived late at court on the morning of the first day of the trial and he asked for Mr Raj Senah to assist him as a McKenzie friend. I was provided with Mr Senah's curriculum vitae. I drew to the attention of Mr Noah and Mr Senah the Practice Guidance: McKenzie Friends (Civil and Family Courts).
3. The claimants did not object to Mr Senah providing reasonable assistance to the second defendant. The second defendant had previously had the benefit of counsel instructed under the Bar's direct Public Access Scheme, but not as it transpired, for trial. I decided that the second defendant should have the right to reasonable assistance from Mr Senah who could provide moral support, take notes, help with the case papers and quietly give advice on any aspect of the conduct of the case.
4. I made it clear that Mr Senah would not be entitled to address the court, make oral submissions or examine witnesses. He wished to do so and in effect to conduct the litigation on behalf of the second defendant, but I declined to accede to that request.
5. I drew the second defendant's and Mr Senah's attention to paragraphs 18 and 19 of the Practice direction on McKenzie friends making it clear that McKenzie friends do not have the right of audience or a right to conduct litigation. I explained to the second defendant and Mr Senah that they would be under no pressure for time whatsoever; I would adjourn as necessary and make reasonable adjustments as necessary after each witness had given evidence. They were provided with the bundle of documents for use at trial. I decided that it would be fair and proportionate to adjourn from mid-morning on day one of the trial until approximately 2.00pm in order that the second defendant and his McKenzie friend Mr Senah should be able to fully prepare for cross-examination of the claimants and the issues for the determination of trial.
6. Without notice I was told at 2.00pm that Mr Senah had to attend a medical appointment, as I understood it to be, that afternoon. I considered the matter carefully and I decided that it was both fair and proportionate to adjourn for the day without the case being opened. In order to facilitate the attendance of the McKenzie friend on the second day of the trial. I was confident, having case managed the trial with care in the presence of the second defendant and his McKenzie friend, that the matter could be fairly and proportionately disposed of in full on the second day of the trial. I make it clear that notwithstanding Mr Senah's prior request I did not consider it appropriate at all for Mr Senah to conduct the litigation on behalf of the second defendant.
7. On the second day of trial and on the morning Mr Noah told me in effect that he was not prepared to carry on with trial without the attendance of Mr Kishora Durodra the Part 20 defendant. However, I had clearly established on day one of the trial that the Part 20 claim was not before me. Mr Durodra was not in attendance and it had never been contemplated that the Part 20 claim would be disposed of at this assessment of damages and consideration of the counterclaim.
8. In effect and in summary form, I adjourned twice for generous periods of time to give the

second defendant time to consider and to prepare his cross-examination of the first claimant and at noon he told me that he would not be further attending the trial. He well understood that if he decided not to attend the trial, the trial would proceed in his absence. Mr Senah, the McKenzie friend, made it plain to me that the second defendant fully understood the consequences of not further attending the trial namely that the trial would continue. I did not consider it to be fair or consistent with the overriding objective to adjourn the trial. The case had been fully opened in the presence of the second defendant. He had all relevant documents. He had had a full opportunity to prepare himself for trial and all of the issues to be determined by the court had been fully and carefully drawn to his attention, but I have to report that he deliberately absented himself from trial. I repeat I considered it appropriate and consistent with my duty and the overriding objective to continue with the trial.

9. The claimants gave evidence and they confirmed all of their witness statements. Yet at 2.00pm yesterday the defendant returned to court. He declined to participate in the trial meanwhile Mr Senah had withdrawn as a McKenzie friend and he apologized to the court for the conduct as he perceived it to be of the second defendant. I must make it clear that notwithstanding all that the second defendant said in court, it is my duty from beginning to end to try this case fairly in accordance with my obligations and consistent with all of the evidence and that I have done.

10. I heard closing submissions in considerable detail from Mr Newman yesterday afternoon. I took time to consider overnight. Overnight I reread all of the evidence including all of the second defendant's evidence, all of the witness statements, and all of the documents and the sources and the authorities to which I had been referred to. This is my reserved judgment on the claims and the counterclaim.

