El-Mouka v (1) Ramsy Property Ltd (2) Home Connect Ltd
Romford County Court, 8th August 2025
HHJ Roberts

NOTE OF JUDGMENT

This is the hearing of the Appellant's appeal against the order of DDJ Perry, whom I will refer to as 'the DDJ', sitting at Romford County Court on 3rd March 2025, when he refused to set aside a possession order made in respect of residential premises at Flat 17 City House, 9 Cranbrook Road, Ilford.

Mr Bano appears for the Appellant. I am grateful for his skeleton argument and his supply of section 18 of the Housing Act 1988, and *Hackney v Findlay* [2011] PTSR 1356 and *R v Wandsworth County Court ex p Wandsworth* [1975] 1 WLR 1315.

I granted permission to appeal by an order dated 21st March 2025, which appears in the appeal bundle at p.17-18. I considered that both grounds of appeal had a realistic prospect of success and I set aside the warrant, and enforcement was stayed.

The background is in the Particulars of Claim. Ramsy Property Ltd is named as the Claimant and Home Connect as the Defendant, and it is said at section 4 that the Claimant is legal the proprietor. The parties entered into a one-year 'guaranteed rent' arrangement. That agreement was terminated by a notice to quit served on 1st August 2023.

In April 2019 the Second Respondent, Home Connect, had granted the Appellant and her husband an assured shorthold tenancy of Flat 17, and that standard assured shorthold tenancy agreement in in the bundle.

The First Respondent issued a claim against the Second Respondent, seeking possession, and the Particulars of Claim is dated 22nd December 2023.

Mr Bano makes the point that, in breach of Practice Direction 55A, the Particulars of Claim does not name the Appellant, who was in occupation of the premises, and that was known by both of the Respondents.

In his skeleton at paragraph 7, Mr Bano says:

> "What is curious is that Home Connect and Ramsy Property share the same registered address at Companies House. Both companies also share Mylvaganam Mahadevan as a director. In other words, the litigation appears to have been between two related companies. It may be the case (although this is not at all clear) that the companies have chosen to try to obtain possession by terminating the 'headlease' between themselves as a means of avoiding the statutory protections conferred upon residential occupiers".

By an order drawn up on 8th May 2024, and dated 1st May 2024, DDJ Perry made an order for possession on mandatory grounds.

The Appellant says (and there is nothing to contradict this) that she became aware of the proceedings when she received a warrant of eviction against the Second Respondent 'and any other occupiers'. The warrant is dated 15th November 2024, but didn't actually reach the Appellant until February 2025. The execution date given was 4th March 2025.

The Appellant sought help from London Renters Union. They obtained support from a tenancy rights caseworker at Safer Renting. The Appellant was unable to obtain formal legal representation, but she was assisted by Safer Renting.

The Safer Renting caseworker prepared a statement, which (the Appellant acknowledges) does not comply with Civil Procedure Rules. It deals with the date that the Appellant received notification of the warrant of eviction, and deals with how she acted (as I find) promptly in applying to set it aside. It also refers helpfully to section 18 of the Housing Act 1988. The caseworker helped to file an N244 application notice dated 26th February 2025, and attended the hearing before the DDJ with the Appellant.

The application heard by the DDJ the day before the scheduled eviction and there is a transcript of the hearing before the DDJ at p.19-22.

At the very outset of the transcript, the DDJ said:

> "So this is an application to suspend a warrant which is due to be executed tomorrow. (Can you translate, please?) And I do not have power to make the order that I am being asked to make. The situation is that property owners often grant leases of their properties to management companies. When the landlord wants the property back, he serves them with notice to quit, and that notice is effective to determine not only the tenancy with the management company, but also any tenancies which an agency have granted. The possession order is effective against anyone who is in occupation of the property. So in the circumstances I do not have the power to make the order I am being asked to make".

Ms Saffari-Gohar [the caseworker] asks the DDJ if he had seen the witness statement and he replied:

> "I'm afraid it does not matter […] I have not got the witness statement, no, but the fact is that this is a common situation: I do not have power to make the order I am being asked to make. Legally, I have explained the situation. The tenancy is brought to an end by notice to quit served by the owner of the property to the managing agent and that brings to an end all subtenancies as a matter of law, and they are entitled to possession. A possession order was made by me, I notice, back on 8th May of last year. The order for possession would have provided for possession in 14 days, which it did. The court's power is limited to an extension if it is satisfied that the defendant would suffer exceptional hardship other than for six weeks from date of order and that has already gone.

CASEWORKER: But, because of section 18 of the Housing Act 1988, I would have thought that authorised subtenancies become the direct tenant of the ----

JUDGE PERRY: No; that is not the way it works. The tenancy is determined by notice to quit.

CASEWORKER: So how would section 18 of the Housing Act 1988 come into it, then?

JUDGE PERRY: It does not.

CASEWORKER: It is an authorised subtenancy of the head tenancy.

JUDGE PERRY: It does not come into it. It does not come into it. The possession order is a valid possession order. It is made on a mandatory ground and the landlord is entitled to possession. So I have to dismiss the application and the warrant will go ahead tomorrow.

