Michaelmas Term
[2014] UKSC 63
On appeal from: [2013] EWCA Civ 12

JUDGMENT

Sims (Appellant)

v

Dacorum Borough Council (Respondent)

and

Secretary of State for Communities and Local Government (Interested Party)

before

Lord Neuberger, President
Lady Hale, Deputy President
Lord Clarke
Lord Wilson
Lord Carnwath
Lord Toulson
Lord Hodge

JUDGMENT GIVEN ON

12 November 2014

Heard on 23, 24 and 26 June 2014

Appellant
Andrew Arden QC
Toby Vanhegan
Justin Bates
Amy Knight
(Instructed by ARKrights Solicitors)

Respondent
Ranjit Bhose QC
Andrew Lane
Dean M Underwood

(Instructed by Dacorum Borough Council Legal Departmnent)

Intervener
Martin Chamberlain QC
Oliver Jones
(Instructed by Treasury Solicitors)

LORD NEUBERGER: (with whom Lady Hale, Lord Clarke, Lord Wilson, Lord Carnwath, Lord Toulson and Lord Hodge agree)

Introductory

1. Where a tenancy of land is held by more than one person, those persons hold the tenancy jointly. In *Hammersmith and Fulham LBC v. Monk* [1992] AC 478 ("*Monk*"), the House of Lords unanimously held that, where such a tenancy is a periodic tenancy, which can be brought to an end by a notice to quit, the common law rule is that, in the absence of a contractual term to the contrary, the tenancy will be validly determined by service on the landlord of a notice to quit by only one of the joint tenants. (This was not a revolutionary decision: it had long been assumed to be the law: see eg *Doe d Aslin v Summersett* (1830) 1 B & Ad135, 140 per Lord Tenterden CJ).

2. Thus, in common law, one of a number of joint periodic tenants can bring the tenancy to an end against the wishes, even without the knowledge, of his or her co-tenant or co-tenants, by serving a notice to quit on the landlord.

3. The present case concerns a secure weekly tenancy of a house granted to a husband and wife, Mr and Mrs Sims. Some years after the tenancy was granted, the couple separated, and Mrs Sims served a notice to quit on the landlord, Dacorum Borough Council. The tenancy was a secure tenancy under the Housing Act 1985.

4. Under sections 82-84 of that Act, a secure periodic tenancy can only be brought to an end by a landlord if it obtains and executes a court order for possession, and such an order can only be granted if (i) the landlord has served a notice relying on one or more of the grounds specified in Schedule 2, and (ii) depending on the ground, it is reasonable to order possession and/or alternative accommodation is available for the tenant. Accordingly, the effect of the 1985 Act is to deprive a landlord of its common law right to determine a secure tenancy by serving a notice to quit on the tenant. By contrast, there is no restriction in the 1985 Act on the exercise by a tenant of his or her common law right to determine a secure tenancy by serving a notice to quit on the landlord.

5. Accordingly, following the reasoning in *Monk*, Dacorum contends that the secure tenancy granted to Mr and Mrs Sims has come to an end, and Mr Sims

must vacate the house. *Monk* was decided before the Human Rights Act 1998 was enacted, and, now that it has come into force, Mr Sims contends that his rights (a) to respect for his home under article 8 of the European Convention on Human Rights and/or (b) peacefully to enjoy his possessions under article 1 of the first protocol to the Convention ("A1P1") would be wrongly infringed if Dacorum's claim succeeds. Accordingly, he contends that the decision, or the effect of the decision, in *Monk* should now be reconsidered.

The factual background

6. On 15 March 2002, Dacorum granted Michael and Sharon Sims a written tenancy of a three bedroom house at 5 Dunny Lane, Chipperfield, Kings Langley, Hertfordshire. The tenancy agreement, which was expressed as if it was written to Mr and Mrs Sims by Dacorum, provided that:

> "92.You must notify us in writing at least four clear rent weeks ahead of your intention to terminate the tenancy which should end at midnight on a Sunday."
>
> The agreement also stated that as regards "Ending joint tenancies": "100. Where either joint tenant wishes to terminate their interest in a tenancy they must terminate the full tenancy as in (92) above.
>
> 101. We will then decide whether any of the other joint tenants can remain in the property or be offered more suitable accommodation."

