Neutral Citation Number: [2020] EWCA Civ 388

Case No: B5 2018 2277

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
HHJ Saunders
Case No D01BR881

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/03/2020

Before :

LORD JUSTICE McCOMBE
LORD JUSTICE FLOYD
and
LORD JUSTICE COULSON

- -

Between :

BLESSING OSHIN	**Appellant**
- and -	
THE ROYAL BOROUGH OF GREENWICH	**Respondent**

- -
- -

Richard Granby (instructed by **Chris Alexander Solicitors**) for the **Appellant**
Emily Davies (instructed by **Greenwich Legal Services**) for the **Respondent**

Hearing date: 3 March 2020

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Approved Judgment

Lord Justice Floyd:

1. The issue in this appeal is whether the respondent local authority, the Royal Borough of Greenwich, was induced to grant the appellant, Blessing Oshin, a tenancy of 15 Jessup Close, London SE18 ("Jessup Close"), by a false statement knowingly or recklessly made by her. The issue arises in the local authority's claim for possession against the appellant of Jessup Close, pursuant to Ground 5 of Schedule 2 of the Housing Act 1985. By a decision dated 13 April 2018 Deputy District Judge John Calver ("the DDJ") held that the respondent had been induced to grant the tenancy by the appellant's false statement and granted an order for possession. The appellant's appeal to the County Court at Central London was dismissed by HHJ Saunders by his decision dated 30 August 2018.

2. Section 84 of the Housing Act 1985 provides that the court is not to make an order for possession of a dwelling house let under a secure tenancy except on one or more of the grounds set out in Schedule 2, and that it shall not do so on the grounds set out in Part 1 of Schedule 2 unless it considers it reasonable to make the order. Ground 5 is in Part 1 of Schedule 2 and is in the following terms:

> "The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by (a) the tenant, or (b) a person acting at the tenant's instigation."

3. In about 1999 the appellant was living with a close friend at 112 Robert Street, London SE18 ("Robert Street"). She had no tenancy at Robert Street, and so applied to the respondent to have her name placed on the housing list. On 2 February 2001 she completed in her own name the respondent's "Housing Application Form" ("the 2001 form"). The 2001 form has a number of questions requiring responses from an applicant. Question 10 on the form was headed "Immigration Status" and asked:

> "Has anyone you have mentioned so far lived outside the United Kingdom in the last 5 years? Please [tick] the correct box:"

4. The appellant ticked the "No" box. This was untrue. The DDJ held that the appellant arrived in the United Kingdom in September 1998 from Nigeria, and that she had therefore lived outside the United Kingdom in the five years prior to the completion of the 2001 form.

5. Underneath the boxes marked "Yes" and "No" the form stated:

> "If **Yes** and an Asylum/Immigration Form has not already been completed, please ask for one."

As the appellant had ticked the "No" box, she was not required to ask for an Asylum/Immigration form.

6. The appellant also answered Question 15 on the 2001 form. That question was designed to elicit an applicant's addresses in the previous five years. She answered by saying that from 1990 to 1999 she had been living in private rented

accommodation at 49 Camberwell New Road, London SE5. In the light of the DDJ's finding that she first came to the United Kingdom in 1998, that statement was also untrue. Her false answer gave the impression that she had been living in the UK for more than 10 years at the date of the 2001 form.

7. In due course the appellant was granted the tenancy of Robert Street (where she was already living as I have mentioned). In 2005 the appellant attended the housing office of the respondent to advise them that her two sons were now living with her at Robert Street. She was asked to complete "Amendment Form A" ("the 2005 form") which was given the same reference number as the 2001 form. In the 2005 form the appellant was required to fill in a section entitled "Immigration information". This asked:

> "Has anyone you wish to add lived outside the United Kingdom in the last 5 years? Please [tick] the correct box."

8. The appellant ticked the "No" box. This was untrue. The appellant's sons (born in 1990 and 1993) had joined her from Nigeria in 2004, and had therefore lived outside the United Kingdom in the five years prior to the completion of the 2005 form.