11. The factual background is as follows. On 30 October 2015 the claimants purchased for £190,000 the leasehold interest of residential premises known as and situate at the Ground Floor Flat, 11 Headcorn Rd, Thornton Heath, CR7 6JR, hereinafter referred to as "the Property". They purchased the Property with the assistance of a mortgage in the sum of £160,000 from Virgin Money and they are continuing to repay the mortgage at the rate, I am told, at £621.61 per month. The documents reveal that completion took place on 19 November 2015. See in particular page 62 of the bundle "VTR1" which I have considered with care, and page 91, from the letter dated 23 November 2015.

12. The second defendant is the freehold owner of the Property and the lessor of the lease. The Part 20 defendant is the previous lessee Mr Kishora Durodra and the individual from whom the claimants purchased the remaining term of the lease. I repeat there are outstanding Part 20 proceedings which will be required to be determined by the court. The claimants moved some of their possessions into the Property on 1 November 2015. They held a blessing, a ceremony on the 3 November 2015 but on 10 November 2015 a letter was posted purporting to be a notice pursuant to section 146 of Law of Property Act 1925 ("the Notice") to the Property addressed to the former leaseholder Mr Durodra. This would seem to have been posted by the first defendant Property Arck Limited.

13. The letter advised that the lessor was seeking peaceable re-entry pursuant to clause 6 of the lease and to the Notice. The lessor alleged amongst others that Mr Durodra had built an extension without the consent of the lessor and requested payment of a very substantial sum £65,387.09. Accordingly, a notice of eviction was left at the Property stating that the second defendant had taken peaceful possession of the Property. The locks were changed on 10 November 2015 and the claimants did not obtain possession of the Property until 15 November 2016, some 372 days later. They continued to pay their mortgage throughout this period. The proceedings in this claim can be summarised as follows.

14. In December 2015 the claimants issued a claim. On 11 January 2016 the matter first came

before District Judge Major, see page for 40 of the bundle, who ordered in the first and second defendants' absence first possession of the ground floor flat, the Property, forthwith to the claimants on the existing contractual terms, relief from forfeiture forthwith, and he made consequential orders as to cost. The second defendant failed to comply with the terms of that order. On or about 18 January 2016 he applied to have the order of the District Judge Major set aside. On 3 November 2016 the matter came before District Judge Coonan, see pages 42 to 43 of the bundle. At that hearing the District Judge made a number of orders having considered a number of applications including the defendant's application to satisfy the order of District Judge Major, the defendant's application to add Mr Durodra as a third-party of the claimants' application to re-amend the particulars of claim. The defendant's application to set aside was dismissed and the court ordered the defendants to deliver up vacant possession of the Property on 4 November 2016 by means of delivery of keys both internal and external which allows access into and within the Property. The defendants failed to comply with paragraph two of the judge's order. They initiated committal proceedings on 8 November 2016 which came before me on 29 November 2016, see page 44 of the bundle. The second defendant admitted that he was in breach of Judge Coonan's order and was ordered to pay a financial penalty of £375 and I made consequential orders as to costs.

15. The second defendant had sought to appeal Judge Coonan's order. It will be remembered that District Judge Coonan had refused to set aside the order of District Judge Major. The chronology reveals that that appeal came before Recorder Fine on 13 June 2017, see page 46 of the bundle.

16. The appeal was dismissed. On 22 August 2017 the matter came before Deputy District Judge Kelly, see page 48 of the bundle. Judgment was entered for the claimants against the defendants on their claim and consequential orders and directions for trial were given. On 23 March 2018 the matter came before a judge of this court, Saggerson HHJ for directions. The judge clarified whether the matter had in fact been allocated to fast track or multi track and he reallocated the matter to multi track. He updated and amended the order that had been made by District Judge Kelly and he specifically noted at paragraph eight, page 52 of his order "the default judgment stands in respect of the assessment of all claims for damages pleaded in the re-amended particulars of claim." That as it seems to me means what it says and it was clearly known by the second defendant that the default judgment stood and clearly known that at this trial we will be dealing with the assessment of those damages.

17. Finally, the matter came before Judge Roberts on 2 May 2018 for cost and case management and further directions, see page 53 of the bundle. The issues for the determination of the court were placed before Judge Roberts and made clear by Judge Roberts, and they amounted to the damages payable to the claimants and what order if any should be made in respect of the defendant's counterclaim. Thus, the matter was listed for trial for four days coming before me as I say on the 28 November 2018 with the issues that I have identified for my determination.

