Judgment Approved by the court for handing down

Neutral Citation Number: [2020] EWHC 2372 (QB)

Case No: F00LE233/BM00019A

In the High Court of Justice
High Court Appeal Centre Birmingham
On appeal from the Leicester County Court
Order of HHJ Hampton dated 10 January 2020
County Court case number: F00LE233
Appeal ref: BM00019A

Birmingham Appeal Centre
Priory Courts, 33 Bull Street,
Birmingham B4 6DS

Date: 04/09/2020

Before :

MR JUSTICE MARTIN SPENCER

- -

Between :

NAVIT SAVADAS KESHWALA (1)	**Claimants/**
KIRAN MAHESH SHARMA (2)	**Appellants**
- and -	
SHARDA BHALSOD (1)	**Defendants/**
JAYSHREE BHALSOD (2)	**Respondents**

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Mr Soofi Din (instructed by **Bond Adams LLP**) for the **Claimants/Appellants**
Mr Stephen Taylor (instructed by **Rich and Carr Solicitors**) for the **Defendants/Respondents**

Hearing dates: 16 July 2020

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APPROVED JUDGMENT

MR JUSTICE MARTIN SPENCER

Covid-19 Protocol: this judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be at 10.30am on 4 September 2020.

Judgment Approved by the court for handing down

MR JUSTICE MARTIN SPENCER :

Introduction

1. By permission granted by myself on 5 June 2020, the Claimants appeal against the decision of Her Honour Judge Alison Hampton dated 10 January 2020 whereby she refused to grant the Claimants' relief against forfeiture in respect of the lease of which the Claimants were tenants and the Defendants' landlords.

Background Facts

2. The background to this matter is fully set out in the admirable judgment of Judge Hampton which it is unnecessary for me to repeat in full. The salient facts are as follows:

   (i) On 12 March 2008 the Claimants entered into a lease of 89 Narborough Road, Leicester, for a term of 20 years: the landlord and freeholder was one Rachel Jane Rowley; the Second Claimant, Mr Kiran Sharma, has always been the lessee with the main interest in, and control of, the premises.

   (ii) The property consisted of a lock-up shop on the ground floor with living accommodation above, on one of the main arterial roads leading into the city centre in an area of either secondary or tertiary mixed commercial and residential properties.

   (iii) The Defendants bought the freehold from Ms Rowley in April 2015 and thereby became the Claimants' landlord.

   (iv) In July 2015 the rent fell into arrears for the first time and the Defendants, who at all times acted through Mr Anil Bhalsod, forfeited the lease by re-entry pursuant to clause 5 of the lease which provided:

   > "If the rent or any part of the rent is unpaid for 21 days, after any of the days on which it is not paid, whether the same shall have been formally demanded or not, it will be lawful for the landlord to re-enter the property or any part of it in the name of the whole and to again repossess and enjoy thenceforth the property as if this lease had not been made, without prejudice to the right of action or remedy of the landlord in respect of any antecedent breach of any covenants or agreements by the tenant."

   (v) On that occasion the claimants applied for relief from forfeiture promptly and this application was resolved by a consent order on 10 November 2015 whereby the figure in arrears (£5,000) and costs were to be paid and the Claimants were able to resume possession.

   (vi) Unfortunately, the business run from the premises (a travel agency) failed and there was an attempt to convert the residential part of the property into student lets, but this was without the necessary licence from the City Council which brought an enforcement action.

(vii) In the course of 2018, the second Claimant planned to open a hairdressing business in the property and paid significant sums of money to refurbish the premises.

(viii) The second Claimant apparently entrusted the payment of the quarterly rent of £2,000 to his sister and, for reasons which are not material, she mistakenly paid only £1,500 in June 2018 leaving the rent £500 in arrears; this mistake was not appreciated by anyone at the time except Mr Bhalsod.

(ix) On 1 September 2018, the landlords' property agents, Andrew Granger, issued an invoice for the rent for the September quarter which was due on 29 September 2018: that invoice made no reference to the outstanding £500.

