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Property Litigation Update

Succession and Ground 16 – A Final Nail in the Coffin?

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Local authorities and any other landlords who have secure tenants will be aware that over the past few years the process of obtaining possession using Ground 16 of Schedule 2 of the Housing Act 1985 has become a good deal more difficult in light of the decision made by the Court of Appeal in *Wandsworth LBC v Randall* [2007] EWCA Civ 1126. However, a case decided in March 2009 has probably made obtaining possession under Ground 16 in some cases even more difficult.

The succession rules are such that where a secure tenant dies and there is a person qualified to succeed to the periodic secure tenancy (usually a family member), the tenancy is effectively transferred to that successor. Often the property which the successor tenant succeeds to is more extensive than is reasonably required by the new tenant and his family - a 5 bedroom property for a successor son and his wife, for example. In these circumstances, the landlord can try to recover possession using Ground 16 if it can prove that the property is larger than the tenant needs and if it provides alternative accommodation that is reasonably suitable for the tenant and his family. Crucially, pursuant to section 84 of the Housing Act 1985, the Court also needs to be satisfied that it is reasonable to make the possession order. And it is this need to consider 'reasonableness' that has recently caused difficulties for Bracknell Forest Borough Council.

The facts of *Bracknell Forest Borough Council v Green* [2009] EWCA Civ 238 are fairly straightforward. The successor tenant, Mr Green, was born in 1959 and had lived in the same three-bedroom house all his life. Since 1984, his sister had also lived there with him. After the death of Mr Green's mother, he succeeded to the tenancy in 2005. In 2006, the local authority served a notice on Mr Green seeking possession pursuant to Ground 16.

Mr Green and his sister were offered four alternative properties by the local authority, but they declined to view any of them.

Possession proceedings were commenced. At the first instance Mr Recorder Flather QC found that the accommodation was more extensive than that reasonably required by the tenant and further stated that one of the properties which Mr Green and his sister had been offered was 'suitable'. But the Recorder refused to make a possession order on the basis that it was not reasonable to do so, due to what he believed were the unusual facts of this case. The Recorder considered the reasons why the local authority wanted possession – which can be adequately summed up as being the pressure on housing stock generally, and particularly on larger properties - and then weighed this against the reasons why Mr Green wanted to stay with his sister in the property. Amongst other things, the Recorder looked at the length of time Mr Green and his sister had lived in the property, at what the Record found to be a genuine emotional attachment Mr Green and his sister had with the property. The Recorder concluded that the property provided the tenant and his sister *'with a profound sense of security'* and that forcing them out of the property would *'permanently destabilise'* them.

The local authority were given permission to appeal the decision to the Court of Appeal. The appeal was dismissed.

In summary, the judges in the Court of Appeal reminded themselves that they should be slow to upset the

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Recorder's evaluation of the reasonableness of making a possession order, unless it was clear that he had acted under an error of principle or his decision was obviously wrong. The statutory requirement which the court had to consider was whether it was reasonable to make the possession order, and in making his decision the Recorder had to consider all the relevant circumstances. The balance reached between the parties was part of the judicial process and was for the Recorder alone.

The Court went on to find that, taking into account all the factors relevant to the reasonableness of making a possession order, the Recorder had been entitled to conclude on the facts of the case that the combination of factors relied on by the local authority, including the offer of suitable accommodation, was outweighed by the length of the tenant's occupation of the property, his personal and family circumstances, his age and the "permanently destabilising" effect of a possession order on him. Moreover, the terms of the 1985 Act expressly contemplated cases in which the tenant's personal circumstances could outweigh the pressures on public housing and other factors.

The facts of this case may be slightly out of the ordinary, given in particular that Mr Green had lived in the Property for over 50 years. But they are far from being unique. This decision is likely to prove problematic for landlords. Ground 16 cases may well be met with Defendant tenants claiming to have this strong bond with the family home, but when does this bond become so significant that it would not be reasonable to evict? What about tenants who have been in residence for 40 years? 30 years? Would 20 years or perhaps less be potentially sufficient to defeat a possession claim?

The best advice for local authorities is to consider the personal circumstances of each successor tenant before issuing Ground 16 proceedings. This is of course in addition to investigating the possibility that a tenant may attempt to increase the occupancy level of the property prior to a case being heard, in light of the *Randall* decision.

The decision in *Green* is not a killer blow to Ground 16. There will still be cases where Ground 16 can successfully be used to obtain possession. But there can be little doubt that the effectiveness of Ground 16 is diminishing, and at a time when the pressure on social housing is increasing, this could present major difficulties for landlords in the long-term.

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