



Neutral Citation Number: [2020] EWHC 753 (Ch)

Case No: PT-2020-000253

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27 March 2020

**Before:**

**MR JUSTICE MORGAN**

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**Between:**

**HAROON RASHEED BARKATALI**

**Applicant**

**- and -**

**(1) REMMIE CHRISTOPHER AUGUSTINE**

**Respondents**

**DAVIES**

**(2) HSBC UK BANK PLC**

**(3) ELDERBRIDGE LIMITED**

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**Mr Hugh Cumber** (instructed by **Kingsley Napley LLP**) for the **Applicant**  
**Ms Mercy Akman** (instructed by **Spence & Horne, Solicitors**) for the **First Respondent**

Hearing date: 23 March 2020  
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**Judgment Approved by the court**  
**for handing down**

**MR JUSTICE MORGAN:**

1. This is an application for an interim injunction where the applicant is Mr Barkatali and the First Respondent is Mr Davies.
2. The application is for an order that Mr Davies do immediately deliver to Mr Barkatali a key to the flat at 12A Maygrove Road, London NW6 to allow Mr Barkatali to resume occupation of that flat. Mr Barkatali also seeks an order preventing Mr Davies from interfering with his occupation of that flat and further orders restraining matters such as threats of violence, intimidation and damage.
3. Mr Cumber appeared on behalf of Mr Barkatali and Ms Akman appeared on behalf of Mr Davies.
4. This application has been listed on short notice to Mr Davies. Ms Akman on behalf of Mr Davies has asked for an adjournment of the hearing to allow her solicitors to obtain proper instructions from Mr Davies. She suggests that the adjournment will need to be for a number of weeks given the current pandemic and Mr Davies' vulnerable condition. Mr Cumber on behalf of Mr Barkatali submits that the application is urgent as Mr Barkatali is seeking an order reinstating him in the flat and it would be unjust to keep him out of possession for the length of the adjournment sought by Mr Davies. When I asked Ms Akman if she would agree to an adjournment of seven days, she submitted that period would be of no assistance to Mr Davies whatever. In these circumstances, I will consider the basis of the application and then decide what course to take.
5. I will begin by setting out some facts which are not in dispute.
6. Until his death on 19 January 2020, Mr Davies' son, Richard Davies, was the lessee of the flat and lived in it as his home. In this judgment, I will refer to the son as Richard and to the father as Mr Davies.
7. Mr Barkatali lived in the flat with Richard as a licensee. On Richard's death, that licence determined by operation of law.
8. Richard died intestate. He is survived by his father and his brother. Under the rules as to intestacy, Mr Davies will in due course inherit the entirety of the estate. Mr Davies is 87 years old.
9. No one has yet obtained letters of administration in relation to Richard's estate.
10. Up to 15 March 2020, Mr Barkatali continued to live in the flat. On 15 March 2020, Mr Davies caused the locks on the flat to be changed while Mr Barkatali was out. Mr Barkatali has not been able to gain access to the flat since then and has been staying with a friend which is not satisfactory.
11. Mr Barkatali does not say that he has any present right to be in possession or occupation of the flat pursuant to a tenancy or licence or a beneficial interest or anything similar. He puts his claim to an injunction giving him the ability to return to the flat on two bases.