9. The 2005 form also went on to say that if the "Yes" box was ticked an Asylum/Immigration form needed to be completed, unless this had already been done. As the appellant had ticked "No", she was not required to complete one, even although she had not previously done so. In due course the appellant was granted a secure weekly tenancy of Jessup Close pursuant to a tenancy agreement dated 28 April 2008.

10. Immigration history is material to an application for social housing because, in very broad terms, an applicant who is not a British citizen is not eligible for such housing if she does not have indefinite leave to remain in the United Kingdom: see Housing Act 1996 section 160ZA(1)(2) and regulations made thereunder.

11. The appellant applied for asylum in the United Kingdom on 3 November 1999. On 24 May 2000 the application was refused, but that refusal decision was withdrawn on 5 June 2001. The decision was reviewed in May 2004 and asylum again refused. On 14 July 2004 she applied for indefinite leave to remain on the grounds of family life. On 17 March 2006 her application for leave to remain in the UK was rejected as she had not provided evidence which had been requested by the Home Office. A request for reconsideration was made on 4 May 2006, but that was rejected on 15 May. Another application for indefinite leave to remain was made and refused in 2009, with no right of appeal. Following further representations by her solicitors, on 22 September 2010 the appellant was granted indefinite leave to remain due to her length of residence and family life in the United Kingdom, and on 8 March 2012 she became a British citizen pursuant to a naturalisation application made in 2011. It follows that the appellant had no valid right to remain in the United Kingdom until her grant of indefinite leave to remain on 26 September 2010. The DDJ found that until that date she was not, by reason of her immigration status, eligible for social housing.

12. The respondent's case before the DDJ was that, had the false statements made in the 2001 and 2005 forms not been made, and truthful answers given instead, the respondent would have been caused to investigate the appellant's immigration status

to determine whether she was indeed eligible for social housing. The evidence of Mr Jon Payne, an Investigation Officer in the Unlawful Occupation team of the local authority, was that, as a result of the application made on the 2001 form as amended by the 2005 form, the local authority granted the appellant the tenancy of Jessup Close.

13. The DDJ accepted this case, at least so far as it related to the statement on the 2001 form, in response to Question 10, that the applicant had not lived outside the UK in the last five years. He found the answer to that question to be highly material, and that it was a fair inference that it had induced the respondent to grant the tenancies. The 2001 form was the "gateway to [the appellant's] entitlement to social housing". He did not regard the information on the 2005 form as material, as the children were not becoming parties to the tenancy, were both minors, and it seemed that all the appellant was doing was advising the respondent of the extended household. He therefore found that ground 5 was made out, and that it was in consequence reasonable to make a possession order. No issue arises on this appeal as to the requirement of reasonableness.

14. HHJ Saunders dismissed the appeal from the judgment of the DDJ. Lewison LJ granted permission for a second appeal limited to two grounds. Ground 1 is that the false statement induced the grant of the Robert Street tenancy but not the Jessup Close tenancy. Ground 2 is that the false statements did not induce the grant of either tenancy, because the respondent was unaware of the appellant's immigration status.

15. On behalf of the appellant, Mr Granby submitted in relation to ground 1 that once the tenancy of Robert Street had been granted, the appellant was no longer an applicant for housing. The statutory scheme prevented local authorities from allocating properties except in accordance with a scheme. Once the appellant had been allocated Robert Street, her application was at an end, because she had been allocated the tenancy. The allocation of the tenancy had the consequence that the appellant's slate was wiped clean of any false statements previously made when it came to any future application for a tenancy. It was therefore only false statements in the 2005 form itself which could be considered under Ground 5. There was nothing false in the 2005 form which induced the grant of the Jessup Close tenancy. Although (subject to ground 2) the false statement in the 2001 form induced the grant of the Robert Street tenancy, it did not induce the grant of the Jessup Close tenancy, which was the only tenancy that was relevant.