7. The tenancy was initially an introductory tenancy under Part V of the Housing Act 1996, and, after Mr and Mrs Sims had resided in the house for a year, the tenancy became a joint secure weekly tenancy by virtue of the provisions of that Act. Until March 2010, Mr and Mrs Sims lived together in the house as their only home together with their four children.

8. Unfortunately, the marriage broke down in about September 2009. Following an alleged act of violence by Mr Sims on one of his sons in November 2009, Mrs Sims told Dacorum that he had been guilty of previous acts of domestic violence, and that she wished to move out. Mrs Sims left the house in March 2010 with their two youngest children, and moved into a women's refuge from which she applied to Wycombe District Council for accommodation. Wycombe told her that her application could not be granted so long as she

had a tenancy of a residential property. Accordingly, she wrote to Dacorum to say that she wanted to give up her tenancy, and Dacorum replied suggesting that she could achieve this by serving a notice to quit. On 25 June 2010 Mrs Sims served a notice to quit on Dacorum purporting to terminate the tenancy on 26 July 2010.

9. Mr Sims, who suffers from learning difficulties, remained living in the house with the older two children (although by the time of the trial those two children were no longer living there). Before the notice to quit had been served, Mr Sims asked Dacorum if he could remain in the house and have the tenancy transferred into his sole name. By a letter dated 19 July 2010, Dacorum refused this request, and informed Mr Sims that he had no legal right to stay in the house. Despite a letter from Mrs Sims, supporting Mr Sims's application to remain in the house and expressing concerns about his mental health, Dacorum confirmed this decision following internal reviews in December 2010 and June 2011.

10. On 28 October 2010, Dacorum issued proceedings in the County Court against Mr Sims seeking possession of the house, and, in his Defence dated 5 January 2011 Mr Sims raised a number of arguments, including challenges to the effectiveness of the notice to quit and challenges to Dacorum's decision to seek possession against him. The proceedings were delayed while Dacorum's internal reviews proceeded, but the trial eventually took place before Deputy District Judge Wood on 2 December 2011. Two weeks later, she gave an admirably clear and thorough judgment in which she examined all the evidence and arguments which had been put before her, and decided that she should make an order for possession against Mr Sims.

11. In summary, the Deputy District Judge held that (1) Mr Sims had committed acts of domestic violence, which was the reason why Mrs Sims had left the house; (2) Mrs Sims had understood that a possible outcome of her serving the notice to quit was that Dacorum would seek to evict Mr Sims, (3) no pressure to serve the notice to quit was put on Mrs Sims by Dacorum, (4) Mr Sims did not suffer from learning difficulties to any extent relevant either to Dacorum's decision-making process or to considerations of proportionality, (5) she was "quite satisfied that the Council's careful decision-making process amply accorded with article 8.1" and that "the decision that the Council made was one to which it could reasonably have come", (6) she was bound by authority to hold that, as a matter of law, "where, as here, a notice to quit has been served by one of two joint tenants of his own accord, that notice is effective to determine the joint tenancy", (7) it was lawful and proportionate to make a possession order, and (8) she should make an outright order for possession of the house.

12. Mr Sims appealed to the Court of Appeal, and the only ground which he pursued on that occasion was that the decision in *Monk* was incompatible with his article 8 rights, and that the court should change the common law so that it was compatible. Mr Arden QC, who appeared on Mr Sims's behalf, as he did on the appeal to the Court of Appeal, accepted that Mr Sims's appeal should be dismissed by the Court of Appeal, which duly happened, for reasons trenchantly given by Mummery LJ (with whom Etherton LJ and Sir Scott Baker agreed) – [2013] EWCA Civ 12.