18. For the avoidance of doubt those issues were reduced to writing and properly circulated and they amount to these list of issues for trial: 1) assessment of the claimants claims for damages for unlawful eviction and consequent losses; and 2) determination of the defendant's counterclaim for alleged arrears of service charge and other items. I wish to make it clear before I move on to the evidence and the legal submissions for my determination of the issues, that I made it entirely clear to Mr Noah what those issues were, that he had access to this court with the assistance of a McKenzie friend for those issues to be fully and properly ventilated including his counterclaim. That he declined to participate

in the trial was a matter for him. The sometimes intemperate language that Mr Noah used when he did attend and when he absented himself I do not for a moment hold against him. That has no bearing at all upon my wholly objective approach to the issues before me and for my determination but I must record that his principal concern appeared to me not to ventilate any grievance or disagreement with the claimants claims and indeed he appeared to be saying to the court that he would like to ally himself with the claimants in pursuit of his grievance against the Part 20 defendant. Indeed, at one point he even asked me to issue a warrant for the attendance of the Part 20 defendant. I politely declined so to do.

19. In my judgment the second defendant Mr Noah well knew what the issues were for the determination of the court and it was made absolutely clear to him that the Part 20 proceedings will proceed in the usual way. His persistence in requiring the attendance of the Part 20 defendant in relation to the matters before me, put as it was robustly by Mr Noah and not always politely, was not something that I could accede but I do not as I say hold his manner against him at all.

20. That the trial should proceed however I have no doubt whatsoever. Thus, the claimants claim in their re-amended particulars of claim at page 7 and the schedule of last page 13, the following heads of damages. In the first place, general damages for unlawful eviction, in the second place, aggravated damages, in the third place, exemplary damages, and in the fourth place, special damages pursuant to the schedule.

21. General damages are compensation for losses that are not quantifiable in monetary terms and can be claimed for distress, inconvenience, loss of enjoyment, loss of occupancy, shock, even personal injury from pain and suffering.

22. Aggravated damages are a species of general damages and are sometimes referred to as enhanced general damages. They are compensation for especially severe suffering or to demonstrate the outrage and indignation at the way a person or persons have been treated. They are compensatory in nature and reflect the victims suffering and they are available in tort and they are available in this case. Exemplary damages are sometimes referred to as punitive damages. They are awarded to punish or to deter a defendant and they may be awarded when the defendant's behaviour was calculated to make a profit. They are available in tort and in this case. See *Rookes v Barnard* [1964] AC 1129, 1127 (per Lord Devlin).

23. I now turn to the evidence that I heard and I have considered. The first claimant gave evidence and he confirmed all of his witness statements; he made four witness statements, the first on 7 January 2016, pages 56 to 59; the second on 20 May 2016, pages 137 to 144; the third on 16 November 2017, pages 169 to 176; the fourth on 13 June 2018, pages 223 to 232. I considered all of that evidence and all of the documents referred to with care.

24. The second claimant gave evidence. She confirmed her witness statement at page 95 to 98, 7 January 2016; secondly 20 March 2016, pages 134 to 135; thirdly 16 November 2017, pages 220 to 221, and fourthly 13 June 2018, pages 222 to 232.

25. Now it is true that this evidence has not been tested under cross-examination but I repeat the second defendant deliberately absented himself from trial fully knowing what the consequences would be if he did so, having been offered the full support of a McKenzie friend in the circumstances that I have described. Ultimately it is for me to consider that unchallenged evidence and to decide the weight that I must attach to it and to come to the proper conclusions on the various heads of damage.

26. I have of course considered the defendant's evidence, albeit that has not been tested under cross-examination. Mr Noah, the second defendant, made a statement on 12 April 2016 pages 327 to 329; on 27 February 2018 pages 342 to 345; and on 10 May 2018 pages 397 to 399. There are a number of other witness statements that were provided on behalf of the

second defendant, which have in large measure very limited if any relevance to the issues for my determination. I recall that I have read them all with care; at pages 309 to 310, 14 April 2016; at pages 313 to 314, 25 April 2016; pages 315 to 316, 12 April 2016; and page 318, 11 April 2018.

