

## Recent Case Law Updates

### Possession Take Two – A response from the Appeal Courts

The Court of Appeal has confirmed in the case of *London & Quadrant Housing Trust v Ansell*, that a landlord can bring a second set of Possession proceedings where the previous Suspended/Postponed Possession Order is no longer enforceable. Previously, the law on this point was somewhat unclear.

#### Background

Ansell occupied the Premises under the terms of a Secure Tenancy. Due to arrears of rent the Trust brought Possession proceedings and in February 2001 the County Court granted an Order for Possession, suspended on terms of payment for rent and an amount per week towards the arrears and issue fee of £120.

Within a month of the Order Ansell had defaulted in the payment terms and breached the Order, the consequence of this being that the Secure Tenancy ended. In spite of this failure the Trust agreed further terms with Ansell and allowed her to remain in the property, effectively 'tolerating' her trespass, rather than seeking to enforce the Order by Warrant.

Later, payments of Housing Benefits and payments towards the arrears appeared to regularise and in October 2004, due to a pre-payment (as opposed to the usual payment in arrears) of Housing Benefit, Ansell's rent account went into credit. In so doing, the 2001 Possession Order became unenforceable (the Trust was unable to issue the Warrant) because the debt was cleared. Notably the Order made express mention of this issue stating, "When you have paid the total amount mentioned the Claimant will not be able to take any steps to evict you as a result of the Order".

#### The Second Chance

When the Trust were later faced with allegations of anti social behaviour being perpetrated by Ansell, her family and associates, it issued further Possession proceedings. The Trust brought the Claim on the basis that Ansell, having been a Tolerated Trespasser since breaching the 2001 Order, was now a 'Trespasser' because the Trust no longer tolerated her occupation. Additionally the Trust also pleaded in the alternative, that if a Tenancy had been created by conduct, it would have been a default Tenancy (Assured Shorthold Tenancy) and the Trust, having previously served a Section 21 Notice, was entitled to a mandatory Order for Possession.

At first instance the District Judge ordered a Trial on the preliminary issue of the Defendant's occupation status – was she a Tolerated (now an intolerated) Trespasser? If not, then what was she?

Ansell, concurred that she was a Tolerated Trespasser but denied a new Tenancy had been created and in fact argued that the Order of 2001 was still enforceable, meaning that the Trust should pursue recovery of Possession by issuing a Warrant (enforcing the 2001 Order) rather than via the fresh proceedings. In adopting this approach we believe that her intentions were to be able to pursue a retrospective Application to have her Secure Tenancy revived under the powers of extended discretion available to the Court whilst the Order for Possession remained extant.

Clearly Ansell's chances of remaining in the property were better as a Secure Tenant facing a Claim for Possession on discretionary grounds, rather than being a Trespasser, where the Order is mandatory.

Alternatively, whilst this extended discretion was available to the Court, Ansell could have sought to make an Application to Suspend the Warrant upon the Trust seeking to enforce the Order.

The District Judge was satisfied that the Order of 2001 had been satisfied and as such the Trust could not enforce upon it. Further, that the Trust were entitled to pursue the second Claim. An Order for Possession was made. Ansell appealed.

### **The Appeal**

The Court of Appeal dismissed Ansell's Appeal for the same reasons as the Judge at first instance, also holding that it must be right that the Trust was able to pursue the second Claim as otherwise Ansell would have been a perpetual Trespasser – without a Tenancy and without the Trust being able to recover Possession – clearly not Parliament's intention!

**Jason Hobday**

## Appeal Court Makes its Decision on Knowsley v White

The Housing Law world has been waiting with baited breath for the Court of Appeal to make its decision in the case of *Knowsley Housing Trust v White*. This week, the Judgment has been issued subject to any final amendments that either party to the proceedings or the Court of Appeal wishes to make.

Unfortunately, it is not possible at the present time to forward a copy of the Judgment, however I am able to give details as to the essence of the case and the impact for the Firm's clients. The table below highlights the key events that took place leading up to the Appeal Court's decision:

Julie White was granted a Secure Tenancy	<b>19.04.93</b>
The Premises were part of a large scale voluntary transfer	<b>15.07.02</b>
Possession proceedings commenced for rent arrears	<b>15.04.04</b>
Absolute Order for Possession made with enforcement postponed	<b>08.06.04</b>
Application to exercise preserved right to buy	<b>28.01.05</b>
Notification no entitlement	<b>23.02.06</b>
Application for Declaration that W still an Assured Tenant	<b>08.05.06</b>
Application dismissed	<b>14.09.06</b>
Appeal by White	<b>14/15.03.07</b>
Appeal dismissed	<b>02.05.07</b>

The Court considered the impact of the Possession Order that had been made on the 8<sup>th</sup> June 2004 and which included the following terms:

- 1) *The Defendant must give the Claimant Possession of the property on or before the 6<sup>th</sup> July 2004.*
- 2) *This Order is not to be enforced so long as the Defendant pays the Claimant the rent arrears and the amount for use and occupation and costs totalling £2,250 by payments set below in addition to the current rent.*
- 3) *Payments required are £5 per week with the first payment being made on or before the 14<sup>th</sup> June 2004.*

As will be appreciated, this was the form of Order that was considered by the Court in the well-known case of *Harlow v Hall*.

As to the practical impact that this decision by the Court of Appeal will have, I would summarise as follows:-

- The position of Assured and Secure Tenancies is the same insofar as Absolute Orders for Possession are concerned and I can't think it would be otherwise where the form of Order is in the old Suspended Order format.
- A large number of residents occupying RSL Properties will be Tolerated Trespassers and will not have Tenancies.
- Anti-Social Behaviour can still be addressed notwithstanding the lack of a Tenancy.
- An ASBI can still be obtained against a Non-Tenant.
- If Possession is sought, there are then the following options:-
  - If the Order is enforceable because payments are in arrears a Warrant can be issued and if a Stay Application is made then the procedure set out in *Sheffield v Hopkins* can be used.
  - If payments are up to date an Application can be issued to Vary the Order for Possession by altering the enforcement provision.
  - If the Order has been satisfied and all arrears and costs have been cleared, Possession proceedings can be issued on the dual basis of former Tenant holding over/Assured Shorthold Tenancy per the case of *London and Quadrant v Ansell*.

A more detailed practice note will be prepared once the Court has received any amendments from the parties involved.

If you would like to get in touch with regard to this judgement or any aspects of either *Harlow & Hall* or *Sheffield & Hopkins* and how they affect your cases, please do so.

**Peter J Whitehead**

#### **And finally..... Welcome to our new solicitor**

Matthew Wilson joins the Firm from Bury Law Centre where he was initially seconded and subsequently took up a role in their Housing Litigation Team.

Matthew (or Matt as he prefers) originally comes from Doncaster and studied Law at Huddersfield. Apparently he "always wanted to be a solicitor" and controversially has a season ticket for Manchester United. Space is limited here but look out for more information about Matt in our next newsletter.