16. Mr Granby also submitted that this result is justified by the strict approach to construction which is appropriate to Ground 5, citing what Simon Brown LJ said in *Ricketts v Ad Valorem Factors* Ltd [2003] EWCA Civ 1706 at [30], namely that the court should not penalise a party when the legislator's intention is doubtful or not made clear. It was not enough that the local authority could show that a false statement had induced the grant of *a* tenancy (namely Robert Street). It had to go further and show that a false statement had induced the grant of *the* tenancy which was the subject of the claim for possession, i.e. Jessup Close.

17. Mr Granby accepted that an applicant for housing made a continuing representation as to the contents of her application, so that if a true statement made in the application ceased to be true, and was not put right, it could be relied upon as a false statement inducing the grant of the tenancy: see *North Hertfordshire District Council v Carthy*

[2003] EWCA Civ 20. Here, he submitted, the position was different. The application, and the false statement contained in it, though continuing up to the date of grant of the Robert Street tenancy, came to an end once the tenancy of Robert Street was allocated.

18. Attractively as they were presented, I am not able to accept any of these submissions. Whatever may have been the status of the application based on the 2001 form in the period between the grant of the Robert Street tenancy and the completion of the 2005 form (when there was no need for the local authority to consult it), once the 2005 form was completed, seeking accommodation more appropriate to the larger family, there was a live application which the local authority had to consider. What did that application consist of? It obviously included the 2005 form. The 2005 form is, however, an amendment. It makes no sense at all to look at the amendment in isolation from the form which it amends. It only makes sense to look at the two forms together, not least because they share a common reference number, and the 2005 form does not repeat the questions asked of the applicant in the 2001 form, in particular questions 10 and 15. The two forms together formed the factual basis on which the local authority was asked to grant a new tenancy, as Mr Payne had explained in his evidence.

19. I do not accept that any question of interpretation of Ground 5, to which the strict approach in *Ricketts* might apply, arises in the present case. It is common ground that it was necessary for the local authority to show that the false statement induced the grant of *the* tenancy, i.e. Jessup Close. The local authority did not shirk from the task of showing that this was indeed the case.

20. The appellant's case is, in fact, founded on a quite different principle, namely that a false statement in an application cannot, in law, be operative once a tenancy has been allocated on the basis of that application. There is, however, nothing in the scheme of allocation of social housing, or in authority, which leads to such a surprising result.

21. As to the statutory scheme, section 159 of the Housing Act 1996 explains that, subject to exceptions, a local authority allocates housing accommodation when it selects a person to be a secure or introductory tenant of housing accommodation held by them, or nominates a person to be such a tenant of housing accommodation held by another person, or nominates a person to be a an assured tenant of housing accommodation held by a registered social landlord. Under section 166, certain duties are imposed on local authorities as regards supplying information and assistance about applications for housing. By section 166(3), the local authority is bound to consider any application for housing made in accordance with the procedural requirements of its allocation scheme. The requirement for an allocation scheme is to be found in section 166A. Such a scheme must "determine priorities" and provide for "the procedure to be followed". Section 166A(14) provides that the local authority is not to allocate housing except in accordance with its scheme.

22. I can see nothing in this scheme that speaks in any way as to the effect of statements made to the local authority after the authority has granted a first tenancy. We were shown no authority that suggested that such statements ceased to have effect. There is, to my mind, no reason why they should.

23. In the end, therefore, the question of what induced the grant of the Jessup Close tenancy was a question of fact for the DDJ to decide. The proper approach to such questions was explained in the judgment of Newman J, sitting as a judge of this court, with which Peter Gibson and Sedley LJJ agreed, in *Waltham Forest LBC v Roberts* [2005] EWCA Civ 940; [2005] H.L.R. 2 at [41] to [43]. The court does not have to decide "what really would have happened", but whether the false statement had played "… a real and substantial part, though not by itself a decisive part, in inducing the Authority to act". It had to be "one of the inducing causes". In considering inducement "it is helpful to start by considering the materiality of the statement". "A false statement of a material matter is likely to have induced the misrepresentee".