13. Mr Sims now appeals to the Supreme Court. The basis upon which the appeal was brought (as is reflected in Mr Sims's petition for permission to appeal) was the same as that which was pursued before the Court of Appeal. However, in the statement of facts and issues as agreed between the parties and his written case and oral submissions, Mr Arden retreated from his submissions in the Court of Appeal and argued only that we should revisit the decision in *Monk*, on the basis that the effect of that decision in the present case infringed Mr Sims's rights under article 8 and under A1P1.

Discussion: A1P1

14. A1P1 provides, inter alia, that everyone is entitled to "peaceful enjoyment of his possessions", and that nobody should be "deprived of his possessions except in the public interest and subject to conditions provided for by law".

15. The property which Mr Sims owned and of which he complains to have been wrongly deprived, whether one characterises it as the tenancy or an interest in the tenancy, was acquired by him on terms that (i) it would be lost if a notice to quit was served by Mrs Sims (clause 100), and (ii) if that occurred, Dacorum could decide to permit him to stay in the house or find other accommodation for him (clause 101). The property was lost as a result of Mrs Sims serving a notice to quit, and Dacorum did consider whether to let Mr Sims remain, as he requested, and decided not to let him do so. Given that Mr Sims was deprived of his property in circumstances, and in a way, which was specifically provided for in the agreement which created it, his A1P1 claim is plainly very hard to sustain. The point was well put in the written case of Mr Chamberlain QC on behalf of the Secretary of State: "the loss of [Mr Sims's] property right is the result of a bargain that he himself made". I believe that that conclusion is reinforced by the admissibility decision in *Di Palma v United Kingdom* (1986) 10 EHRR 149, which concerned the implementation of a forfeiture proviso in a lease against a tenant in rather harsh circumstances.

16. The only two arguments which I think Mr Sims could even conceivably raise in those circumstances would be (i) that clause 100 is irrational or at least so unreasonable as to offend the right to enjoy the property concerned, or (ii) that Dacorum unfairly or irrationally operated clause 101. Assuming (without deciding) that those arguments are open to him in principle in relation to his A1P1 claim, it is nonetheless plain that they fail on the facts.

17. Clause 100 is consistent with a common law principle which is not now attacked, and its effect is anyway mitigated by clause 101. Further, it is not an unreasonable provision, in that someone's interest has to suffer when one of two joint periodic tenants serves a notice to quit. If the result is not as decided in *Monk*, either the tenant who served the notice is forced to remain a tenant against her will, or the landlord is landed with one tenant instead of two, which means less security - and, in a case such as the present, a family property occupied by a single person. Just as a joint tenant in Mr Sims's position can claim that the outcome determined as correct in *Monk* is harsh, so could a joint tenant in Mrs Sims's position or a landlord in Dacorum's position contend that either of the alternative outcomes is harsh.

18. As to Dacorum's operation of clause 101, the Deputy District Judge dealt with this when considering whether Dacorum's decision to seek possession of the house was reasonable and proportionate, on the basis that the two issues were different sides of the same coin; no complaint is made of that, and rightly so. The Deputy District Judge took into account the facts that Mr Sims had lived in the property for ten years, that Mrs Sims had voluntarily served a notice to quit, that she had not been unaware of the effect of serving the notice, that Dacorum had not induced her to serve the notice, that Mr Sims had been responsible for her vacating the property by his violence, that there were no "relevant medical circumstances or particular vulnerability pertaining to Mr Sims" which would impede his search for other accommodation, that Dacorum had "a clear right to re-allocate the property", that "[s]ocial housing is a scarce resource", and that procedurally, Mr Sims had been accorded an ample opportunity to present his case, and Dacorum had carefully considered the position and had fully reviewed its own decision. Accordingly, as already mentioned, she made the order for possession sought by Dacorum.