12. The first basis is that he says he is entitled to claim an order under the Inheritance (Provision for Family and Dependants) Act 1975 and the particular order which he will seek and obtain is an order allowing him to remain in the flat either as the transferee of the flat or pursuant to a life interest under a settlement.
13. The second basis of the claim is that he says that, although he did not have any legal interest in the flat when he was evicted on 15 March 2020, he was evicted by Mr Davies who also did not have any title to or right to possession of the flat. It is said that because Mr Barkatali had been in possession of the flat before he was evicted, he had a better right to possession of it than Mr Davies did and he should therefore be allowed to retake possession of the flat as before. In support of the submission that Mr Davies did not have any right to possession of the flat it is said that the lease of the flat is vested in the Public Trustee, that Mr Davies is not entitled to represent or act for the estate and the fact that he is the sole beneficiary of the estate does not give him any particular interest in the flat but only a right in equity to have the estate duly administered.
14. I will deal first with the claim under the 1975 Act.
15. Mr Barkatali says that he is a person who can apply for an order under the 1975 Act as he comes within section 1(1)(ba) together with section 1(1A) and he also comes within section 1(1)(e).
16. Section 1(1)(ba) refers to section 1(1A) which applies, so far as relevant, if, during the period of two years ending immediately before the date when the deceased died, the applicant was living in the same household as the deceased and as if the applicant and the deceased were civil partners.
17. Mr Barkatali's witness statement sets out facts which satisfy section 1(1A). Ms Akman submits that Mr Davies would be in a position to show that those alleged facts are not true but I do not have a witness statement from Mr Davies nor in any other way the evidence on which he would wish to rely. Accordingly, I will proceed on the basis that Mr Barkatali is eligible as an applicant under section 1(1)(ba).
18. Mr Barkatali also relied on section 1(1)(e). In view of my earlier conclusion it is not strictly necessary to deal with this paragraph but because a discussion of this paragraph may be material to other matters which need consideration, I will comment on it. This paragraph refers to a person who immediately before the death of the deceased was being maintained either wholly or partly by the deceased. In his witness statement, Mr Barkatali asserts that this was the case. However, other parts of the witness statement, in particular, paragraph 12, make this assertion look very doubtful. The witness statement, taken as a whole, appears to support the finding that Mr Barkatali was maintaining Richard and not the other way around.
19. The way in which the 1975 Act operates has been explained in detail by Lord Hughes in the Supreme Court in *Ilott v Mitson (no 2)* [2018] AC 545. I will not seek to summarise that explanation but will apply it to the circumstances of this case.
20. The first question which I will ask is: does the application of the intestacy rules produce a failure to make reasonable financial provision for Mr Barkatali as defined in section 1(2)? In a case like the present, the reference to reasonable financial

provision is to provision for the maintenance of the applicant. In this context, reasonable financial provision is judged by reference to the needs of the applicant for maintenance and not for anything else and by reference to the standard appropriate to the circumstances.

21. Mr Barkatali's witness statement gives next to no information about his needs for maintenance. I asked Mr Cumber what the position was in that regard and his answers support a finding that Mr Barkatali does not have a need for financial maintenance. Although he is currently not working that is expected to be a temporary state of affairs and when he resumes work he will enjoy a level of remuneration which, while not specified, would appear to be entirely satisfactory (at least) to meet his needs. Accordingly, the prima facie conclusion would appear to be that the intestacy rules do not fail to make reasonable financial provision for Mr Barkatali because no such provision was appropriate.
22. The second question I will ask is: what reasonable financial provision ought now to be made for him? This raises essentially the same issues as before and, again, the prima facie conclusion is that there ought not to be an order making any provision for Mr Barkatali.
23. Mr Cumber submits that these prima facie conclusions leave out of account an all-important matter which is that Mr Barkatali has, it is submitted, a need to be accommodated in this specific flat. In support of that submission, Mr Cumber relies on the decision of the Court of Appeal in *Lewis v Warner* [2018] Ch 450. The facts of that case were somewhat special and were radically different from the facts of the present case. In that case, the applicant was 91 years old and had a number of health problems. The findings made by the trial judge were that the applicant had been maintained by the deceased in the deceased's house and that the applicant needed that maintenance to continue, rather than being required to move house: see at [26]. There were features in that case which justified the finding that the applicant's needs for maintenance went beyond having accommodation somewhere but extended to a need to live in that specific property. The other point considered in that case was whether the court had jurisdiction under the 1975 Act to make an order providing for the applicant to buy the specific property at its market value. It was held that the court had such jurisdiction.
24. Mr Cumber submits that the order which will be appropriate in this case might well be an order providing for Mr Barkatali to buy the flat at its market value. It was submitted that I should accept that Mr Barkatali could afford to do so.
25. I accept, on the authority of *Lewis v Warner*, that the court would have jurisdiction to make an order providing for Mr Barkatali to buy the flat at its market value but the existence of that jurisdiction does not mean that it is necessarily right to make such an order.
26. On the evidence at present before me, Mr Barkatali has not shown that he has a need for maintenance which can only be met, or even can best be met, from allowing him to remain in this specific flat. His requirement of accommodation can be met by him buying or renting a suitable property. He does not have any other need for maintenance.

