Womens Refuges, Homeless at Home and Reasonableness to Continue to Occupy

The House of Lords joined the appeals of ***Birmingham CC v Ali and others and Moran v Manchester CC*** to give its judgment ([2009] UKHL 36) on these cases that seemed "poles apart" but which both concerned the meaning of the phrase "accommodation which it would be reasonable for him to continue to occupy", as used in s175(3) of the Housing Act 1996 ('HA 96'). The rhetorical question asked by the court was: "Does this mean that a person is only homeless if it would not be reasonable for him to stay where he is another night? Or does it incorporate some element of looking to the future, so that a person may be homeless if it is not reasonable to expect him to stay where he is indefinitely or for the foreseeable future?" The answer given by the court is that homelessness does involve looking to the future and considering whether the applicant has accommodation that it would be reasonable for him/her to continue to occupy for so long as he/she would occupy it if the local authority did not intervene or indefinitely.

The brief facts of the two appeals were: In the Birmingham case (previously known as Birmingham CC v Aweys), six applicants were statutorily overcrowded and therefore needed larger properties. The local authority eventually accepted that each of these families were homeless and that the "full housing duty" was owed, but required them to stay in their properties pending an appropriately sized property being found. In the meantime these applicants were placed in Band B of Birmingham's allocation scheme, whereas other homeless applicants who were in temporary accommodation were placed in Band A. In the Moran case, Ms Moran fled her home because of domestic violence and went into a women's refuge. Ms Moran was subsequently evicted from the refuge and the local authority found that she was intentionally homeless from the refuge.

The conclusions of the House of Lords were as follows:

(1) That Birmingham CC were entitled to decide that the families were homeless but could nevertheless stay where they were for a period, as long as that was not indefinitely.

(2) That on the evidence the allocations policy of Birmingham CC was unlawful and on the face of it the six applicants appeared to have a "more pressing claim" for housing than their counterparts in temporary accommodation.

(3) That Ms Moran was not intentionally homeless as she was not, whilst at the refuge, in accommodation that it was reasonable for her to continue to occupy indefinitely.

(4) Confirming the decisions in Alam and Khatun, that interim accommodation is not accommodation within the meaning of s175(1) of the Housing Act 1996.

(5) That the correct construction of s175(3) HA 96 did involve looking to the future.

(6) That the previous decision in Sidhu (that Women's refuge accommodation was not accommodation within the meaning of the Housing Act) was instinctively right, but could not survive subsequent House of Lords decisions. However, that decision was no longer necessary in light of the correct interpretation of s175(3) HA 96 as set out by their lordships.

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UPDATES IN HOUSING LAW BY RUSSELL JAMES

The Practical Implications of Birmingham & Moran

The practical effect of the judgment of the House of Lords in ***Birmingham CC v Ali; Moran v Manchester*** [2009] UKHL 36 is as follows:

(1) A person can be "homeless at home" but required to stay in their property for a period of time whilst the local authority re-house them. If the local authority take too long to re-house the applicant and his family a challenge can be made through the courts, but no guidance was given on the length of time that would be considered too long. On this issue the court said that resources can be taken into account and the court should be slow to intervene.

(2) A person in a women's refuge will in most cases still be homeless within the meaning of Part VII of the Housing Act 1996.

(3) A person in interim accommodation provided pursuant to s188 HA 96 remains homeless within the meaning of Part VII of the Housing Act 1996.

(4) Although the courts should be "very slow" to interfere with a local authority's allocations policy this case provides an example of when they would still be prepared to intervene.

Savings Clauses Can Apply to Joint Tenancy Notices to Quit

The High Court has recently upheld the decision in the case of ***Hussain v Bradford Community Housing Limited & Kauser*** (2009) LTL 17/06/09 that using a savings clause in a notice to quit by one joint tenant to cause the cessation of a joint tenancy does not make the notice ambiguous. In the case of Hussain the terms of the tenancy agreement required the tenants to give 28 days notice to the landlord when they wished to terminate the tenancy. Ms Kauser therefore served a notice to quit which was to take effect on the last Sunday of the month or the last day of the periodic tenancy after four weeks. Mr Hussain argued that this was ambiguous and should therefore be read contra proferentum (against the party seeking to rely on it). The effect of this, he argued, would be that the notice to quit would be invalid and therefore the joint tenancy would not have been brought to an end. The High Court did not accept this argument and found that the notice to quit was a valid one. The court further concluded that the notice to quit had not been varied by the actions of the landlord and the former joint tenant.

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