FIELD COURT CHAMBERS

Housing Law e-bulletin

***Ali and Others v Birmingham City Council, Manchester City Council v Moran* [2009] UKHL 36**

Although heard separately, opinions in these two appeals were delivered at the same time, because they both raised issues on the meaning of "accommodation which it would be reasonable for him to continue to occupy" in the context of s.175(3) of the HA 1996 (the *Birmingham* case) or s.191 (the *Manchester* case).

In the *Birmingham* case, the House of Lords reversed the Court of Appeal's decision that it was unlawful for the Council to discharge duty under s.193(2) by leaving applicants in their existing home until suitable permanent accommodation could be found, having accepted the applicants were homeless within the meaning of s.175(3) because they were in overcrowded accommodation which was not reasonable for them to continue to occupy. Their Lordships held suitability for the purposes of s.193(2) does not imply permanence or security of tenure. The Council was entitled to decide the families were homeless because it was not reasonable for them to remain in their present accommodation indefinitely, even though they could stay in their current accommodation for a little while. It must be a question, which turns on the particular facts in any particular case, as to how long a family could be left in their current accommodation. A court, when addressing this question, should not ignore the pressures on Council stock when deciding whether, in a particular case, an authority had left an applicant in their current accommodation for an unacceptably long period of time.

In the *Manchester* case, a victim of domestic violence had found a place in a women's refuge. She was subsequently evicted because of her conduct. The Council provided her with temporary accommodation, but subsequently found she had become homeless intentionally. The issues for the House of Lords was (a) whether a women's refuge is "accommodation" at all for the purposes of s.175 and, if so (b) whether it accommodation which it would be reasonable to continue to occupy, so that Ms Moran became homeless intentionally when she behaved in such a way that she was evicted. Disapproving the court's approach to the question of accommodation in *Sidhu*, the House of Lords held because it would not be reasonable for a particular woman in a refuge to continue to occupy her place there indefinitely, it was unnecessary to decide whether the refuge is "accommodation". Women will be homeless while they are in the accommodation and remain homeless when they leave. A women who loses her place there, even because of her own conduct, does not become homeless intentionally, because it would not have been reasonable for her to continue to occupy the refuge indefinitely.

***Freeman v Islington LBC* [2009] EWCA Civ 536**

F sought to succeed to her father's secure tenancy under s 87 HA 1985. The trial judge found that she had not "resided

with" her father for the requisite 12 months ending with the date of his death. He also found that:

(i) F was living at the material property 7 days a week by 20 June 2004 providing care for her sick father;

(ii) F's father died on 30 June 2005;

(iii) since 1999 F had owned her own flat in Hackney; during the material 12 months, it remained unoccupied;

(iv) on 6 June 2005 F had let her flat under an AST for 6 months;

(v) during the material 12 months F did not change her correspondence address, save for one credit card.

Held: The Court dismissed F's appeal. Applying the established case law (*Collier v Stoneman* [1957 1 WLR 1108, *Swanbrae Ltd v Elliot* (1987) 19 HLR 86] there was nothing to show that, at least until F let her flat, she was doing anything more that fulfilling her natural duty to her father by nursing him – F was there to tend and look after her father, not to make his flat her home.

***London & Quadrant Housing Trust v R (on the application of Weaver)* [2009] EWCA Civ 587**

London & Quadrant Housing Trust ("LQHT") determined W's tenancy on the grounds of rent arrears. She argued that when terminating the tenancy of someone who was in social housing, LQHT was subject to human rights principles. The Divisional Court found that the act of terminating her tenancy was not a private act under s 6(5) Human Rights Act 1998. LQHT appealed.

Held: dismissing the appeal, to determine whether or not W's human rights were engaged the key question was whether the act of termination was a private act. In answering that question, regard had to be had to the source and nature of the act and the context in which it occurred. Cases would be fact specific. In the present case, the Court noted that:

(i) LQHT was a RSL, regulated by the Housing Corporation under HA 1996, and had both corporate and charitable status;

(ii) LQHT significantly relied upon public finance;

(iii) although it did not directly take the place of local government, it operated in very close harmony with it;

(iv) the provision of subsidised housing was a governmental function.

Considered cumulatively, these factors established a sufficient public flavour to LQHT's provision of social housing. The act of determining the tenancy was so inextricably linked with the provision of such housing that once the latter was seen as the exercise of a public function within, the former must also be a public function.

***Hanoman v Southwark LBC* [2009] UKHL 29**

The issue here was whether the crediting of housing benefit to the rent account of a local authority tenant (as required by s 134(1A) of the Social Security Administration Act 1992) was a "payment of rent" for the purposes of s 153B of the Housing Act 1985.

