



**THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Claim No. HC-2012-000187

BETWEEN:

THE SECRETARY OF STATE FOR DEFENCE Claimant

and –

HELEN NICHOLAS Defendant

JUDGMENT

THE APPLICATION

1. By an Application Notice dated 26th August 2015 (“the Application”) the Secretary of State for Defence (“the Secretary of State”) seeks to enforce an order for possession in respect of property known as and situate at 4 Thorn Avenue, Bushy Heath, Watford, Hertfordshire. WD23 1HL (“the Property”). The Property comprises a house owned by the Secretary of State in which the Defendant, Ms Helen Nicholas, currently resides.
2. The Defendant was given notice of the Application by way of:
 - (1) An email dated 26th August 2015 from the Government Legal Department (“GLD”) to the Defendant’s solicitors; and
 - (2) Service of the Application and supporting documentation by way of first class post on 26th August 2015.

The Defendant's solicitor was also provided with a notice of the hearing fixed for 19th October 2015 by way of a letter from the GLD dated 4th September 2015.

3. Prior to the hearing of the Application the Defendant filed and served a witness statement dated 16th October 2015 to which was exhibited an earlier witness statement made by her dated 14th August 2015. Her solicitor, Mr Mandeep Gill, of ARKrights, Solicitors, also filed a witness statement on behalf of the Defendant dated 12th August 2015. The fourth witness statement of Mr Peter David Williams dated 14th October 2015 was filed and served on behalf of the Secretary of State. This was made further to his three previous witness statements in the proceedings. The Court was also assisted by Skeleton Arguments from Counsel instructed on behalf of the Secretary of State (Mr Jonathan Davey), dated 14th October 2015, and from Counsel instructed on behalf of the Defendant (Ms Amy Knight) dated 15th October 2015. I shall make further reference to their submissions during the course of this Judgment.

THE BACKGROUND

4. The Defendant and her then husband, a serving member of the Royal Air Force (Squadron Leader Nicholas) moved into the Property in June 2005. Their entry into possession of the Property was pursuant to the terms of a licence ("the Licence") granted to Squadron Leader Nicholas by Defence Estates, a body which was part of the Ministry of Defence. The licence agreement concluded with the following acknowledgement by Squadron Leader Nicholas: -

"I have read and agreed to the terms of this Licence. I understand that this Licence is to be granted because my occupation of the property is required for the better performance of my service with the Crown and that this licence is not a tenancy."
5. The Licence was terminable by the licensor on 93 days' notice on certain prescribed events, which included the vacation of the property by Squadron Leader Nicholas on marital breakdown. The marriage did indeed break down, and Squadron Leader Nicholas moved out of the Property at some stage before 2008. On 22nd May 2008 Defence Estates gave notice requiring the Defendant

requiring her to vacate the Property by 24th August 2008. The Defendant contended that the fact that a Crown Licensee has no security of tenure amounted to unlawful discrimination as a result of Article 8 of the Convention of the Protection of Human Rights and Fundamental Freedoms (“the Convention”) taken in combination with Article 14, thereof. As a consequence, it was submitted that the Ministry of Defence was acting unlawfully, and in breach of section 6 of the Human Rights Act 1998 (“the 1998 Act”) in seeking possession against her. In addition, she contended that the notice which purported to terminate the licence was invalid. Both those submissions were rejected by Burton J on 31st July 2013, and the Defendant was ordered to give up possession of the Property and permission to appeal was refused.¹

6. By an Appellant’s notice dated 11th September 2013, and pursuant to Permission to Appeal granted by the Court of Appeal on 13th March 2014² the Defendant appealed upon the following grounds: -

(1) Burton J should have made a declaration of incompatibility. He should also have held that the Secretary of State’s decision to seek possession, the service of the notice to quit, the seeking of a possession order, and the making of a possession order by the Court, were all in breach of Articles 8 and 14 of the Convention, and gave rise to a breach of section 6 of the 1998 Act.

(2) The Judge has been wrong to find that there had been a lawful termination of the interest of Squadron Leader Nicholas in the Property.

7. On 4th February 2015 the Court of Appeal dismissed the Defendant’s appeal, the lead Judgment being that of Lewison LJ.³ The Court of Appeal held as follows: -

¹ [2013] EWHC 2945 (Ch).

² [2014] EWCA Civ 425.

³ [2015] 1WLR 2116.