(x) On 13 September 2018 the Defendants effected forfeiture by re-entry using the services of bailiffs. The second Claimant then became aware that there had been a shortfall in the rent and there had been a re-entry.

(xi) The second Claimant arranged for the payment of the arrears of £500 to the agent, Andrew Granger, and on 24 September 2019 he wrote an email to a Mr Skipworth of Andrew Granger:

> "You have failed to tell me how to pay rent. Accordingly, I am now forced to make an application to the court. I have paid £500 to your bank account and this quarter's rent is £2,000 and I have still not had a response from you. This is my fourth email I am sending to you."

The second Claimant also indicated his readiness to pay the quarterly rent due on 29 September 2018.

(xii) On 14 October 2018 Mr Skipworth wrote, copying in Mr Bhalsod:

> "I am sorry for not replying. I have specific instructions from my client not to take any action as he is dealing with the matter. Please forward any correspondence to Mr Bhalsod."

(xiii) Unfortunately, there was then no contact between the Claimants, or anyone on their behalf, and the Defendants or Mr Bhalsod, a delay which is unexplained. The next attempted contact was on 25 January 2019 when solicitors to the Claimants, Messrs Bond Adams, sent an email to Mr Bhalsod indicating the Claimants' willingness to pay the outstanding quarterly rents which would have been due on the September and December quarter days but for the forfeiture, and explaining that there had been some delay in lodging the claim for relief from forfeiture as signatures had needed to be obtained from India, and stating "we trust you have done nothing to disturb our client's property interest." Even more unfortunately, there was an error in the email address so that this email was never received by Mr Bhalsod.

(xiv) On 4 February 2019, the Defendants re-let the commercial and residential parts of the property in separate leases: the residential part on an assured short hold tenancy and the commercial premises on a three-year lease.

(xv) On 26th February 2019, the Claimants issued their claim for relief from forfeiture.

The Hearing before Judge Hampton

3. The claim for relief from forfeiture came before Judge Hampton on 9 January 2020 when she heard evidence from the second Claimant, Mr Sharma, his uncle, Mr Mistry, and Mr Anil Bhalsod. It is fair to say that the learned judge was, to a degree, dissatisfied with the evidence on both sides. So far as Mr Bhalsod was concerned, she considered that his decision to forfeit a 20 year lease which still had some 10 years to run for £500 arrears which had only been in arrears for a short period of time to have been a very harsh decision, albeit lawful. She said:

> "73. I consider it to be harsh business practice to forfeit for only what is a fraction of the rent, when your agent has already furnished the invoice for the following quarter's rent without making any reference to the arrears and without giving the tenant any notice of what you are about to do."

After the forfeiture, the learned judge referred to Mr Bhalsod's "harsh and unyielding attitude" in making life difficult for the Claimants to make good the default by withdrawing instructions from the agents with whom the Claimants had dealt throughout, without informing the Claimant of this and then in failing to respond to any informal approaches through friends or relatives of the Claimant (including Mr Mistry).

4. So far as the second Claimant is concerned, he tried to run a case that the premises had not been occupied for the purposes of a business so that the case came within the Landlord and Tenant Act 1987 rather than the Landlord and Tenant Act 1954 so that formal notice of forfeiture was required. The learned judge had no difficulty in rejecting this argument. She referred to the Claimants' conduct in unlawfully sub-letting the residential premises as student lets, the lack of any correspondence from 14 October 2018 to 25 January 2019, and the delay in making the application for relief from forfeiture.

5. At the hearing, the Defendants argued that the way in which the second Claimant had managed the property in not running an active business there, or not attempting to do so until very shortly before the forfeiture, was a reason why relief should not be granted. They also raised the unsuccessful attempt to let the residential part of the premises as a house in multiple occupation without the required license. They further argued that the court in fact had no discretion to grant relief from forfeiture because of the Claimants had failed to establish the participation in the proceedings of the first Claimant, it being trite law that, with a joint tenancy, if there is a forfeiture, it is necessary for both tenants to apply for relief. This argument was rejected on the basis that it had not been properly pleaded.