27. I read Mr Durodra's statement at page 412, 29 June 2016 but of course that has very limited relevance to these proceedings and as I say the Part 20 proceedings will have to take their course. I would have permitted the second defendant to put a case to the claimants in diminution of the award of general damages and or aggravated and exemplary damages in relation to an aspect of this case, which is that the transaction with the Part 20 defendant was not an arm's length transaction and there was an alleged conspiracy, if he had wished to do so, but he declined to do so because as I said he did not participate in trial. I have fully read and fully considered all of the evidence.

28. I must turn next to the submissions that were made by Mr Newman and to the approach that he invited me to take to the quantification of the claims. In summary form, Mr Newman submitted that this is a very bad case of unlawful eviction. A young couple whose first home this was, deprived of its use and occupation for a very substantial period of time. Having had a blessing there, continued to pay the mortgage, having to come to court to seek to obtain justice, and only as a result of this hearing, being able to be afforded any justice. Mr Newman as his headline point submitted that this really is a very bad example of unlawful eviction.

29. As to general damages he showed me the recent decision of the court of appeal in *Smith v Khan* Neutral Citation Number: [2018] EWCA Civ 1137 and the judgment of Patten LJ with whom Henderson LJ and Newey LJ agreed at [37]:

> 'Damages for trespass are payable to compensate a displaced a tenant or anyone who has a right to possession of the property in question for the unlawful occupation of that property by the trespasser. They continue to be payable throughout the period during which the claimants right to possession subsists. They are not therefore inconsistent with the pursuit in the same proceedings of a claim for an injunction to reinstate.'

30. At [45]:

> 'In the case of unlawful eviction damages to trespass must compensate the tenant not nearly for the letting value of the time that he has been deprived but also for anxiety inconvenience and mental stress.'

31. Mr Newman submitted this is a paradigm example of severe anxiety, inconvenience, and mental stress; plain and obvious from the papers, and plain and obvious from any assessment of the demeanour of the claimants in the course of this trial. A summary of recent county court cases indicated awards ranging from £100 to £300 per night.

32. Mr Newman carefully took me through other first instance decisions and commended my attention to three in particular *Trouchery v Garcia*: [2013] EWHC 2383 (QB) and the judgment of Supperstone J, secondly *Donnely v Adrian Lesrado* [2013] EWHC 2616 (QB) and the judgment of Griffith Williams J, and then finally, *Mehta v Royal Bank of Scotland* (2000) 32 HLR 45 and the judgment of Richard Southwell QC.

33. Mr Newman submitted that each case must be determined on its own facts. He had been unable to find a case where the period of unlawful eviction was anywhere as long is this. They range from 28 days to 70 days at most. In one case of 70 days, £200 per day was awarded. In the Court of Appeal case to which he first referred me the judge had ordered £130 a day but for a very much shorter period.

34. Mr Newman addressed the question of aggravated damages and submitted that this is a

paradigm example of a case where exemplary damages should be awarded. He referred me to case of *Drane v Evangelou* [1978] 1 WLR 455 where Denning LJ considered the award of exemplary damages in an unlawful eviction case and submitted that this was an obvious case for exemplary damages.

35. On the evidence before the court which was ultimately unchallenged but was obviously credible evidence derived from the witness statements of the claimants, Mr Newman drew particular attention to a number of features of this case. He drew attention first to the claimants being out of possession for such a considerable period of time, evicted unlawfully on 10 November 2015 and not getting back into possession until 15 November 2016. Secondly in relation to court orders, the defendants having failed to comply with orders of the court, Judge Major's order at page 40, and this Judge Coonan's order at page 42, the committal application having to be made, the penal notices being attached to those first two orders and submitted that it really was only after the committal application that the second defendant provided the set of keys, and has continued to refuse to pay various significant orders as to costs.

36. Then in the third place he drew the court's attention to the unchallenged evidence but which I am bound to accept and I do. In my judgment that this was the claimants' first home together. They paid £190,000 for the lease. Completion took place on or around 31 October 2015. Mr Newman showed me powerful evidence indicative of the fact this was a completely legitimate and arm's length transaction.

37. The claimants on 1 November 2015, on the evidence which I accept and is credibly and reliably given in the papers, began to put their possessions into the Property and yet they are met on 10 November 2015 with the first defendant placing a notice on the door of the Property stating that the third party owed £65,000 and more and was taking possession. That must have been the most terrible shock to them and I so find.