CASEWORKER: Please may I ask ----

JUDGE PERRY: No; you have not got right of audience, as you correctly said. I am not prepared to hear from you. Thank you all.

MS EL-MOUKA: Have you received the witness statement as well?

JUDGE PERRY: No, I have not received the witness statement, but it is not of any relevance because of the circumstances I have just explained".

There are two grounds of appeal: the DDJ erred in law in respect of CPR 39.3 section 18 of the Housing Act 1988; and 'serious procedural irregualrity'.

I've been referred by Mr Bano to *Hackney LBC v Findlay*, and the judgment of Arden LJ at [24]:

> "Thus, in my judgment, in the absence of some unusual and highly compelling factor as in the *Forcelux* case, a court that is asked to set aside a possession order under CPR 3.1 should in general apply the requirements of CPR 39.3(5) by analogy. This is in addition to, and not in derogation of, applying CPR 3.9 by analogy, as this court did in *Forcelux*, as that provision requires the court to have regard to all the circumstances in any event. However, in my judgment, for the reasons given above, in the absence of the unusual and compelling circumstances of a case such as *Forcelux*, this court should give precedence to the provisions of CPR 39.3(5) above those enumerated in CPR 3.9. Even that is subject to a qualification in the case of a secure tenant. Parliament clearly contemplated in section 85(2) of the Housing Act 1985 that the tenant should have the chance there described of persuading a court to modify an outright possession order. It follows that the requirements of CPR 39.3(5) need not be applied in such a case with the same rigour as in the case of a final order that does not have this characteristic. (It is only fair to the tenant to make the point that District Judge Manners expressly had the possibility of a

subsequent application by. him in mind when she made her order.) Accordingly, the court should not decline to exercise its power to set aside a possession order if in consequence the statutory purpose in section 85(2) would be defeated. Moreover, in my judgment the court can have regard to the wider social context in which these cases come before the courts. Accordingly, in deciding whether the tenant has a good reason for non-attendance the court can in my judgment have regard to the provisions of the Rent Arrears Pre-Action Protocol and to best practice among social landlords. It may conclude that, while in the ordinary case a defendant might have had no proper excuse for not attending a court hearing at which the possession order was made, given best practice of social landlords and the provisions of that protocol, a tenant is in fact able to provide an appropriate explanation".

I find and, it cannot be contested, that the DDJ failed to consider the principles for setting aside because he made up his mind, before even hearing the matter, that the application to set aside was hopeless. The first question that that the DDJ should have addressed was promptness. If he had, he could only conclude that the Appellant had acted promptly. She sought help straight away, and made the application less than 10 days after finding out about the order. Second, whether there was a good reason for not attending. She had a good reason – she was not named as party. She was unaware that possession was being sought. On the third question, the DDJ said that section 18 did not 'come into it'.

Section 18 of the Housing Act 1988 provides:

"(1) If at any time—

(a) a dwelling-house is for the time being lawfully let on an assured tenancy, and

(b) the landlord under the assured tenancy is himself a tenant under a superior tenancy; and

(c) the superior tenancy comes to an end,

then, subject to subsection (2) below, the assured tenancy shall continue in existence as a tenancy held of the person whose interest would, apart from the continuance of the assured tenancy, entitle him to actual possession of the dwelling-house at that time".

Mr Bano has, in the highest traditions, has addressed the court as to when section 18 may not apply. Firstly, there is a subsection (2), but it is of no relevance because it relates to non-assured tenancies. Second, it would not apply if it were being said that the assured shorthold tenancy was unlawful because superior tenancy prohibited such a grant. Again, this is not this case.

With respect to the DDJ, not only did section 18 'come into it' but it provided an unanswerable defence to a possession order being made. A possession order could not have been lawfully granted while the assured shorthold tenancy was in existence.

For these reasons, I find that ground 1 is made out and the appeal must be allowed on that ground.

Ground 2 is serious procedural irregularity – that the DDJ failed to consider the documents filed. In particular, he did not consider the witness statement that was filed on behalf of the Appellant.

I find that the DDJ's order is vitiated by a serious procedural error: failing to read caseworker's statement.

That statement did address the criteria for setting aside a possession order. It explained why the tenant had not attended the hearing when the DDJ had made the possession order on 8th May 2024, it explained the dates and showed that the application was made promptly, and thirdly it dealt with the fact that there were reasonable grounds for setting aside the possession order in section 18 of the Housing Act 1988.

I find that the DDJ's order is vitiated by serious procedural error in failing to read the caseworker's statement ins support of the application because that statement explained why the criteria for setting aside the possession order were met. I allow the appeal on ground 2 in addition.

Regarding remedy, I allow the appeal.

I remind myself that CPR 52.20(2) gives the appellate court all the powers of the lower court. I have found that section 18 gives rise to an unanswerable defence. Second, therefore, the orders of DDJ Perry (both) are set aside and the underlying claim is dismissed.

[Indemnity costs awarded here and below].

Nick Bano
8th August 2025