6. At the heart of the learned judge's decision not to grant relief from forfeiture was the delay on the part of the Claimants. She made it clear that, had the Claimants made a prompt application, she would have granted it, saying:

> "31. The claimant says, and I accept in the circumstances, that quarter's rent would have been paid had it not been for the forfeiture, the defendants having then taken the decision to re-enter the premises without notice, using bailiffs, and in the bailiffs' notice not stating why they were re-entering the premises. If the claimants had made a prompt application at that stage for relief from forfeiture, it is highly likely that the court would have granted such an application."

Again, at paragraph 119 of the judgment, the learned judge repeated that, if the application for relief had been made promptly or if the Claimants had at least forewarned the Defendants promptly in September or October 2018 that there would be an application for relief from forfeiture, she had "no doubt the court would have had no difficulty in granting relief."

7. The learned judge was referred by Mr Din, counsel for the Claimant, to a number of authorities on the relevance of delay to claims for relief from forfeiture and in particular *Pineport v Grangeglen* (referred to in paragraph 18 below) where relief from forfeiture was granted to a defaulting tenant 14 months after the forfeiture had been effected. However, the facts of that case were, she found, very different to the present case, *Pineport* involving the lease of an industrial unit for 125 years at a low rent and a considerable premium where the leasehold interest was valued at £275,000. Judge Hampton directed herself that, in deciding whether to grant relief from forfeiture, she was exercising an equitable discretion and she explained her reasons for refusing to exercise that discretion in favour of the claimants at paragraphs 111 to 119 of her judgment as follows:

> "111. Having considered the question of relief from forfeiture, I find, as I observed in the course of argument, that I'm not really dealing with the situation where it is a question of which of the arguments put before me I find the most appealing, but rather dismally, it is which of the arguments I find the least unappealing.
>
> 112. I have given great thought to the matter. I have considered the learning that is found in Woodfall, the cases that have been put before me and the arguments that have been rehearsed. The delay on the part of the claimants has not been properly explained. I can understand why they did not commence the proceedings formally, but that does not explain why they did not put the defendants on formal notice, either by a solicitors' letter or by some form of formal letter sent to the addresses recorded at the Land Registry, making it clear that once the first claimant had been tracked down, an application for relief from forfeiture would follow and that if the defendants parted with possession of the property, they did so at their peril.
>
> 113. I also consider the background about the first claimant's willingness to cooperate with the second claimant. He has been willing to cooperate in principle, but it is quite clear, both from his witness evidence and from the exchange of correspondence, that he wishes to have nothing to do with the property. He certainly does not want to bear any liability.
>
> 114. I also note the second claimant's management of the property has not always been very efficient. There was the misguided attempt to let as a house in multiple occupation. As I have said, I have left such matters out of account with regard to relief from forfeiture, but it is part of the background. The second claimant put the first claimant at risk of a penalty from the Local Authority. More importantly, there was the difficulty between him and the first claimant because the second claimant must have failed to pay the business rates in time so that the bailiffs turned up at the first claimant's property. This prompted the rather hostile exchange of correspondence in September 2018 between the claimants' solicitors, and that again underlies the first claimant's response and reaction to any potential liability

in relation to this property. Of course, if I grant relief I cannot do anything to absolve the first claimant from his responsibility, should that arise, under the lease.

115. These proceedings themselves demonstrate the difficulties that there are in contacting the first claimant when his presence is required. He has been absent in India at a crucial period and he has not returned, notwithstanding he has provided a witness statement. It was hoped that his evidence would be led orally at trial and it has not been.

116. Set against that, I find it a very harsh decision to have acted to forfeit the premises with 10 years of the residue of the lease to run, for arrears of only £500. Each party criticises the other party's principal witness for not being truthful, and I have taken that into account. I find Mr Bhalsod to be a most unimpressive witness. I find him to be evasive. I find that he has manipulated the situation to his advantage, but he has not done so unlawfully.