24. The DDJ applied this approach. There was no principle that prevented him from concluding that the materially false statement made in the 2001 form continued to operate on the local authority's mind when it came to grant the Jessup Close tenancy. I would not therefore disturb his conclusion on this ground.

25. In support of ground 2, Mr Granby submitted that the applicant's false statement was not material to the grant of the tenancy because it failed to ask the right question. To recapitulate, the appellant was asked whether she had lived outside the UK in the last five years. The answer to that question was not capable of demonstrating whether an applicant was entitled to social housing. An applicant might be eligible for social housing despite having lived in the UK for less than five years, or might not be entitled even if she had lived in the UK for more than five years. What the local authority should have asked is a question designed to establish precisely what the appellant's immigration status was. It was not open to the local authority to contend that the answer to Question 10 was material, because it did not go directly to any matter that would cause or prevent a grant of social housing. The fact that the local authority was unaware of the appellant's immigration status was a consequence of their failure to ask the right question.

26. Mr Granby placed some reliance on the opinion of the authors of *Luba et al, Defending Possession Proceedings* 8th Edn, 2016,: Para 3.264. Having pointed out that ground 5 was basically designed for those cases where a tenancy is obtained by deception, the authors go on to say:

> "… the grounds are not available where the landlord's essential complaint is that it would not have granted the tenancy if the tenant had given information for which in fact the landlord had failed to ask."

27. Mr Granby drew attention to the following two sentences in paragraph 71 of the DDJ's judgment:

> "There is no doubt, in my judgment, question 10 was highly material. The immigration status of the Defendant, if correctly given, would, according to Mr Payne have resulted in further enquiries being made which would have revealed that the [appellant] had no entitlement to social housing at the time."

The form did not require the appellant to give her immigration status, only her residence outside the UK in the last five years. Even if the reference to immigration

status was simply a typographical error, the DDJ had, so Mr Granby submitted, pointed up the fallacy in the local authority's case.

28. I would say immediately that, read in context, paragraph 71 of the DDJ's judgment is a finding that the answer to Question 10, if correctly given, would have revealed that the appellant was not entitled to social housing. I think the DDJ was using "immigration status" as a shorthand for the Immigration Status question in the 2001 form, which was question 10.

29. In my judgment, Mr Granby's submissions overlook the context in which the false statements were made. Question 10 is headed "Immigration Status", so it is immediately made abundantly clear what purpose the local authority has in mind in asking it, namely to determine whether the applicant has the necessary status to be eligible for social housing. That purpose is reinforced by the specific attention that is drawn, immediately below the boxes, to the fact that answering the question in the affirmative will lead to the need to fill out an Asylum/Immigration Form. It is therefore clear to any applicant that the answer to the question operates to trigger an investigation into immigration status. Answering the question in the negative avoids the need to fill in the further form which would obviously be concerned with eliciting further immigration details. There was thus ample basis to allow the DDJ to find that a correct answer to the question would have revealed that the applicant was not eligible for social housing, and that the answer to the question was highly material.

30. The passage from *Luba et al* relied on does no more than state the obvious proposition that there can be no deception if no relevant statement is made, although, of course, a representation may be implied where it is not express. Bare reliance on the fact that a material fact was undisclosed will not be enough. That does not assist the appellant, because she did make a false statement capable of inducing the grant of a tenancy.

31. I accept that, in order to be material, the false statement must be relevant to whether the applicant is eligible for social housing. That, however, is not the same thing as requiring that the statement be directly determinative of that question. The appellant's false statements did not mean that she was entitled to social housing, but they still had sufficient materiality to be capable of inducing the local authority to grant her a tenancy when she was not entitled to one. I would therefore reject ground 2 as well.

32. For the reasons I have given, I would dismiss the appeal.

Lord Justice Coulson:

33. I agree.

Lord Justice McCombe:

34. I also agree.