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Landlord and Tenant--License to Enter to Make Repairs--Right to Make Repairs of a Nature Not Contemplated by Parties When Lease Was Executed (Nabru Associates, Inc. v. Zimmerman, 247 App. Div. 645 (1st Dept. 1936))

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holds property from the true owner knowing the same to have been stolen.[7] To prove that the defendant knew he was concealing and withholding stolen property, evidence may be introduced that at or near the time of the arrest, the defendant concealed and withheld other stolen property, knowing it to be stolen.[8] It is not necessary that he receive it from the same thief or know the thief who stole it. The reasoning of *People* v. *Doty,* which relates solely to *receiving* stolen property, therefore, does not apply to this case.

In cases of forgery and counterfeit money it has always been one of the chief elements of proof, as bearing upon the defendant's guilty knowledge that he possessed, at other times not too remote, other forged or illegal paper.[9] This same principle, the court now holds, can be applied to stolen automobiles, especially since the identity of an automobile can always be ascertained and ownership established through the state registration records.[10]

S. L.

LANDLORD AND TENANT—LICENSE TO ENTER TO MAKE REPAIRS —RIGHT TO MAKE REPAIRS OF A NATURE NOT CONTEMPLATED BY PARTIES WHEN LEASE WAS EXECUTED.—The plaintiff at the time this action was brought, was the owner of two adjoining buildings which were previously in the hands of two different owners. The defendant occupies the entire floor of one of these premises pursuant to a lease obtained from one of the plaintiff's grantors, which lease contains a covenant of quiet enjoyment. The plaintiff desires to consolidate both buildings into one with a common elevator, and this necessitates breaking through the party-wall of defendant's premises. The plaintiff claims the right to make this structural change under the terms of the assigned lease, which reserved to the landlord the right to enter and make repairs and changes in the building. *Held,* a lease which reserves to the landlord the right to enter and make repairs and changes in a building will not be construed to authorize a major change which could not have been contemplated when the lease was executed.

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[7] People v. Wilson, 151 N. Y. 403, 45 N. E. 862 (1897).

[8] People v. Di Pietro, 214 Mich. 507, 183 N. W. 22 (1921); State v. Cohen, 254 Mo. 437, 162 S. W. 216 (1913); State v. Feuerhaken, 96 Iowa 299, 65 N. W. 299 (1895); United States v. Brand, 79 F. (2d) 605 (C. C. A. 2d, 1935); Nakutin v. United States, 8 F. (2d) 491 (C. C. A. 7th, 1925); WHARTON, CRIMINAL EVIDENCE (11th ed. 1935) § 349; WIGMORE, EVIDENCE (2d ed. 1923) § 324.

[9] Note (1936) 10 ST. JOHN'S L. REV. 263.

[10] In People v. Di Pietro, 214 Mich. 507, 183 N. W. 22 (1921), the court said: "* * * that the probabilities of an honest mistake diminish as the number of similar transactions indicating a scheme or system increases." WIGMORE, EVIDENCE (2d ed. 1923) § 324, "the more striking the coincidence, the more difficult to believe that the explanation is an innocent one."

Nabru Associates, Inc. v. *Zimmerman*, 247 App. Div. 645, 288 N. Y. Supp. 315 (1st Dept. 1936).

The obligation of a landlord to repair demised premises rests solely upon an express covenant or undertaking. Without an express covenant to that effect by the lessor, he is neither bound to repair the demised premises himself nor to pay for repairs made by the tenant.[1] A covenant to repair will not be implied nor will an express covenant be enlarged by construction.[2] If the words of a covenant are of doubtful meaning they will be construed most strongly against the covenantor,[3] and in favor of the covenantee.[4]

Where there is an express covenant by the landlord to repair, the covenant implies a license to enter upon the premises for a reasonable time for the purpose of performing the covenant.[5] The landlord is in such case merely a licensee as regards his right to enter during the tenancy, and the tenant has the exclusive possession to the same extent as any owner of land who has granted a license to another.[6] If the landlord enters the premises to make repairs or improvements, without authority of statute or under the lease, and without the tenant's consent, he is liable as a trespasser for all injuries resulting from the work, without reference to whether or not there was negligence in its execution.[7]

Therefore, in the case at bar,[8] although the plaintiff had the right to enter the demised premises to make repairs or improvements, this right was limited to the terms of the lease. At the time the lease was executed between plaintiff's grantor and the defendant, the former was not the owner of the adjoining building as these two buildings were in the hands of different owners. The structural change now proposed could not at that time have been contemplated by the plaintiff's grantor nor by the defendant. Hence, the plaintiff is not entitled

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[1] Mumford v. Brown, 6 Cow. 475 (N. Y. 1826); Witty v. Matthews, 52 N. Y. 512 (1873); Clark v. Babcock, 23 Mich. 164 (1871).