117. The second claimant himself has changed his position from saying he did not run a business, to saying he did run a business, but now arguing that the premises were not being used for business purposes, but then seeking damages, he says, for the unlawful forfeiture and the money that he has lost in refurbishing and re-equipping the premises.

118. However, the claimants' inactivity between October and January is not sufficiently explained. I am not comfortable with the inconsistencies that there are in the first claimant's position as demonstrated by the correspondence. His demonstrated wish to absolve himself of any liability is inconsistent with his purported support of the second claimant in this application for relief. There is discomfort in imposing on the first claimant a liability he plainly does not want, and on the defendants a tenant who is difficult to get hold of and who does not wish to have any liability in respect of the property. If the second claimant gets into difficulties again, must have been in some sort of difficulty not have paid the business rates in the summer of 2018, the defendants are left with the other reluctant tenant who may not be in the jurisdiction, if any need arises to enforce any financial default on the part of the second claimant.

119. Taking all those matters into account, and as I have said, if this application for relief had been made promptly or at least the claimants had forewarned the defendants promptly in September or October 2018 that there would be an application for relief from forfeiture, I have no doubt the court would have [had] no difficulty in granting relief. In the circumstances of the case for the reasons that I have discussed, I find that although the matter is finely balanced, it is not appropriate to grant relief from forfeiture in this case, and the claimants' claim is dismissed."

The Appellant's Arguments on Appeal

8. In their Notice and Grounds of Appeal, the Claimants assert that the refusal to grant relief from forfeiture was wrong in law. It is stated that the learned judge failed to apply any of the authorities and principles to which she had been referred. In particular it is stated that she failed to appreciate that the equitable discretion to grant relief from forfeiture in the

case of non-payment of rent proceeds on the footing that the proviso for re-entry is, in the eyes of equity, merely a security for the payment of rent and accordingly, save in exceptional circumstances, relief ought to be granted so long as the tenant pays the rent. The Claimants argue that the learned judge failed to take any or sufficient account of the balance of prejudice between the parties whereby the second claimant had invested large sums of money, time and effort into refurbishing the residential and commercial parts of the premises so that, by the time of the forfeiture, they were both ready for use, whilst the Defendants were able immediately to re-let the premises at an increased annual rent of £14,700 per annum amounting to a very considerable windfall for the defendants. Finally, in relation to the delay, it is argued that the lack of formal notice to the defendants should not have weighed with the judge in circumstances where the defendants had taken steps to "lie low" and avoid any contact from and with the claimants. So far as the delay is concerned, it is asserted that the general rule is that equity follows the law and that account should have been taken of the fact that the statutory provisions relating to claims for relief from forfeiture which are governed by statute require the claim to be made within six months of the date of re-entry, as was the case here. Thus it is said that there was no material delay on the part of the claimants that should have affected their claim from relief from forfeiture.

9. In his written argument in support of the appeal, Mr Din refers again to the fact that the proviso for re-entry should be treated as no more than security for the payment of rent whereby if the rent is paid or tendered, relief should follow "unless there is some exceptional reason why it would be unjust to grant relief." It is thus argued that the approach of the learned judge to the exercise of this equitable discretion was wrong, she simply approaching it as a balancing exercise in deciding whether to refuse to grant relief on the principal basis that there had been a delay from October 2018 to January 2019 which was unexplained when, had the application be made promptly, it would have been granted. He argues that there is no exceptional reason shown in this case why it would be unjust to grant relief. In support, Mr Din cites *Gill v Lewis* [1956] 2 WLR 962 where Jenkins LJ said at page 971:

> "As to the conclusion of the whole matter, in my view, save in exceptional circumstances, the function of the court in exercising this equitable jurisdiction is to grant relief when all that is due for rent and costs has been paid up, and (in general) to disregard any other causes of complaint that the landlord may have against the tenant. The question is whether, provided all is paid up, the landlord will not have been fully compensated; and the view taken by the court is that if he gets the whole of his rent and costs, then he has got all he is entitled to so far as rent is concerned, and extraneous matters of breach of covenant, and so forth, are, generally speaking, irrelevant.
>
> But there may be very exceptional cases in which the conduct of the tenants has been such as, in effect, to disqualify them from coming to the court and claiming any relief or assistance whatever. The kind of case I have in mind is that of a tenant falling into arrear with the rent of premises which he was notoriously using as a disorderly house …"

This approach is supported by the leading textbook, Woodfall on Landlord and Tenant, at 17.181:

> "In the eyes of equity, the proviso for re-entry was merely a "security" for the rent. Equity is in the "constant course" of relieving against forfeiture where the tenant

> pays the rent and all expenses. Thus save in exceptional circumstances the function of the court is to grant relief when all that is due for rent and costs has been paid up."