38. Until the claimants obtained possession just over a year ago, fourthly, they lived with Mr Vadher's parents. Now of course they had a roof over their head but that must have been stressful because they had put their hopes and their expectations and their lives and their thoughts into starting a family in their new home and as Mr Newman emphasised it both in oral argument and in writing they had to put a hold on this.

39. Then fifthly during the period of unlawful occupation there is credible evidence before me that building works were being undertaken to the Property, see paragraphs 4 and 15 of Mr Vadher's statements at page 170 and see also page 174. Mr Vadher credibly says this at paragraph 4:

> 'Certainly during the year we did not have the keys, Mr Noah, his contractors and others came into the Property and carried out some quite extensive building works. In the second room there used to be a window into the garden, now there is a door there with some very shoddy work around the door which does not seem very safe at all. There are numerous random holes the size of a football in the living room. The front room has also been decorated with wallpaper with clear signs of someone living there including small children's clothes.'

40. The photographic evidence bears testament at least to some of this albeit the photographs are not particularly clear. There seemed to be some work carried out in the garden. "I had also been informed" he says at paragraph 5 "by Croydon Counsel that Mr Noah had tenants living in the Property towards the end of the year".

41. In my judgment, sixthly, the claimants have indeed obtained credible evidence that the Property was let during this period of time or some of it and there has been a period of some

unlawful occupation. It is quite impossible for me to determine for how long, see paragraph 5 of Mr Vadher's unchallenged evidence and see also the email of the 14 February 2016 from Karen Sullivan head of customer contact in relation to council tax. This states as follows:

> 'Dear Mr Vadher, thank you for your email dated 30 November 2016 regarding council tax on the above property. I can confirm you became liable for council tax on the property from 9 November 2016. Prior to this date other people were registered at the property. I am unable to divulge any information about the accounts of those who were previously liable for council tax under the Data Protection 1998.'

42. That is credible independent evidence from an independent source that others had been living there.

43. Seventhly, the claimants had purchased brand new white goods which had been used and items with sentimental value had gone missing. Here again I refer to paragraph 15 page 174 of Mr Vadher's evidence. Mr Vadher says this at paragraph 15:

> 'Being particularly distressing I attach photographs of the flat. We got back our white goods, that were in the Property on the whole. They had obviously been used and were no longer in pristine condition. The luxury clothes and wedding cutlery had gone along with hoover steam cleaner, boots and wellington boots. Not to mention the sentimental items of value also photographs and religious ornaments which are highly personal and priceless.'

44. I accept all that evidence as credibly given and it to and it adds and heightens the anxiety and distress that this young couple must have felt when they were dispossessed of their home and also having to suffer in the way that Mr Vadher says they did.

45. In relation to aggravated and exemplary damages, Mr Newman drew my attention to these factors and made submissions to which I shall return in a moment. On aggravated damages and as to exemplary damages, he submitted that the defendant had obtained a valuable asset without following the due process and that despite all court orders requiring him to give up possession he had sought on the face of it with credible evidence to make a profit by letting it, carrying out building works, and he manipulated documents to support his case, see page 370 and 382.

46. I repeat I have considered with care all of the authorities. I have considered with care all of Mr Newman's submissions and I do regard this as a very bad example of unlawful eviction and I have no doubt that the suffering of the first and second claimants has been very considerable indeed. Thus, I must now turn to the conclusions that I reach in relation to damages.

47. I appreciate that in many of the cases to which I have been referred, a daily rate of £100 to £200 is often the yardstick that is approached by the court to the assessment of damages. in relation to loss of occupancy. At the outset of his submissions Mr Newman was minded to advance a figure as high as £100, which would amount to £37,200 for each claimant. A total of just shy of £75,000. Standing back and looking at the matter Mr Newman very sensibly and realistically accepted that that would produce too high a figure. He accepted that although the claimants have individually suffered they are after all married and a quantification times two exercise which produced a figure as much as that would not be appropriate. Mr Newman also very properly and realistically acknowledged that there had been no violence in this case, no actual threats, no actual harassment and the claimants were not in fact thrown onto the streets as the court sometimes sees.

48. Mr Newman invited the court to stand back and to use its common sense to have regard to all the very serious features in this case which mark it out and to which I have referred. These claimants purchasing and being dispossessed in the manner for the longevity that I have set out, Mr Newman submitted that at the low point the court would surely have in mind an aggregate of £30,000 representing £15,000 for each claimant and he submitted that really should be at the low point because if the court did come to that conclusion it would in fact represent less than the £100 daily rate for the claimants as a couple. He realistically accepted that the court might have in mind a figure closer to that or in the region of that more than the figure of £70,000 or £75,000.

