

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT
(HIS HONOUR RECORDER HAYTON)

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday 20 January 1999

B e f o r e:
LORD JUSTICE MUMMERY
LORD JUSTICE MANTELL

- - - - -

THE NOTTING HILL HOUSING TRUST

Plaintiff/Respondent

- v -

MRS RAKEY JONES

Defendant/Appellant

- - - - -

(Computer Aided Transcript of the Palantype Notes of
Smith Bernal Reporting Limited, 180 Fleet Street,
London EC4A 2HD
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Official Shorthand Writers to the Court)

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MR D WATKINSON (Instructed by Kensington Citizens Advice Bureau Legal Service, London, W10 5XL) appeared on behalf of the Appellant.

The respondent did not attend and was not represented.

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J U D G M E N T
(As approved by the Court)

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Thursday 20 January 1999

JUDGMENT

LORD JUSTICE MANTELL: The appellant became the tenant of the respondents at Flat A, 26 Powis Square, London, W11 in the place of her husband. That was the consequence of a Transfer of Property Order made pursuant to section 24 of the Matrimonial Causes Act 1973, which had been made by the County Court judge sitting at Willesden. Accordingly, the tenancy was transferred into the appellant's name and she became responsible for the rent and for observing the tenant's obligations under the agreement. At the date of transfer there were arrears of rent which had accumulated during the period that the applicant's husband had been the tenant. Although the figure is not of great importance, the arrears were said to amount to £629 odd.

By a separate agreement dated 24 February 1997, the appellant agreed to pay off the arrears at the rate of £3 per week in addition to the rent which was due under the agreement. She failed to do so. The respondent, the Notting Hill Housing Trust, consequently brought proceedings for possession and recovery of the arrears. The matter came before Mr Recorder Hayton in the Central London County Court on 23 April 1998. He made an order for possession to take effect as from 21 May 1998, but suspended it on condition that the arrears, which were at that time calculated to be £429.25p, and £80 costs, were paid off at the rate of £5 per week on top of the rent under the agreement. He further ordered that that sum, or the first instalment under that order, should be made on 7 May.

The appellant has obtained leave to appeal and argues that the ground for ordering possession under the 1985 Housing Act has not been satisfied because, as a matter of law, she did not inherit her husband's obligation to discharge the arrears and could not be fixed with any breach

by reason of not paying those arrears because she was not obliged so to do. It was not, so it is argued, an obligation which arose under the terms of her tenancy agreement. The Notting Hill Housing Trust has not appeared to oppose the appeal. I am satisfied that that ground of appeal is made good and that there was no ground available to the recorder upon which he could have properly made an order for possession.

There remains the question of the money judgment. The recorder ordered that the amount of the arrears should be paid on the basis to which I have referred. It is argued by Mr Watkinson, on behalf of the appellant, that there was no obligation in law upon which the appellant could be ordered to make those payments. He submits that the transfer of the tenancy agreement occurred in January 1997. That is a date which he derives from the plaintiff/respondent's particulars of claim.

The agreement relied upon by the Housing Trust under which the arrears are claimed is dated 24 February. Thus, argues Mr Watkinson, it cannot be shown that there was any consideration for the agreement. In the absence of any argument advanced on behalf of the Trust, I find that that ground of appeal is made good.

Accordingly I would allow the appeal in its entirety.

LORD JUSTICE MUMMERY: I agree.

Order: Appeal allowed with costs. Order dated 23 April 1998 of the judge in the court below be set aside. The claim for possession dismissed and claim for the money judgment be set aside. Order for costs in the court below to be set aside. Legal Aid taxation of appellant's costs.