10. So far as the issue of delay is concerned, Mr Din submitted that the learned judge ought to have addressed this in the context of the statutory six month limit for the grant of a claim for relief from forfeiture as a guide against which any issue as to delay should be weighed, again citing *Pineport v Grangeglen* and *Gibbs v Lakeside Developments Ltd* [2019] 4 WLR 6. In his oral submissions, Mr Din supplemented this by reference to further authorities dealing with delay: *Billson v Residential Apartments Ltd* [1992] 1 AC 494 and *Silverman v AFCO* (UK) 56 P&CR 185 (1988). He suggested that, pursuant to *Billson*, the statutory 6-month period is treated as a guideline and that although, in *Silverman*, the court refused relief within the 6 month period, that case was wholly different because the tenants had indicated that they did not intend to contest the possession proceedings against them and the landlord had not unreasonably and precipitously granted rights in the premises to third parties on the footing that the original lease was at an end.

11. Finally, dealing with the fact that the landlord had entered into a new three-year lease for the commercial part of the premises in February 2019, Mr Din submitted that this did not feature as a reason stated by the learned judge for refusing to grant relief, and rightly so because this can be dealt with by granting a reversionary lease.

The Respondents' Arguments on Appeal

12. For the Respondents, Mr Taylor submitted, relying on *Billson*, that the equitable jurisdiction to grant relief from forfeiture effected by peaceable re-entry can only be invoked by those who apply with reasonable promptitude, and what is reasonable will depend on all the circumstances, having due regard to the statutory six-month limit which is applied in certain cases of forfeiture effected after court proceedings. He submitted that the concept of reasonable promptitude necessarily involves consideration of the reasons for the delay. It is, he submitted, an "elastic concept" which is capable of taking into account human factors. He submitted that the court may refuse relief if the landlord has granted to a third party an interest in the property within the six-month period if the landlord's conduct was reasonable and not precipitous, and the grant of relief would cause either the landlord or a third party injustice. In his submission, this appeal is in reality a complaint by the Claimants in respect of the exercise by the learned judge of her discretion and the test to be applied is the "Wednesbury" test, namely whether she failed to take into account relevant matters, or took into account irrelevant matters or exercised her discretion in a way which no reasonable judge could do. He submitted that, as shown by the careful way in which the learned judge approached the matter in her judgment (quoted in paragraph 7 above), she gave anxious consideration to the way in which she exercised this discretion and that there was nothing about her approach or decision which could be characterised as unreasonable.

13. Mr Taylor also renewed and relied upon the argument rejected by the learned judge at trial, namely that there had been no jurisdiction to grant relief from forfeiture because the application had not been made by both tenants. In support of this, he relied upon the Respondent's Notice which pleads that the learned judge had been wrong to reject the Defendant's submissions on the basis that the point had not been clearly or sufficiently pleaded. It is said that the learned judge was wrong because "it is for the joint claimants to

prove their case. In this case, the Claimants' case had to be (because of the law) that they both wanted relief. On the evidence, that was not proved, so the claim should have failed for that reason." In any event, he submitted that the matter was in fact clearly pleaded: the Amended Defence could not have left the Claimants under any misunderstanding. He relied upon paragraph 95 of the judgment, where the learned judge said:

> "It is quite clear [the First Claimant] wishes to have nothing to do with the premises. He has no interest in the business. He does not wish to have any liability for any expense under the lease or any expense that may be attributed to the premises, such as business rates."

