

Master Dagnall gave judgment in the case of Corp of Trinity House of Deptford Strond v (1) Dequincy Prescott (2) Clodagh Byrne on 11 February 2021 [2021] EWHC 283 (QB) which considered several issues regarding the pandemic and possession proceedings which are worthy of note as the stay on evictions has again been extended.

The outline facts were that the landlord sought possession on the basis of the expiry of a s21 notice in relation to an assured shorthold tenancy. In the claim, a money judgment was sought for outstanding arrears of rent. A possession order was made together with an order that the tenant pay the sum to clear the arrears which amount to 8 months arrears of rent. No warrant for possession was executed due to the stay and the landlord applied to transfer the matter to the High Court which issued writ of possession.

The landlord applied to the court for a declaration that it was satisfied that the “rent arrears exemption” to the stay on evictions under the Public Health (Coronavirus) (Protection from Eviction) (England) (Regulations) 2021 applied. The landlord argued that the Regulations were discriminatory under ECHR art 14 read with the Protocol art 1 right to protection of property because there was a distinction between the use of s21 and s8 notices even if there were substantial arrears. The latter being entitled to enforce a possession order, the former prohibited.

Under regulation 2(3) a writ for possession could be executed where the court was satisfied that there were substantial rent arrears and that the notice, writ or warrant related wholly or partly to one of the rent arrears-related grounds – namely grounds 8,10 or 11 of Schedule 2 to the Housing Act 1988.

Master Dagnall held that the High Court was the correct court to determine this application as the application had been made to transfer to the High Court for

enforcement. Further, the application for a declaration that the exemption applies should be contained in an application notice and served on the Defendant.

More importantly, it was held that the literal interpretation of the Regulations was correct and that, in this case proceeding on the basis of s21, the claim had not being brought wholly or party on rent arrears grounds.

It was further held that the Regulations were compliant with ECHR rights. The difference in treatment between s21 and s8 claims was directed to a legitimate aim and was rationally connected to that aim.

This is particularly important given that the stay has been extended until at least 31 March 2021.

Whilst every effort has been taken to ensure that the law in this article is correct, it is intended to give a general overview of the law for educational purposes. Readers are respectfully reminded that it is not intended to be a substitute for specific legal advice and should not be relied upon for this purpose. No liability is accepted for any error or omission contained herein.

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