

MANCHESTER CITY COUNCIL v PINNOCK

On 3 November 2010, the Supreme Court (formerly known as the House of Lords) gave judgment in the case of Pinnock.

Mr Pinnock was a demoted tenant with limited security. Manchester City Council was seeking possession based on various incidents of anti-social behaviour committed by Mr Pinnock's sons in or in the immediate vicinity of the property during the year in which the demotion order was in force.

Mr Pinnock sought to defend the claim for possession, raising an Article 8 defence.

Article 8

Article 8 provides:-

- (i) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (ii) There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and as necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime for the protection of health or morals, for the protection of the rights and freedom of others.

The House of Lords has previously considered whether or not an Article 8 defence can be raised in the cases of *Leeds City Council v Price* and *Kay v London Borough of Lambeth* and *Doherty v Birmingham City Council*. The House of Lords concluded that it was not possible for a trespasser to defend a claim brought by the lawful owner by raising an Article 8 defence. The Defendant could either claim that the law was incompatible with the Human Rights Act or bring a public law defence in the County Court to challenge the Local Authority's decision on the basis e.g. it was a decision no reasonable Local Authority would make.

Mr Kay applied to the European Court of Human Rights. Judgment was given on 21 September 2010. The European Court of Human Rights found that Mr Kay's Article 8 rights had been infringed because it was not possible at that time to challenge the decision of a Local Authority to seek a Possession Order on the basis of the alleged disproportionality of that decision in the light of personal circumstances.

The English Courts are not bound to follow every decisions of the European Court of Human Rights. They would usually follow a clear and constant line of decisions.

Decision in Pinnock

The Court concluded in Pinnock that any person at risk of being dispossessed of his home at the suit of the Local Authority should have the right to raise the question of proportionality of the measure, and to have it determined by an independent tribunal in the light of Article 8, even if his right of occupation under domestic law has come to an end. Judicial review or a public law defence does not afford sufficient protection of the Defendant's Article 8 rights.

If the court concludes that it would be disproportionate to evict a person from his home notwithstanding the fact that he has no domestic right to remain there, it would be unlawful to evict him for as long as this conclusion persists. This may be for a specified period or until a specified event occurs or a particular condition is satisfied.

The test to be applied by the court is whether the eviction is a proportionate means of achieving a legitimate aim.

Where a person has no right in domestic law to remain in occupation of the property the proportionality of making an Order for possession, the Authority's ownership rights are of real weight and there is a very strong case for finding an order is proportionate. Also relevant will be the Local Authority's duties in relation to the management of its land and resources, the development of land, the need to remove the source of nuisance to neighbours.

In the case of trespassers, there may well be an argument regarding whether after a relatively short period of occupation, the land constitutes the person's "home" for the purposes of Article 8.

The court indicated that if an Article 8 point is raised, the court should initially consider it summarily and if satisfied that even if the facts relied on are made out, the point would not succeed, the defence should be dismissed. It is only if the court is satisfied that the issues raised could affect the final Order that the court should entertain the defence.

In exceptional circumstances an Article 8 defence may justify granting an extended period for possession, suspending the Order for possession on the happening of an event or even refusing an Order altogether.

Issues such as mental illness, physical or learning disabilities, poor health or frailty will be relevant factors in an Article 8 defence and the issue may require the local authority to explain why they are not securing alternative accommodation in such cases.

The case of Leeds City Council v Hall will be heard by the Supreme Court week commencing 22 November 2010, considering Article 8 defences in the context of introductory tenancies and accommodation provided to homeless persons. It is anticipated that additional guidance will be provided.

Conclusions

This case is highly significant in any case where the occupant has no legal right to remain on land or in a property.

In the case of travellers, it is likely that Article 8 defences against a claim for possession will be raised in the County Court in addition to any public law defence.

Claims are listed for a short initial hearing. Should the Defendant attend and indicate that he wishes to raise a public law and / or Article 8 defence, it is likely that the court will give directions requiring the Defendant to file a defence, file further evidence and list the case for a 1 day hearing.

An Article 8 defence is a further means of defence against claims for possession. The court is required to complete its own assessment of proportionality, balancing the rights and duties of the local authority as against the personal circumstances of the individuals and substituting its own view. In contrast a public law defence/Judicial requires the court to consider whether the council has considered all the relevant factors, considered any irrelevant factors, consider whether this is a decision that no reasonable Local Authority could reach, with the court recognising that there may be a range of reasonable decisions which would not be subject to a successful challenge.

The risks associated with such claims have been fully detailed in the advice provided by Legal previously. It is likely that there will be delays in obtaining possession and increased legal costs.

It remains to be seen how the court will deal with such defences and whether an Article 8 defence will, in cases, tip the balance in favour of the defendants, resulting in the claim being dismissed or granting an extended period for possession or suspending the order for possession on the happening of an event.

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