



12 November 2014

PRESS SUMMARY

Sims (Appellant) v Dacorum Borough Council (Respondent) [2014] UKSC 63 *On appeal from [2013] EWCA Civ 12*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Carnwath, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEALS

This case concerns a secure weekly tenancy of a house granted to a husband and wife, Mr and Mrs Sims, as joint tenants, by Dacorum Borough Council. A secure periodic tenancy can only be brought to an end by a landlord by obtaining and executing a court order for possession. By contrast, there is no such restriction on the ability of a tenant to exercise a common law right to bring a periodic secure tenancy to an end by serving a notice to quit on the landlord. Following the decision of the House of Lords in *Hammersmith and Fulham LBC v Monk* [1992] AC 478 (“*Monk*”), a periodic tenancy held by joint tenants may be validly brought to an end by only one of the joint tenants serving a notice to quit on the landlord. Under the terms of the tenancy agreement in this case it was specifically provided in clause 100 that, if either of the joint tenants wished to terminate their interest in the tenancy, they were required to terminate the full tenancy. Clause 101 provided that Dacorum would then decide whether the other joint tenant could remain in the property or be offered more suitable accommodation.

Mr and Mrs Sims separated, and Mrs Sims served a notice to quit on Dacorum. Dacorum therefore contends that the secure tenancy has come to an end, and Mr Sims must vacate the house. *Monk* was decided before the Human Rights Act 1998 was enacted. Mr Sims contends that his right to a private and family life under Article 8 of the European Convention on Human Rights and his right peacefully to enjoy his possessions under Article 1 of the first protocol to the Convention would be wrongfully infringed if Dacorum’s claim were to succeed.

The issue in this appeal is therefore whether the eviction of Mr Sims would be a wrongful infringement of his rights either:

- (1) under Article 1 of the first protocol to the Convention (“A1P1”); or
- (2) under Article 8 of the Convention.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Neuberger (with whom the other Justices agree) gives the only judgment.

REASONS FOR THE JUDGMENT

In his written case and oral submissions, counsel for Mr Sims retreated from the suggestion that the Supreme Court should revisit the decision in *Monk*, but maintained that the effect of that decision in the present case infringed Mr Sims’ rights under Article 8, or under A1P1

Article 1 of the first protocol to the European Convention of Human Rights [14-19]

Under A1P1, everyone is entitled to “peaceful enjoyment of his possessions” and nobody should be “deprived of his possessions except in the public interest and subject to conditions provided for by law” [14]. Clause 100 provided that the tenancy could be determined by one only of the tenants and Clause 101 provided that if that occurred, Dacorum could decide to permit him to stay in the house. In this case, Mrs Sims determined the tenancy in accordance with clause 100 and Dacorum did consider whether to let Mr Sims remain in accordance with clause 101 and decided not to let him do so. The way in which Mr Sims was deprived of his property was thus specifically provided for in the agreement which created the property, that is, his interest in the tenancy. He lost this property right as a result of the bargain that he himself made. [15-16].

In these circumstances, the only arguments Mr Sims could raise would be either (1) that clause 100 is irrational or so unreasonable as to offend the right to enjoy the property concerned or (2) that Dacorum unfairly or irrationally operated clause 101. However, clause 100 is consistent with the common law principle in *Monk*, and the effect of clause 100 is mitigated by clause 101. The effect of *Monk* for a joint tenant in Mr Sims’ position is harsh. However, when one of two joint periodic tenants serves a notice to quit, someone’s interest has to suffer; if the position were otherwise than it is under *Monk*, there would be a harsh result for the other joint tenant or for the landlord [17]. The Deputy District Judge considered Dacorum’s operation of clause 101, and concluded that procedurally Mr Sims had been accorded ample opportunity to present his case and that Dacorum had carefully considered the position and had fully reviewed its own decision. In light of the Deputy District Judge’s conclusions of primary fact, she reached the only appropriate conclusion she could have reached, namely that Dacorum’s operation of clause 101 was reasonable. In these circumstances, Mr Sims’ case based on A1P1 fails. [18-19].

Article 8 of the European Convention of Human rights [20-25]

Under Article 8.1 of the Convention, everyone is entitled to “respect for his private life [and] his home” and Article 8.2 provides that there should be “no interference by a public authority with the exercise of this right” save if is “in accordance with the law”, “necessary in a democratic society”, and “in the interests of ... the economic well-being of the country...or for the protection of the rights or freedoms of others” [20]. Mr Sims was entitled to raise the question of the proportionality of Dacorum’s pursuit of the claim for possession of the house in light of previous decisions of the House of Lords and Supreme Court. However, proportionality does not assist Mr Sims. The Deputy District Judge carefully assessed Dacorum’s decision-making process and she was plainly correct that it was lawful and proportionate to make an order for possession in this case [21].

Service of the notice to quit put at risk Mr Sims’ enjoyment of his house which had been his family home for many years. However, Mr Sims’ Article 8 rights were accorded full respect, given that (1) his tenancy was determined in accordance with agreed contractual terms, (2) he received the benefit of clause 101, (3) under the Protection from Eviction Act 1977 he could not be evicted with a court order, (4) the court would have to be satisfied that Dacorum was entitled to evict him, and (5) the court could not make such an order without permitting him to raise a claim that it would be disproportionate to evict him [22-23]. Accordingly, Mr Sims’ case based on Article 8 fails [24-25].

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.uk/decided-cases/index.html