[2] Potter v. New York, O. & W. Ry. Co., 233 App. Div. 578, 253 N. Y. Supp. 394 (4th Dept. 1931), *aff'd*, 261 N. Y. 489, 185 N. E. 708 (1933); Freiot v. Jacobs, 209 App. Div. 334, 204 N. Y. Supp. 446 (3d Dept. 1924); Richmond v. Lee, 123 App. Div. 279, 107 N. Y. Supp. 1072 (1st Dept. 1908); Witty v. Matthews, 52 N. Y. 512 (1873); Rheims v. Dolley, 93 Misc. 500, 157 N. Y. Supp. 213 (1916); Clark v. Babcock, 23 Mich. 164 (1871).

[3] Carpenter v. Pocasset Mfg. Co., 180 Mass. 131, 61 N. E. 816 (1901).

[4] Miller v. McCardell, 19 R. I. 304, 33 Atl. 445 (1895).

[5] Gerzebek v. Lord, 33 N. J. L. 240 (1869); Lunn v. Gage, 37 Ill. 19 (1865); Young v. Burhans, 80 Wis. 438. 50 N. W. 343 (1891); 2 MCADAM, LANDLORD AND TENANT (5th ed. 1934) § 392. The covenant of quiet enjoyment must be read subject to the license implied in the covenant to repair.

[6] Stebbins v. Demorest, 138 Mich. 297, 101 N. W. 528 (1904); 1 TIFFANY, LANDLORD AND TENANT (1912) § 3-b(3).

[7] Wolff v. Hvass, 11 Misc. 561, 32 N. Y. Supp. 798 (1895); Butler v. Cushing, 2 N. Y. Supp. 39 (1888); Fiepons v. Grostein, 12 Idaho 671, 87 Pac. 1004 (1906).

[8] Nabru Associates, Inc., v. Zimmerman, 247 App. Div. 645, 288 N. Y. Supp. 315 (1st Dept. 1936).

to enter the premises to perform the work mentioned without committing a breach of the covenant of quiet enjoyment.

A stipulation in a lease giving the landlord the right to enter demised premises to make repairs and improvements should not be extended beyond its express provisions, particularly where the lease granting the license was prepared by the landlord. Such an instrument must be construed most strongly against the party who drew it.[9]

V. E. C.

MORTGAGES—AFTER-ACQUIRED PERSONAL PROPERTY CLAUSE IN REAL PROPERTY MORTGAGE—RIGHT OF SUBSEQUENT CHATTEL MORTGAGEE.—Plaintiff became the owner of a recorded real property mortgage containing *inter alia,* an after-acquired personal property clause. The mortgagor conveyed the property subject to the plaintiff's mortgage to the defendant boat company which subsequently executed a chattel mortgage covering machinery on the premises, to a security company. Plaintiff's action to foreclose on the first mortgage and that of defendant Hirsch to foreclose on the chattel mortgage were consolidated. Defendant Hirsch appealed from a decision for plaintiff, on the ground that the personal property clause relating to after-acquired personal property is ineffectual as to him and his rights under the chattel mortgage. *Held,* affirmed. A subsequent chattel mortgage purporting to cover in whole or in part the same personalty is subordinate to the lien of a prior real property mortgage with an after-acquired personal property clause.[1] Mortgagor must, however, secure title to personalty subsequently acquired to have the lien of the real property mortgage attach.[2] *Herold* v. *Cohrone Boat Co., Inc.,* — App. Div. —, 292 N. Y. Supp. 81 (1936).

The validity of after-acquired property clauses has been well established by numerous authorities [3] which hold that a mortgage on after-acquired property though without means of enforcement at law is nevertheless enforcible in equity,[4] and the mortgagee will be pre-

[9] Bank of Montreal v. Recknagel, 109 N. Y. 482, 17 N. E. 217 (1888); Moran v. Standard Oil Co., 211 N. Y. 187. 105 N. E. 217 (1914).

[1] President and Directors, *etc.* of Manhattan Co. v. New-berry, 265 N. Y. 588, 193 N. E. 333 (1934); Shelton Holding Corp. v. 150 East Forty-Eighth St. Corp., 264 N. Y. 339, 191 N. E. 8 (1934).

[2] Central Chandelier Co. v. Irving Trust Co., 259 N. Y. 343, 182 N. E. 10 (1932); Modfes v. Beverly Development Corp., 251 N. Y. 12, 166 N. E. 787 (1929); Central Union Gas Co. v. Browning, 210 N. Y. 10, 103 N. E. 822 (1913).

[3] Kribbs v. Alford, 120 N. Y. 519, 24 N. E. 811 (1890); People's Trust Co. v. Schenck, 195 N. Y. 398, 88 N. E. 647 (1909); Mitchel v. Winslow, Fed. Cas. No. 9673 (C. C. D. Me. 1843).

[4] Central Trust Co. v. Kneeland, 138 U. S. 414, 11 Sup. Ct. 357 (1891); Foley and Pogue, *After Acquired Property Under Conflicting Corporate Mortgage Indentures* (1929) 13 MINN. L. REV. 81, 88.