- (1) That, since the Defendant would have had no security of tenure had the licence been granted by a private sector provider, or by another provider in the public sector, or even had the licensee been granted a shorthold tenancy, she had suffered no disadvantageous treatment, by comparison with persons in relevant similar or analogous situations, so as to breach her rights under Article 14 of the Convention.
- (2) That, since all the formal statutory requirements of the notice to quit had been complied with, the licence had been validly terminated despite the licensee's name not having been included on the notice because, read together with the covering letter, it was clear that it applied both to the licensee and the Defendant. Accordingly, the Judge had been right to make an order for possession.

The Decision of Burton J was accordingly affirmed.

8. In paragraph 2 of the order the Court of Appeal ordered that the Defendant give the Secretary of State possession of Property by 31st March 2015, and also refused her application for permission to appeal to the Supreme Court. Further, the Court dismissed the Defendant's application for an injunction to restrain the Secretary of State from seeking to evict her from the Property, pending the outcome of her Application for permission to appeal.
9. By an application dated 11th June 2015 the Secretary of State applied to the High Court for permission to enforce the possession order as granted in the order of the Court of Appeal dated 4th February 2015 by writ of possession ("the Writ of Possession). On 24th June 2015 Deputy Master Matthews granted permission to enforce the possession order on paper. This was made without notice to the Defendant. The Writ of Possession was executed on 11th August 2015. It is stated by the Defendant that the first she knew of the eviction was when she awoke to find the High Court Enforcement Officers in attendance at her property having changed the locks. The Defendant then applied to set aside the Writ of Possession.

10. On 24 August 2015 Mrs Justice Rose granted the Defendant's application. This was on terms of the Defendant's submissions that: -

(1) She had not been given notice of the Secretary of State's application;

(2) Although the witness statement from the GLD in support of the Application has stated there was no application for permission to appeal presently before the Supreme Court, it had not stated that the time for appealing had been extended pending a decision on legal aid – this was a fact of which the GLD was unaware at the time.

11. However, Mrs Justice Rose refused the Claimant permission to appeal her decision in the terms set out in the "brief reasons for decision to allow or refuse appeal", as follows: -

"The grounds for setting aside the Writ [of Possession] were because of procedural irregularities which, if the [Secretary of State] wants to pursue this matter can be remedied by a renewed application for a Writ [of Possession] properly made. An appeal has no prospect of success."

12. Thus it is in these circumstances that the Application was made pursuant to the indication given by Mrs Justice Rose, as set out above.

13. On 9th October 2015 the Defendant then filed an application for permission to Appeal to the Supreme Court. Counsel for the Defendant has stated that on 12th October 2015 the Supreme Court Office telephoned the Defendant's solicitor and confirmed that fee remission had been granted. Accordingly, as at the date of the hearing on 19th October 2015 there was a pending application for the Supreme Court for permission to appeal. In other words, it is submitted by the Defendant's Counsel that the litigation remains extant, and that there should be a stay of the hearing of the Application pending the Defendant's application for permission. It is submitted that there is a real risk that if a stay is refused, and the Defendant's appeal eventually succeeds, she might well not be in a position

to be reinstated at the Property, and therefore would be denied substantive relief.

14. For his part, Counsel for the Secretary of State submits that it makes no difference that the Defendant has sought permission to appeal to the Supreme Court. He points to the order of the Court of Appeal dated 4th February 2015 where in paragraph 5 the Court contemplated and dismissed the Defendant's application for an injunction to restrain the Secretary of State from seeking to evict her from the Property, pending the outcome of her application for permission to appeal to the Supreme Court.

THE LEGAL BASIS FOR THE APPLICATION

15. The Application is made pursuant to the provisions of CPR 83.13. This provides, inter alia, as follows: -

“Enforcement in the High Court of a judgment or order for possession of land

83.13(1) A judgment or order for the giving of possession of land may be enforced in the High Court by one or more of the following means –

- (a) writ of possession;
- (b) ...
- (c) ...

(2) Subject to paragraphs (3), (5) and (6), a writ of possession to enforce a judgment or order for the giving of possession of any land will not be issued without the permission of the court.

(8) Permission referred to in paragraph (2) will not be granted unless it is shown

- (a) that every person in actual possession of the whole or any part of the land (“the occupant”) has received of the proceedings such notice as appears to the court sufficient to enable the occupant to apply to the court for any relief to which the occupant may be entitled; ...”