Held: dismissing the Council's appeal, crediting of housing benefit is a "payment of rent" for the purposes of s 153N HA 1985. Their Lordships so held on the basis that:

(i) "payment" varies with the context in which it is used: *White v Elmdene Estates Ltd* [1960] 1 QB 1;

(ii) the purpose of ss 153A and 153B are to penalise any local authority that drags its feet and delays the tenant's attempts to exercise his right to buy; and

(iii) to hold otherwise would produce anomalous differences between tenants. Those of HAs, HATs, Housing Co-operatives (whose housing benefit has to be provided to them by

payment of rent allowances) would have the benefit of s 153B. Tenants of local authorities and New Town Corps (housing benefit paid as rent rebate) would not. Their Lordships held that there was no justification for that potential situation.

***Manchester City Council v Pinnock* [2009] EWCA Civ 852**

The Council claimed possession of a property let on a demoted tenancy, pursuant to s.143D HA 1996.

Held: In possession proceedings the county court was restricted to considering whether the Council had followed the review procedure prescribed by ss143E and 143F HA 1996. It could not review the substance or rationality of the Council's decision.

***Stokes v Brent LBC* [2009] EWHC 1426 (QB)**

S, a traveller, appealed against a decision summarily granting the Council possession of a caravan pitch at one of its travellers' sites. Save for a short period of express tolerance whilst S gave birth to her fourth child, she was a trespasser. Before issuing possession proceedings the Council offered her another pitch at the same site, but she refused without giving any reasons. She also submitted a homelessness application. The Council, having yet to determine S's homelessness application, issued possession proceedings in respect of the pitch. The judge refused to make any directions for trial, determining that S had no seriously arguable public law defence to the possession claim and summarily ordering possession in favour of the Council.

Held: dismissing S's appeal

(i) the contractual and proprietary rights to possession of a public authority landowner could not be defeated by a defence based on art.8 of the ECHR unless the point was seriously arguable: *Kay v Lambeth LBC* [2006] 2 AC 465;

(ii) on the existing material, there was no prospect of a court finding that the decision to seek possession to be within that exceptional class of case, namely, one which no reasonable person would consider justifiable. The instant case was one of short term occupation wherein S was, for the most part, a trespasser on the pitch.

(iii) on the material placed before him, the judge was bound to reach the conclusion that S's public law defence had not been shown to be seriously arguable;

(iv) the instant case did not involve a challenge to a decision which, by law, the decision maker was obliged to give reasons for so as to enable S to see whether the decision was amenable to judicial review. A decision to issue a claim for possession against a trespasser did not, in law, require written justification or detailed reasons.

***R (on the application of G) Southwark LBC* [2009] UKHL 26**

G, aged 17 and with indefinite leave to remain, was excluded from his home by his mother. After a few months "sofa surfing" he consulted solicitors who advised him to present himself to children's services and request a s.17 assessment and s. 20 accommodation under the Children Act 1989. The Council carried out an assessment which concluded that G's needs were primarily housing and education; the Council considered that those needs could be met by accommodation provided its housing department under Part VII HA 1996. G argued that he was owed the s 20 duty by

children's services, which ought to have provided him with accommodation and ancillary support. Having lost at first instance and the Court of Appeal, G appealed to the House of Lords.

Held: Once the criteria of the s 20 CA 1989 duty were fulfilled the Council's children's services department was not entitled to 'side-step' that duty by giving the accommodation a different label, namely under the HA 1996. In the present case, the criteria of the s 20 duty were fulfilled.

And finally…

Much of sch 11 to the **Housing and Regeneration Act 2008** was brought into force on 20th May 2009 (by **SI 2009/1261**). From that date, where a court makes a possession order in respect of a dwelling-house let on a secure, introductory, demoted or assured tenancy, the tenancy will not end until the possession order has been executed. This means that there is no longer a possibility that the defendant tenant might become a "tolerated trespasser" and the practical and legal difficulties associated with the concept of tolerated trespasser will be avoided in future. Moreover, where a possession order had been made in respect of a dwelling house let on a secure, introductory, demoted or assured tenancy, and the tenancy had come to an end before 20th May 2009 but the possession order had not been executed, a new tenancy will be treated as arising on 20th May 2009 between the ex-tenant and ex-landlord provided that:

(i) the premises have been the ex-tenant's only or principal home throughout the period from the termination of the tenancy up to and including the 20th May 2009; and

(ii) the ex-landlord is on 20th May 2009 entitled to let the property.

Part 2 of Sch 11 contains further detailed provisions about the nature and terms of the replacement tenancy that arises. Where the landlord's interest has been assigned to a successor landlord modified provisions apply by virtue of the Housing (Replacement of Terminated Tenancies) (Successor Landlords)(England) Order 2009 (**SI 2009/1262**).

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