49. I have considered the gravity of all of the factors to which I have referred. I have stood back as I am required to do, weighed all of the circumstances, considered all of the authorities, and I have reached the conclusion, taking into account all of the factors that the total figure of general damages in this case should be £35,000.

50. I have reached the conclusion in this case that this should be apportioned as to £17,500 to each claimant. That I readily accept that it equates to just less than £100 a day for both claimants but they were after all a married couple. I appreciate that equates to just less than £100 but standing back and having regard to all of the factors, I have reached the conclusion that that is the just and the equitable and the appropriate figure to compensate the claimants in general damages for what I regard as a very bad example of this type of case.

51. Secondly, aggravated damages are of course available in a serious case such as this. They are also available to demonstrate the outrage and indignation at the way the claimants had been treated. In my judgment this is an appropriate case for aggravated damages and I have reached the conclusion that it is right for me to make one award. It is of course to be a relatively modest award but it does reflect the outrage and the indignation at this type of treatment. It is as I have made clear a species of general damages, what I have referred to as enhanced general damages.

52. I have reached the conclusion that the appropriate figure is £5,000 to be shared between the claimants. It will be observed therefore that the total figure for general and aggravated damages is £40,000 which does correlate to the daily rate of the odd £100 or thereabouts and which I consider standing back to be the appropriate figure to in all of the circumstances.

53. I must turn, thirdly, to exemplary damages. In my judgment exemplary damages are plainly available in this case, see *Rookes v Barnard* and *Drane v Evangelou*. This is in my judgment as I have made clear a very bad example of this type of case. Exemplary damages are available where there is evidence before the court that a profit has been made and or to reflect the courts disapproval at what has happened and to deter this sort of behaviour from happening. The second defendant obtained an extremely valuable asset without following the due process. In my judgment Mr Newman submission in that regard is entirely well founded on all of the credible evidence and I so find.

54. Mr Newman in his careful closing submissions submitted that Mr Noah had manipulated documents to support his claim, see in particular pages 370 and 382. Mr Newman accepted that this argument was not developed in his written argument but submitted that this was material that he would have asked Mr Noah about had Mr Noah attended for cross-examination. I must record that it was Mr Noah's decision and his alone to absent himself of the trial fully knowing what the consequences would be. There is material before me which demonstrates credibly that there has been manipulation of documents to support the case, the full extent of which is unnecessary for me to conclude but there is some evidence. Despite court orders requiring him to do so there is the clearest evidence before me of those court orders being endorsed with a penal notice and the second defendant not

observing them.

55. As I have made clear by reference to Mr Vadher's witness statement and reference to the communication with Croydon regarding council tax, there is evidence before me that the second defendant apparently sought to make a profit by letting out the Property and carrying out building works, see page 194 and see paragraph 5 page 170. It is quite impossible for me to come to a clear conclusion as to the full extent of this, but pulling all those threads together can I be satisfied on clear balance of probability that there is credible evidence before me which justifies me in making an award of exemplary damages? In my view there clearly is.

56. Undoubtedly there is the disobedience of the court orders to give up possession with penal notices. There is credible evidence of apparently appearing to try to make a profit but I decline to say how much and there is credible evidence of manipulation of documents. There is photographic evidence to which Mr Newman took me in relation to clothing and paraphernalia indicative of third parties having been living there. I am clear of the view that I can and should mark this as a case where I should make an award of exemplary damages.

57. I am well aware that I have already decided that the appropriate award for enhanced general damages and aggravated damages is a substantial one, a total of £40,000, but in my judgment I must make an additional award of exemplary damages.

58. In my judgment it would be wrong for that figure to be in anyway disproportionately high and I have to stand back and ask myself whether the general damages and the aggravated damages represent adequate compensation without the additional exemplary award. I do not consider they do because I consider I must make an award of exemplary damages.

59. The figure that I have decided is one of £6,000 and it will be one award of exemplary damages. I have decided that the global figure will be one of £46,000 for general damages, aggravated damages and exemplary damages.