16. Several submissions are made by Counsel for the Secretary of State, as follows:
- (1) An essential prerequisite of the enforcement process pursuant to provisions of CPR 83.13 is the grant of an order for possession. In the present case an order for possession was made by the Court of Appeal on 4th February 2015 whereby it was ordered that the Defendant give up possession of the Property by 31st March 2015.
 - (2) CPR 83.13 provides three means by which enforcement may be affected. It is the first such means by which the Secretary of State in issuing the Application seeks possession of the Property, as set out in (a), namely a writ of possession. This will not be issued without permission of the Court.
 - (3) As to the requirement under CPR 83.13(8) that the person in possession of the Property has received “notice of the proceedings”, this has also been complied with. If this refers to the claim for possession by the Secretary of State, then the Defendant has at all times been aware of the claim. Alternatively, if the expression refers specifically to the application for permission to enforce, then, again, it is submitted that the Defendant has had notice of the same. The Defendant was given notice of the Application on 26th August 2015.
17. Counsel for the Secretary of State makes a number of additional points relating to the Defendant’s reliance on her recent application to the Supreme Court for permission to appeal. First the Defendant has already applied to the Court of Appeal for an injunction to prevent her eviction pending any application for permission to appeal to the Supreme Court. The Court of Appeal has rejected that application.
18. Secondly, even if the Defendant were to succeed in obtaining permission to appeal, and even if the Defendant were to succeed on that appeal, the available relief would be a declaration of incompatibility under the 1998 Act with regard

to the legislation in question. It is submitted by Counsel for the Secretary of State that such a declaration would not bear upon the facts of the present case, and therefore would not prevent the Secretary of State recovering possession of the Property. Section 4(6) of the 1998 Act states in terms that a declaration of incompatibility "...does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given, [and] is not binding on the parties to the proceedings in which it is made."

19. Thirdly, as to the Crown Tenancies Bill, to which is reference is made by the Defendant in her notice of appeal to the Supreme Court, two points are made by Counsel. First, the Bill is not an Act of Parliament – it has not as yet been enacted. Secondly, even if the Bill were to be enacted, its provisions would not assist the Defendant in the circumstances of the present case. Counsel refers to paragraphs 5 and 6 of the fourth witness statement of Mr Peter David Williams dated 14th October 2015.
20. For her part, Counsel for the Defendant submits that the High Court has an inherent power to stay its order until an appeal is heard. Further, or in the alternative, it is submitted that the Court has jurisdiction to stay execution pursuant to its case management powers (see CPR 3.1(2)(f)). It is also submitted that the High Court when it is seised of an enforcement application is required to undertake a balancing exercise pursuant to its discretion under CPR 82.13(2). Reliance is placed upon the overriding objective pursuant to CPR 1.1 and the imbalance in the power of the respective parties, and the allocation of court resources. It is also submitted that there will be a serious risk of injustice if the Court does not exercise its discretion in favour of the Defendant and stay the enforcement pending determination of the application for permission to the Supreme Court.
21. In short, the Court is invited to refuse the Secretary of State's Application for Permission for a writ of possession, or, in the alternative, to stay enforcement of the possession order depending determination of the Defendant's application for permission to appeal to the Supreme Court.

CONCLUSION

22. Drawing together the various strands set out above, in the exercise of my discretion I have come to the conclusion that this is a case where the Writ of Possession should be issued to enforce the possession order. My reasons are as follows:
- (1) This matter has a long history. It is now more than 7 years since the Defence Estates gave notice requiring Squadron Leader Nicholas and the Defendant to vacate the Property. A possession order was made by Burton J on 31st July 2013. The Defendant's appeal against that Decision was dismissed in February 2015. The Defendant was ordered by the Court of Appeal to give up possession of the Property by 31st March 2015. She did not do so. The Defendant's application for permission to appeal was dismissed.
 - (2) The Court of Appeal has also rejected the Defendant's application for an injunction to restrain the Secretary of State from seeking to evict her from the Property pending the outcome of her application for permission to appeal to the Supreme Court.
 - (3) I am satisfied that the Defendant has received notice of the proceedings sufficient to enable her to apply to the Court for any relief to which she may be entitled. I am also satisfied that she has exhausted all remedies available to her, and that none such has any merit, as demonstrated by the various judgments and orders referred to above.
 - (4) Accordingly, in my judgment the provisions of CPR 83.13 have been satisfied, and having regard to the circumstances that I have set out above, I consider that it is appropriate to grant permission for such an order to be made.
23. In my discretion I also refuse the application for a stay pending consideration of the application for permission to appeal to the Supreme Court. I agree with

Counsel for the Secretary of State that such an application is, in effect, superfluous, in the context of paragraph 5 of the order of the Court of Appeal dated 4th February 2015 which has already dismissed an application for permission to appeal to the Supreme Court.

24. Accordingly, I make an order that the order for possession of the Property made by the Court of Appeal on 4th February 2015 be enforced by a Writ of Possession.

Edward F Cousins
Deputy Chancery Master

 15th January 2016