Mr Taylor also relied upon the First Claimant's unwillingness to participate actively in the proceedings which included leaving the country shortly before the trial and making himself unavailable to give evidence.

14. So far as the pleadings are concerned, Mr Taylor says that the terms of paragraph 44 of the Amended Defence adequately plead the point. These state:

"Moreover, if it is shown that Mr Sharma:

(a) acquired relief from forfeiture in 2015 without Mr Keshwala being aware that relief had been sought; and/or
(b) that he has applied for relief from forfeiture in this claim without Mr Keshwala's involvement: that would provide additional reason for refusing the equitable and/or discretionary relief sought."

Mr Taylor submitted that this was sufficient to raise the issue and, having done so, it was for the Claimants to prove that Mr Keshwala was fully engaged with the claim, but they had failed to do so.

Discussion

15. Dealing first with the Respondents' Notice and the arguments that the claim should have been dismissed because the application had not been made by both tenants, in my judgment there is no merit in this argument. In the first place, as Mr Din submitted and the learned judge found, this was not an issue which was sufficiently pleaded: see paragraphs 84 and 89 of the judgment below. Secondly, and in any event, it seems to me clear that the First Claimant, Mr Keshwala, did authorise the claim, which was brought with his consent and concurrence. Thus, the Claim Form is signed by the Claimants' solicitor on behalf of the Claimant, and although the "Claimant" is referred to in the singular, it is to be assumed that the solicitor, Mr Patel, had the authority of both Claimants to bring the claim. Conclusively, though, Mr Keshwala signed a witness statement on 17 July 2019 in which he stated:

> "1. I confirm that I am the First Claimant in this claim against the Defendants. I also confirm that I am aware and have consented to this action being brought against the Defendants as set [out] in the Amended Particulars of Claim dated 26 April 2019, which contains my signature."

In my judgment, this paragraph in the First Claimant's witness statement conclusively decides the issue, and it makes no difference that Mr Keshwala did not attend trial and was not cross-examined: Judge Hampton would not have allowed cross-examination on the point in any event, in view of the fact that it had not been adequately or properly pleaded and was therefore not an issue in the case.

16. So far as the main issue on the appeal is concerned, I find myself in agreement with the submissions of Mr Din that the learned judge erred in treating the issue before her as simply one involving the exercise of a general discretion. The starting point, as Mr Din submitted, is that, in exercising the discretionary remedy of relief from forfeiture, the proviso for re-entry is to be treated as no more than security for the payment of rent, so that if rent is paid (or tendered) relief should follow unless there is some exceptional reason why it would be unjust to grant relief. As stated in Woodfall at paragraph 17.181,

> "In the eyes of equity, the proviso for re-entry was merely a "security" for the rent. Equity is in the "constant course" of relieving against forfeiture where the tenant pays the rent and all expenses. Thus save in exceptional circumstances the function of the court as to grant relief when all that is due for rent and costs has been paid up."

17. The question for the learned judge should therefore have been whether the delay in this case comprised such exceptional circumstances as to justify the refusal to grant the relief sought. In this context, as submitted by Mr Din, the principal guidance for the learned judge should have been the statutory six month limit for the bringing of a claim for relief from forfeiture. This has been well-recognised for well over 100 years. Thus, in *Howard v Fanshawe* [1895] 2 Ch 581, Stirling J said (at pages 588-599):

> "The statute [i.e. the Common Law Procedure Act 1852] fixes a period of six months only from recovery in ejectment within which an application for relief may be made, and it is said that the whole evil which the Act was passed to remove would be reintroduced if it were to be held that the jurisdiction to give relief were to be applied in a case where peaceable possession had been taken. Upon that two observations may be made: first, that if the landlord desires to limit the time within which the tenant can apply for relief, he can avail himself of legal process to recover possession and so get the benefit of the statute; and, secondly, that it does not follow that a Court of Equity would now grant relief at any distance of time from the happening of the event which gave rise to it. It appears to me that, in as much as the inconvenience of so doing has been recognised by the legislature, and a time has been fixed after which, in a case of ejectment, no proceedings for relief can be taken, a similar period might well be fixed, by analogy, within which an application for general relief in equity must be made. A Court of Equity might possibly say that the action for relief must be brought within six months from the resumption of possession by the lessor."