60. I must turn to the claim for special damage and I required Mr Newman to spend a considerable amount of time in closing submissions yesterday identifying how the special damage claim was put. I had to satisfy myself in relation to each head of alleged claim that it was made out on balance of probability albeit the evidence was not tested.

61. First there is a claim for mortgage payments of £7,459.32, for £4,800 for rent incurred when living with the family, see paragraph 16 of Mr Vadher's evidence. This is put on the basis of either or and Mr Newman realistically excepted in closing submissions that the court might take this as a starting point the lesser of the two alternatives albeit he made the point that the mortgage payments were made and there was no benefit deriving from them. I have to have regard to the fact that I have already made substantial awards for general aggravated and exemplary damages. Therefore, I do take as a starting point the lesser of those two figures, but in my judgment that should be discounted because Mr Vadher very clearly says that there was provision for food as well.

62. In my judgment the discount should be 20% but not more than 20% because I am fully satisfied on the evidence that this young couple did make significant contributions to their keep when they were living with Mr Vadher's parents and in my judgment the appropriate figure is one of £4,000. The council tax and utility bills are not pursued.

63. Mr Newman spent some considerable time addressing me, thirdly, on the alleged repair damage and reinstatement to the Property pleaded in the sum of £13,450 and claimed in that sum, see the estimate from Metals Woods Limited, page 493 of the bundle dated 14 May 2018. Now Mr Newman accepted that this is only an estimate and I really have to go on the evidence that is before me. He drew my attention in particular to Mr Vadher's evidence at page 170 paragraph four and to the photographs and he submitted that there is clear and compelling evidence of damage to the ceiling in the living room, see page 485,

and to considerable other damage which engages the second item in the estimate. He submitted that there is clear and compelling evidence, see page 191 of the bundle, of damage which equates to a significant amount of the items in the third paragraph of the Metal Woods estimate. Now the Metal Woods estimate is £13,450 and I also as Mr Newman submitted have the photographs before me and I repeat Mr Newman drew my attention to Mr Vadher's evidence at page 170 paragraph four and the photographs.

64. I have to do the best I can. I am fully satisfied that there are reparation costs and repair costs that will have to be undertaken and that they are significant and substantial. I am equally satisfied that a figure approaching £13,450 is too high and it is not made out on balance of probability. I am quite satisfied on clear balance of probability looking in particularly at the aggregate of items two and three, the aggregate of which is £6,550 that there will be substantial costs incurred. I have decided that I should discount that £6,550 by £1,000 and I have decided that the proper figure of probability in relation to this head of claim is one of £5,500 and I so allow.

65. I must turn to the additional travel costs that are claimed. It must be remembered at page 176 of the bundle and Mr Vadher's evidence in relation to very significant additional travel costs is not challenged and I am quite satisfied for the reasons very credibly given in Mr Vadher's witness statement and adopted by Mrs Vadher that significant travel costs have been incurred by virtue of the claimants being dispossessed of their home, but it would be wrong for me to make a two year allowance.

66. Therefore, my starting point is a one year allowance and I would quantify a one year allowance of £5,491.20. Likewise, to the deduction that I made in relation to the first head of claim I have reached the conclusion that I should discount this likewise by 20%, and that produces a figure of £4,392.96.

67. Finally, in my judgment the receipt for the items left at the Property is properly claimed and I make an award of £700 in this regard.

68. Accordingly, I make the following awards. As to general damages, a total figure of £35,000 in what I have regarded as a very bad case which should be apportioned between the claimants and I have apportioned it between them as to £17,500 each.

69. Aggravated damages of £5,000, one award; exemplary damages of £6,000, one award; a total of £46,000. Special damages of £4,000, £5,500, £4,392.96, and £700, making a total special damage of £14,592.96; making a total, subject to any arithmetical correction of general and special damage in the sum of £60,592.96.

70. I am required to turn next to my consideration of the counterclaim. I have very carefully considered all of the items in the counterclaim notwithstanding the undoubted fact that Mr Noah has not been present to argue his case in respect of them, but nonetheless I considered the evidence and all of the documents and the legal arguments in relation to the counterclaim. It must be remembered that at paragraph 23, page 27 of the counterclaim: 1) service arrears in the sum of £18,027.53 are claimed; 2) rent arrears of £400; 3) legal costs of £6,000; 4) building surveyors' fees of £900; making a total of £25,327.53. I note and record that exactly those sums appear to be pleaded and claimed in the Part 20 proceedings.

