



9 November 2011

PRESS SUMMARY

Berrisford (FC) (Appellant) v Mexfield Housing Co-operative Limited (Respondent) [2011] UKSC 52

On appeal from [2010] EWCA Civ 811

JUSTICES: Lord Hope (Deputy President), Lord Walker, Lady Hale, Lord Mance, Lord Neuberger, Lord Clarke and Lord Dyson.

BACKGROUND TO THE APPEALS

Mexfield Housing Co-Operative Ltd (“Mexfield”) is a fully mutual housing co-operative association founded by a bank as part of a mortgage rescue scheme with a view to buying mortgaged properties from borrowers in difficulty and letting the properties back to them. The borrowers were required by Mexfield’s rules to become members of the association: [1]. One of the properties acquired in that way was 17 Elton Avenue, Barnet, which Mexfield bought from Ms Ruza Berrisford and let back to her under an “Occupancy Agreement” dated 13 December 1993: [2]. The Occupancy Agreement provided that rent was to be payable weekly in advance at £89 per week (subject to annual increases). The only express provisions of the Occupancy Agreement dealing with its termination provided that it could be determined, under clause 5, by Ms Berrisford giving Mexfield one month’s notice in writing and, under clause 6, by Mexfield “*by the exercise of the right of re-entry specified in this clause but ONLY in [certain specified] circumstances*” which did not include the giving of notice to quit: [5]. Because Mexfield was a mutual housing association the only statutory protection from which Ms Berrisford benefited was a right to (a) not be evicted without a court order and (b) at least four weeks’ notice to quit: [6]. Ms Berrisford remained in occupation and complied with her obligations under the Occupancy Agreement until (apparently through no fault of her own) she fell into arrears with her rent, which she soon paid off. Rather than invoke any of the provisions of clause 6 of the Agreement, Mexfield sought to end Ms Berrisford’s occupancy by serving a notice to quit: [7].

Mexfield applied for summary judgment on the basis that the Occupancy Agreement could not be a valid express tenancy because it was of uncertain duration. However, it said, an implied periodic tenancy arose by virtue of the payment and acceptance of rent since 1993, and, pursuant to well-established principles, Mexfield was therefore entitled to determine such a tenancy by notice to quit: [9]. At first instance, His Honour Judge Mitchell refused Mexfield’s application for summary judgment. On appeal, Peter Smith J, and on appeal from him, the Court of Appeal, accepted Mexfield’s argument and made an order for possession: [10].

JUDGMENT

The Supreme Court unanimously allows the appeal. The Occupancy Agreement takes effect as a lease for 90 years, determinable by Mexfield only on one month’s notice on Ms Berrisford’s death or in accordance with the provisions of clause 6 of the Occupancy Agreement.

Lord Neuberger gives the leading judgment with which Lord Hope, Lord Walker, Lady Hale, Lord Mance, Lord Clarke and Lord Dyson agree, each adding further comments of their own.

REASONS FOR THE JUDGMENT

The first point to consider was whether Mexfield was entitled on a proper construction of the Agreement, to terminate Ms Berrisford's occupancy on one month's notice. For the purposes of interpreting the Occupancy Agreement, the surrounding circumstances were that Mexfield was a co-operative housing association and the purpose of the agreement was to provide Ms Berrisford with a home; these factors together with the mortgage rescue background tends to support the notion that Ms Berrisford's right of occupation was not intended to be precarious: [15]. Despite the fact that the Agreement is expressed to be a tenancy "from month to month", it seems clear from the language of the Agreement that the parties intended that the arrangement should only be determinable pursuant to clauses 5 or 6:[18]-[22]. On a review of the authorities, such an agreement cannot take effect as a tenancy according to its terms as it is for an uncertain duration: [23]-[34]. While there is no apparent justification for the rule that an agreement for a term of uncertain duration cannot give rise to a tenancy and the law is not in a satisfactory state, this rule has been established for many centuries and should not be jettisoned, at least in this case: [34]-[37].

However, before the Law of Property Act 1925 came into force, the common law treated an agreement for an uncertain terms such as the Occupancy Agreement as a tenancy for the life of the tenant, determinable before the tenant's death according to its terms: [38]-[44]. The effect of section 149(6) of the 1925 Act is that the Occupancy Agreement, as a tenancy for life at common law, is to be treated as a term of 90 years determinable on the death of Ms Berrisford, subject to the rights of determination in clauses 5 and 6: [45]-[53]. Accordingly Ms Berrisford retains her tenancy and Mexfield is not entitled to possession: [57].

Although this conclusion makes it unnecessary to consider Ms Berrisford's alternative case in contract, having heard full submissions, Lord Neuberger expresses the view that, if Ms Berrisford had failed in establishing that she had a subsisting tenancy, she would have defeated Mexfield's claim for possession on the ground that she is entitled to enforce her contractual rights as between the parties, albeit that they are not capable of binding the parties' successors as no interest in land or other proprietary interest would subsist: [58]-[68]. Lady Hale does not think it necessary to express an opinion on this alternative case in contract: [96].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html