18. In *Billson v Residential Apartments Ltd* [1992] 1 AC 494, Nicholls LJ said (in a passage not affected by the subsequent decision of the House of Lords to allow the tenants' appeal) at page 530:

> "The concurrent equitable jurisdiction can only be invoked by those who apply with reasonable promptitude. What is reasonable will depend on all the

> circumstances, having due regard to the statutory time limits. In the exercise of its jurisdiction courts of equity should apply, by analogy, the statutory time limits … but not with a strictness which in all the circumstances could lead to a result Parliament could never have intended." (*Emphasis added*).

This passage was quoted with approval by Lewison LJ in *Gibbs v Lakeside Developments* Ltd [2019] 4 WLR 6, a case where the application for relief from forfeiture was made one and a half years after the landlords recovered possession, who went on to say:

> "56. I should note that in *Pineport Ltd v Grangeglen Ltd* [2016] EWHC 1318 (Ch); [2016] L & TR 28 Chief Master Marsh granted relief against forfeiture of a lease of an industrial unit following a forfeiture by peaceable re-entry on an application made 14 months later. The claim was originally made in the county court, but then transferred to the High Court because the county court lacked jurisdiction after a delay of that length. The Chief Master said, at para 19:
>
> > 'Plainly, in this case where the application was made 14 months after re-entry, the claimant has a significant obstacle to overcome whether the court has 'due regard' to the six-month period under the 1852 Act or the period is taken as a guide. It is not that the court is unable, as a matter of jurisdiction, to grant relief where an application is made some considerable time outside the six-month period but rather whether the court should exercise its jurisdiction to do so. The issue of 'reasonable promptitude' necessarily involves consideration of the reasons for the delay by the claimant; it also may involve considering those reasons in the overall context as what is reasonable may vary depending on that context.'
>
> 57. In the result the Chief Master granted relief, referring to a variety of "human factors" including the depression of the main human actor, the lack of specialist advice, the existence of a restraint order and the consequent lack of money with which to pay the arrears. He concluded, at para 64:
>
> > 'Although 14 months is more than double the guide period of six months (and near to the breaking point for the concept's elasticity), I am satisfied that it would be wrong to bar the claimant from obtaining relief in the circumstances of this case.'
>
> 58. I have considerable doubts whether the Chief Master was right to decide that case in the way that he did. Be that as it may, by the time that Ms Gibbs made her application to set aside the judgment, the elasticity of "reasonable promptitude" had snapped. In those circumstances, in my judgment even if the judgment for possession had been set aside, it would have done Ms Gibbs little good in circumstances in which her application to set aside the judgment was made one and a half years after the landlords recovered possession."

19. In my judgment, what these cases, and the other cases cited by Mr Din, show is that although an application for relief from forfeiture may be brought more than six months after possession has been taken by the landlords so long as the elasticity of "reasonable promptitude" has not snapped, an application brought within six months is to be taken as

having been brought with "reasonable promptitude". In those circumstances, the factor relied upon by the learned judge in refusing to grant the relief sought, namely the delay within six months, was not capable of amounting to the kind of exceptional circumstances which it is necessary for a landlord to show when inviting the court to refuse relief despite the application having been brought within six months. It may be of significance that, in reaching her decision, the learned judge made no reference to the guidance to be derived from the statutory six month time limit.

20. Finally, I should address the fact that the premises have since been re-let by the landlord. So far as the residential part of the premises is concerned, as at the date of the hearing they had been vacated; as regards the ground floor business premises, the Claimants have stated that they would be content with a reversionary lease and, in those circumstances, I consider that, if the order makes appropriate provision for the terms upon which relief from forfeiture is granted, the re-letting of the premises is no bar to granting this application for relief from forfeiture.

21. The appeal is therefore allowed and the claim for relief from forfeiture is granted.