19. In my view, the Deputy District Judge's conclusion was, to put it at its very lowest, one to which she was entitled to come for the reasons that she gave. Indeed, I would go further, and say that, in light of her conclusions of primary fact, she reached the only appropriate conclusion she could have reached. In these circumstances, I would reject Mr Sims's case based on A1P1.

Discussion: article 8

20. Article 8.1 provides, inter alia, that everyone is entitled "to respect for his private life [and] his home", and article 8.2 states that there should be "no interference by a public authority with the exercise of this right" save if it is "in accordance with the law". "necessary in a democratic society", and "in the interests of … the economic well-being of the country … or for the protection of the rights or freedoms of others".

21. So far as Mr Sims's case on article 8 is concerned, there is no doubt but that he was entitled to raise the question of the proportionality of Dacorum's pursuit of the claim for possession of the house in the light of *Pinnock v Manchester City Council* [2010] UKSC 45, [2011] 2 AC 104 and *Hounslow LBC v Powell* [2011] UKSC 8, [2011] 2 AC 186, as explained by Lord Hodge in *R (CN) v Lewisham LBC* [2014] UKSC 62, paras 58-60 and 63. However, in this case, that point gets Mr Sims nowhere. As I have already indicated in paras 18 and 19 of this judgment, the Deputy District Judge carefully considered that question, and, in relation to Mr Sims's case on article 8, she came to the conclusion that Dacorum's "careful decision-making process amply accorded with article 8.1 [and] that the decision that the Council made was one to which it could reasonably have come". She then said that "[h]aving reviewed all the relevant factors myself, in my judgment it is lawful and proportionate to make an order for possession in this case". Again, I consider that this was plainly correct.

22. In these circumstances, Mr Arden argued that the service of the notice to quit by Mrs Sims was itself a violation of Mr Sims's article 8 rights because it put in jeopardy his right to remain in his home. The fact that the service of the notice to quit put Mr Sims's right to stay in his home at risk does not mean that it therefore operated as an infringement of his right to respect for his home. No judgment of the Strasbourg court begins to justify such a proposition. Mrs Sims had the right to serve the notice, and, as already observed, the service of such a notice and its consequences were specifically covered by the agreement which gave Mr Sims the right to occupy the house as his home in the first place (see clauses 100 and 101).

23. I accept that the effect of the service of the notice to quit was to put at risk Mr Sims's enjoyment of his home. I also accept that different considerations may very well apply for article 8 purposes to Mr Sims, who is at risk of losing what has been his family home for many years, from those considerations that apply to temporarily housed homeless people who are at risk of losing their temporary accommodation as in *R (CN) v Lewisham.* However, I do not consider that that undermines the point that full respect for Mr Sims's article

8 rights was accorded by the facts that (i) his tenancy was determined in accordance with its contractual terms to which he had agreed in clause 100 of the tenancy agreement, (ii) he was entitled to the benefit of clause 101 of his tenancy agreement, (iii) under the Protection from Eviction Act 1977, he could not be evicted without a court order, and (iv) the court would have to be satisfied that Dacorum was entitled to evict him as a matter of domestic law, and (v) the court could not make such an order without permitting him to raise a claim that it would be disproportionate to evict him, in accordance with the reasoning in *Pinnock* and *Powell*.

24. Mr Arden suggested that this conclusion was inconsistent with the judgment of the Strasbourg court in *Buckland v United Kingdom* (2013) 56 EHRR 16, but I agree with the written submission of Mr Bhose QC for Dacorum that the judgment simply supports the proposition that, where the court is considering making an order for possession against a public sector residential tenant, she must have the opportunity of raising the argument that, in the light of article 8, no order for possession should be made. I do not therefore think that it assists Mr Sims in this case.

25. In these circumstances, I consider that Mr Sims's case based on article 8 also fails.

Conclusion

26. It follows from this analysis that I would dismiss this appeal.