71. It is right as Mr Newman has recorded in his written argument that Mr Noah put forward a number of so called conspiracy theories in respect of the sale of the Property from the third party to the claimants, none of which have been ventilated at this trial and all of which I must record are robustly and strenuously denied by the claimants in their detailed witness evidence.

72. What is significant and important for me to observe in this regard is that the claimants have provided a copy of the TR1, the land registry transfer, a wholly authentic document at

page 62 and a letter from their conveyancers at page 91 to show that this was a genuine transaction and Mr Newman even absent Mr Noah makes the submission that there is overwhelming evidence. Insofar as the claimants are concerned that supports that.

73. In my judgment on the claimants' unchallenged evidence is credible and the submission made by Mr Newman are well founded.

74. As Mr Newman has submitted each of these sums and or breaches of covenant would seem irresistibly to have been incurred, if they were incurred, prior to the lease being assigned to the claimants. In those circumstances he points to section 23 subsection 1 of the Landlord and Tenant (Covenants) Act 1995, submits to the court that this is a complete answer to the claim. Section 23 subsection 1 of the 1995 Act provides as follows:

> 'Where as a result of an assignment a person becomes by virtue of this Act bound by or entitled to the benefit of a covenant, he shall not by virtue of this Act have any liability or right under the covenant in relation to any time falling before the assignment.'

75. Mr Newman would have submitted if Mr Noah had attended the trial that the second defendant has a claim, if he has a claim, against the Part 20 defendant and not against the claimants, and he must know that.

76. In my judgment that submission is entirely well founded, for I observed in the first place Mr Noah has not attended court to advance his counterclaim but I have considered it independently on its merits as in my judgment where there is a litigant in person I am required to do. It seems to me as against the claimants it has no substance whatsoever; it is on its face entirely misconceived. It is true that the so called conspiracy theory has not been advanced in cross-examination but I have considered and read and re-read overnight all of the documents and the particular documents to which Mr Newman referred me in opening and in closing debunk so far as these claimants are concerned any conspiracy theory.

77. As it seems to me the service charge arrears claimed as they are against the claimants cannot be recoverable at all, likewise the rent arrears, likewise the legal costs, likewise any building surveyors' fees. Mr Newman for what it is worth in his written argument drew attention to the fact that the notice attached to the front door even referred to £65,387.90 and that there really is a complete lack of any reliable evidence that any notice of arrears was served on the previous owners. I am not sure that I need to come to any conclusion as to that because the Part 20 proceedings will take their course but I have read and carefully considered pages 374 to 388. I simply record that the claimants did not purchase the lease until October 2015. The defendant is relying upon an invoice, amongst others, see page 88, of 8 December 2012.

78. The evidence that is contained in this bundle relating to the counterclaim against these claimants is in my judgment wholly misconceived. There is no legal basis for enforcement of any of these sums against these claimants for the reasons that I have given. In my judgment the counterclaim as against these claimants is erroneous and without merit in law and I can find nothing in the documentation evidentially as a matter of fact which substantiates any credible counterclaim against these claimants. It is true that Mr Newman in my judgment very properly drew my attention to an open letter that has apparently been written on behalf of the claimants to the second defendant in relation to a very modest figure.

79. I need say nothing more than that I considered it appropriate for Mr Newman to have drawn my attention to that but the offer has not, as I see it, been taken up. It is not a pleaded matter in the counterclaim and in my judgment the counterclaim for the reasons that I have given must fail in its entirety and it must be dismissed and there will be judgment for the

claimants on the counterclaim.

80. I turn to my conclusions. It is always a matter of regret when a litigant in person attends trial but in the course of the trial decides that he is not going to participate in it. Everything was done that could reasonably and proportionately have been done to encourage and to facilitate Mr Noah's attendance at trial and his participation in this trial. He was as I have made clear permitted to have the assistance of Mr Senah as his McKenzie friend. A number of adjournments were given as I have made clear in order to try to facilitate Mr Noah's continued participation. However, in the end it was his decision and his alone not to participate and for the reasons given I was clearly of the view that the trial must proceed and it has proceeded.

81. There will accordingly be judgment for the claimants in the sums that I have indicated. The counterclaim will stand dismissed.

End of Judgment

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This transcript has been approved by the judge.