FAIR WEAR AND TEAR

Repairing covenants are commonly inserted in leases by draftsmen. It is usual to find the phrase "fair wear and tear excepted" although the effect of the exception in such a covenant has for a long time been doubtful. Since 1937 it has been generally understood that the exception relieved the covenantor of the burden of repairs for damage due to time and the weather and any consequential damages to the premises resulting therefrom and not for wilful damage, fire, floods and other extraordinary events. This made the value of such a covenant practically useless to the covenantee.

The House of Lords in *Regis Property Co., Ltd.* v. *Dudley* [1958] 3 W.L.R. 647, [1958] 3 All E.R. 491, has now held that the covenantor is exempt from liability for repairs due to reasonable use of the premises and the ordinary operation of natural forces but not from anything else. The covenantor must now do such repairs as are necessary to stop any further damage flowing from the disrepair caused by wear and tear. Lord Denning said, "If a slate falls off through wear and tear and in consequence the roof is likely to let through the water, the tenant is not responsible for the slate coming off but he ought to put in another one to prevent further damage."

In coming to this decision the House of Lords overruled *Taylor* v. *Webb* [1937] 2 K.B. 283, [1937] 1 All E.R. 590, 106 L.J.K.B. 480, 156 L.T. 326, 53 T.L.R. 377, 81 Sol. Jo. 137, and re-instated *Haskell v. Marlow* [1928] 2 K.B. 45, 97 LJ.K.B. 311, 138 L.T. 521, 44 T.L.R. 171.

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