Writ of possession and providing notice to tenants (Partridge v Gupta)

23/08/2017

Property Disputes analysis: When a landlord is seeking a writ of possession to enforce a possession order, what notice has to be given to the tenant? Ben Maltz of Five Paper examines the High Court's decision in Partridge v Gupta and suggests the ruling helpfully addresses the potentially unintended consequences of the decision in Secretary of State for Defence v Nicholas.

Original news

Partridge v Gupta [2017] EWHC 2110 (QB)

The Queen's Bench Division dismissed a tenant's appeal against a master's refusal to set aside a writ of possession. The court held that the respondent landlord had not failed to meet the requirement under CPR 83.13(8) to give the appellant sufficient notice of the proceedings to enable him to apply to the court for any relief to which he might be entitled.

What was the background to the case?

The appellant was the assured shorthold tenant of a residential property.

The County Court had granted the respondent a possession order under section 21 of the Housing Act 1988.

A circuit judge subsequently refused the appellant permission to appeal and the respondent sought to enforce the possession order by instructing authorised High Court enforcement officers rather than County Court bailiffs. The circuit judge accordingly ordered the transfer of the proceedings up to the High Court under section 42 of the County Courts Act 1984.

The respondent's enforcement officers duly issued a without-notice application in the Queen's Bench Division for an order under CPR 83.13 permitting the issue of a writ of possession to enforce the possession order. A master granted that application.

The appellant applied for an order setting aside the writ of possession shortly after it had been executed, which was refused by another master.

In this appeal, the appellant sought to overturn the second master's refusal of his application to set aside the executed writ of possession. The appellant argued that the without-notice application for permission for the issue of the writ of possession had not complied with the requirement under CPR 83.13(8) that he receive sufficient notice of the proceedings.

What issues arose for the court's consideration?

The central issue on this appeal was what constitutes sufficient notice of the proceedings, within the meaning of CPR 83.13(8).

The enforcement officers had written to the appellant, and separately to 'The Occupiers', to give notice of their application to transfer the proceedings to the High Court and their intended future application for permission to issue a writ of possession. It was common ground between the parties that these letters could not amount to formal notice of application under CPR 83.13 for permission to issue the writ as that application had still not been made when the letters were received.

The appellant's argument was that notice of the proceedings required formal notice of the application for permission to issue the writ of possession, ie service of the sealed application notice with the supporting evidence. The respondent contended that the wording of CPR 83.13(8) connoted a judicial discretion, which allowed the court to consider, in the particular circumstances of each case, whether the notice given to the occupant of the land had been sufficient to enable an application for relief to be made.

What did the court decide, and why?

Mr Justice Foskett recognised that this case raised a point of practical and procedural importance. Although the judge considered that the present appeal was largely academic to the parties (the appellant not having pursued an order for re-admission to the subject premises), he acknowledged that a considered decision might be of assistance in other cases.

It was held that notice of the proceedings did not necessarily require either the service of the formal notice of application for permission or even a more informal intimation by letter or other communication that the application would be heard on a particular day or at a particular time. The phraseology used in CPR 83.13(8) suggested some degree of flexibility was permitted in the court's approach and that what might constitute sufficient notice could vary from case-to-case. There was no express requirement in the wording of the rule for notice of the application for permission to issue the writ to be given to anyone.

Having considered the notes in the White Book accompanying CPR 83.13(8), and its procedural predecessor (rule 3 of Order 45 of the Rules of the Supreme Court), Foskett J observed that the practice repeatedly referred to in respect of both named occupiers and persons unknown would suffice to satisfy the requirement for sufficient notice of the proceedings, ie:

- if the defendant is the only person in possession, the claimant must give the defendant notice of the judgment or order and if there is a risk this will be insufficient, the same communication should confirm that permission to apply for a writ of possession will be sought if possession is not delivered up, followed by eviction
- if the sole defendant has not played any part in the proceedings, a letter or other communication providing all of the information above should be given
- if there are occupants other than the defendants then a letter should be sent to them addressed to them using their names if known or to 'the occupants' if unknown in similar terms as above, including reference to the intention to apply for permission to issue a writ for possession if possession is not given, followed by eviction

The decision of Rose J in *Secretary of State for Defence v Nicholas* [2015] EWHC 4064 (Ch), [2016] All ER (D) 46 (Apr) was distinguishable on the basis that no warning whatsoever of the impending eviction had been given in that case, whereas the appellant in the instant case had the knowledge gained from his active participation in all proceedings after the possession order had been granted, and at the very least the intimated intention to apply for the writ in the letter from the enforcement officers. In any event, it seemed clear that, in *Nicholas*, Rose J relied on the notes in the White Book to CPR 83.13 in substantiating that part of her judgment, without having been taken to the underlying authorities. Foskett J expressed doubt that *Leicester City Council v Aldwinckle* (1991) 24 HLR 40, which was still cited in the relevant notes, was authority for the proposition that a failure to give notice of the application for a writ of possession could of itself be a reason for setting aside the writ after execution, or that all occupants had to be served with the sealed application notice.

Foskett J rejected the appellant's submission that the standard wording of the draft order in Form PF92 made it clear that formal notice of the application for permission to issue the writ was required. Indeed the third recital in such an order explicitly stated that notice of this application could be given by some form of 'notice in writing' rather than specifying that formal notice of the application was required.

The appellant also sought to argue, on policy grounds, that those who were to be evicted should be given notice of the time and date of eviction. Foskett J appreciated the force in this submission but accepted the landlord's submission that even if notice of the formal application were required, the occupier would still not be afforded notice of the date and time of the actual eviction by the enforcement officers.

To what extent is the judgment helpful in clarifying the law in this area?

Given the lengthy wait for bailiffs' appointments in the County Court, the transfer up of possession claims to the High Court for enforcement is routine for many landlords wishing to expedite execution of possession orders. This decision helpfully addresses the potentially unintended consequences of the decision in *Nicholas*. Of course, unless and until the Court of Appeal has grappled with this issue, there remains no definitive authority on the point.

What are the implications for practitioners? What will they need to be mindful of when advising in this area?

When acting for landlords in connection with the enforcement of possession orders in the High Court, this decision provides the following guidance as to compliance with CPR 83.13(8).

First, where there is a sole occupant against whom possession has been ordered and who has full knowledge of the proceedings, a written reminder of the terms of the order and a request that possession is given up pursuant to the order is generally sufficient notice. It would be prudent to also mention in the same communication that permission to apply for a writ of possession will be sought from the court in due course if possession is not delivered up and that eviction will follow.

Secondly, where the sole occupant has played no part in the proceedings for possession, a letter or other suitable form of communication (such as email) containing the above information should ensure that sufficient notice has been given under CPR 83.13(8).

Thirdly, where there are occupants other than the defendant(s) to the possession proceedings known to occupy the property, a separate letter is required, addressed to 'The Occupants', which gives notice of the intention to apply for permission to issue a writ of possession if possession is not delivered up by the date prescribed in the order and that eviction will follow.

In many cases the landlord will not necessarily know whether unauthorised persons have been allowed into occupation or to share occupation with the tenant. As such it may be prudent to send a separate letter giving notice of the intention to apply for permission to issue a writ of possession as a matter of course to avoid any possible complications in respect of unknown occupiers post-eviction.

Ben Maltz appeared for the respondent landlord in this case.

Interview by Robert Matthews.

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