



Neutral Citation Number:[2020] EWHC 1532 (QB)

BM00027A

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM APPEALS CENTRE

12 June 2020

Before :

MR JUSTICE CAVANAGH

Between :

**BROMFORD HOUSING ASSOCIATION
LIMITED
- and -
MR KEVIN NIGHTINGALE
-and-
MRS CAROLINE NIGHTINGALE**

**Claimant/
Respondent**

**Defendants/
Appellants**

David Renton (instructed by **Shelter Legal Services**) for the **Appellants**
Aadhithya Anbahan (instructed by **GC Law**) for the **Respondent**

Hearing dates: 28 April 2020

FURTHER CONSIDERATION OF STAY

Mr Justice Cavanagh:

1. On 28 April 2020, I heard a rolled-up application for permission to appeal in this matter, with appeal to follow if granted. The hearing took place remotely via Skype for Business.
2. On 28 May 2020, I issued a ruling about the timing of further steps in this appeal, including the hand-down of my judgment, in light of the stay on possession proceedings in PD 51Z and the judgments of the Court of Appeal in **Arkin v Marshall** [2020] EWCA Civ 620 and **London Borough of Hackney v Okoro** [2020] EWCA Civ 681. Both of these judgments were handed down after the hearing of the appeal in the present case.
3. In my decision on 28 May 2020, I decided that (1) I would not hand down judgment in this appeal until after the stay imposed by PD 51Z is lifted; (2) I would take up the offer of Mr Renton, counsel for the Appellant, to notify the Court promptly once a date has been set for lifting of the stay and (3) the parties would be given 14 days from the lifting of the stay to lodge any further written submissions (or to indicate to the Court that they do not intend to make any further written submissions or to apply for a further oral hearing – though I do not encourage this last course of action).
4. The stay in PD 51Z has been extended to 23 August 2020.
5. Yesterday, the parties helpfully drew my attention to the judgment of Freedman J in **Copeland v Royal Bank of Scotland plc** [2020] EWHC 1441 (QB), which was handed down on 4 June 2020. The parties were in agreement that this case was in relevant to the present case and asked that it be placed before me. Neither of the parties invited me to take any particular step in light of the judgment in **Copeland**.
6. **Copeland** was an application for permission to appeal against a refusal to set aside a possession order, with appeal to follow if successful. In **Copeland**, the oral argument took place in February 2020, before PD 51Z was issued and before the stay on possession proceedings was imposed, but the judgment had not been handed down at the time when the stay came into force. Freedman J decided to lift the stay under CPR 3.1 for the narrow purpose of issuing the reserved judgment and making consequential orders, but also ordered that any possession order would be stayed under PD 51Z, for however long PD 51Z applies, and that he would grant an extension of time to bring a second appeal until after PD 51Z had ceased to apply.
7. I have considered whether, in light of **Copeland**, I should reconsider the order that I made on 28 May. I have decided that I should not do so. There is a key difference between **Copeland** and the present case, which is that the hearing in **Copeland** took place before the stay was imposed by PD 51Z. It just happened to be the case that the reserved judgment in **Copeland** had not been handed down at the point at which the stay came into effect. In the present case, in contrast, the stay was in force at the time when the appeal hearing took place. If the parties and I had enjoyed the benefit of seeing the Court of Appeal judgments in **Arkin** and **Okoro** at the time of the hearing, the proceedings would inevitably have been stayed and the hearing would not have taken place. In those circumstances, I think that it is important, and in keeping with the spirit of the stay, that the parties are given a further opportunity make submissions after the stay is lifted and before I hand down my judgment. It may be that they decide that there is no need to do so, but, nonetheless, they should be given that opportunity. There was no such need in **Copeland** because the appeal hearing had concluded before the stay was imposed.

8. In reality, the practical effect of course of action that I have decided upon is not very different from that decided upon by Freedman J in **Copeland**. The only consequence is that, after the stay has been lifted, there will be a further short delay whilst the parties are given the opportunity to make further submissions, before I hand down my judgment.
9. Accordingly, the order that I made on 28 May 2020 remains in place.