27. It is said that Mr Barkatali has a need for maintenance in that he wants to continue to live in this flat which he shared with Richard for a period of about 3 years, save for when Mr Barkatali (with or without Richard) was working in Kenya. I am somewhat sceptical about this suggested wish. Mr Barkatali's time in the flat was not lengthy and as the events of 15 March 2020 revealed he has neighbours who are hostile to him. But even if this expression of his wishes is genuine and even if the wishes are deeply held, I do not see this as amounting to a need for maintenance or being the subject of reasonable financial provision.
28. It follows that I do not consider that Mr Barkatali has any prospect of persuading a court to make an order under the 1975 Act, against the wishes of the estate, providing for him to purchase the flat at market value, or any other similar order.
29. This means that Mr Barkatali cannot claim that the court should grant interim relief reinstating him into possession of the flat as an order ancillary to and protective of his entitlement to obtain a suitable order under the 1975 Act.
30. Expressing my finding in terms of the approach required by *American Cyanamide*, there is not a serious issue to be tried as to Mr Barkatali's ultimate entitlement to remain in the flat pursuant to an order under the 1975 Act. On that basis it is not necessary to consider the adequacy of damages or the balance of convenience.
31. Mr Cumber's second submission is that Mr Barkatali had a better right to possession than Mr Davies so that Mr Davies acted unlawfully when he evicted Mr Barkatali and the court should make an order which restores the earlier position.
32. I am prepared to assume that Mr Davies acted unlawfully when he evicted Mr Barkatali. I strongly disapprove of what Mr Davies did and the way he conducted himself (at least as described in Mr Barkatali's witness statement). However, I consider that it is appropriate to take into account wider considerations before determining whether the court should intervene by making the interim order which is sought.
33. The flat is owned by Richard's estate. As there is not currently an administrator, title to the flat is vested in the Public Trustee. It may be that Mr Davies would wish to be the administrator. If he does not wish to be the administrator, perhaps by reason of his age, I expect the administrator will be someone selected by Mr Davies, or with his approval, as he is the sole beneficiary of the estate. Most recently, the absence of an administrator is partly attributable to the fact that Mr Barkatali has lodged a caveat in relation to the appointment of an administrator. However, I do not see how (in the light of my conclusions as to the 1975 Act) Mr Barkatali's views will be relevant as to the selection of the administrator.
34. If there were an administrator and if Mr Barkatali wished to obtain an interim order against the wishes of the administrator, the court would not grant that order. Such an order would involve allowing Mr Barkatali into possession when he has no right to possession against the wishes of the owner of the flat. I do not consider that I should take a different view when there is currently no administrator, particularly in the circumstances described above as to why there is no administrator. The interim order which is sought would still consist of putting into possession someone who has no right to possession and without the consent of the owner of the estate.

35. Accordingly, I will dismiss the application for interim relief.
36. Following the giving of this judgment, I will hear counsel as to whether there is any need for Mr Barkatali to have access to the flat to remove his belongings; that subject was not referred to during the hearing. I will also, I expect, hear submissions as to costs. In relation to any application for costs by Mr Davies, I will wish to consider whether I should take into account his conduct on 15 March 2020.