

SCOTLAND / JUDGMENT

GLASGOW WEST HOUSING ASSOCIATION LTD AGAINST DANUTA HARASIMOWICZ [2015] ScotSC 46 (09 June 2015)

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JUDGMENT

of SHERIFF PRINCIPAL C A L SCOTT, QC in the cause Glasgow West Housing Association Ltd Pursuers ; against Danuta Harasimowicz Defender : Glasgow, 20 May 2015. The sheriff principal, having resumed consideration of the appeal, refuses same; finds the defender liable to the pursuers in the expenses of the appeal on the summary cause undefended scale. NOTE :-

- [1] On 7 January 2015, at a continued calling of this case, the sheriff granted decree for ejection together with decree for payment of rent arrears in the sum of £1,409.70. On behalf of the pursuers, the sheriff had been informed that the then current arrears were £2,973 in respect of a monthly rent of £260. There was a continuing monthly shortfall when it came to the payment of rent. The last payment of rent was made via housing benefit in December 2013.
- [2] The defender had, in fact, left the tenancy in December 2013 to go to Poland and had only returned in December 2014. She had not paid rent during that period and had failed to use the tenancy as her principal home. She was, accordingly, in breach of the tenancy agreement with the pursuers.
- [3] It will be seen from the sheriff's stated case that the solicitor for the defender opposed the pursuers' motion for decree and ultimately sought to have the case continued further for investigation to take place and for a repayment arrangement to be entered into. Alternatively, the sheriff was invited to fix a proof.
- [4] In the sheriff's note, he records that it was clear that the defender was in considerable arrears and that there was no prospect of the arrears being reduced within a reasonable period. Any suggestions about repayment were speculative and woolly and nothing was specified at all about supposed health issues. The sheriff had been told that the defender was applying for job seekers' allowance. The sheriff records that he took full cognisance of the terms of section 16(3) of the Housing (Scotland) Act 2001. In all the circumstances, he considered that it was reasonable to grant decree for recovery of possession.

- [5] Following decree being granted, the solicitors acting on behalf of the defender lodged a note of appeal on or about 20 January 2015. The case eventually called for the purposes of the appeal hearing on 6 May 2015. At that stage, the defender's solicitor withdrew from acting. The defender was present on that occasion and requested that the appeal be continued to enable her to secure alternative legal representation. The appeal was continued until 13 May 2015.
- [6] On that occasion, the defender remained bereft of legal representation. However, she indicated that she wished to represent herself. To assist her she had the benefit of a Polish interpreter. Whilst the defender addressed the court at length in support of the appeal, I regret to say that none of the issues raised by her led the court to conclude that, in granting decree, the sheriff had erred in any way. In effect, the defender's line of argument involved trying to persuade the court that sympathy towards her plight taken along with a massively optimistic approach to her future ability to generate income was sufficient and relevant to justify allowance of the appeal.
- [7] The defender informed the court that she had a "progressive" financial position. She was using an agency to seek out employment. Her job seekers' allowance had been stopped. That arose because, having returned from Poland in December 2014, the British authorities had treated her as being a new arrival in the country whereas, the defender suggested that she had, before her departure to Poland, resided in this country for a number of years. Housing benefit had not been paid for similar reasons. She argued that she was a graduate and had a "chance to get a good job". She maintained that the appeals and court hearings, inter alia, associated with her treatment by the UK authorities on her return to the country had generated a large amount of stress. That treatment was to be the subject of an appeal which was scheduled to take place on 20 May 2015. The defender summarised her position by stating that she had no money and that she was looking for a job.
- [8] The solicitor for the pursuers invited refusal of the appeal and adherence to the decree granted by the sheriff. The sheriff had taken account of the section 16(3) requirements. He had proceeded in accordance with summary cause rule 8.3(3)(d). The fact that there had been no payment made since December 2013 was highlighted. Reference was made to the case of *Glasgow Housing Association Ltd v Hamilton Fisher & Linda Brennan* being a decision of Sheriff Principal Taylor dated 30 September 2008. At paragraph [5] Sheriff Principal Taylor expressed the view that: "If a defender does not put forward at the first calling all the facts upon which the defender wishes to rely, the sheriff is thwarted in accomplishing the tasks which the rules have set him or her. The court is entitled to be fully addressed on the defence when the case first calls. If a party is not in a position to do so without good reason then that party will require to bear the consequences." It was, in effect, submitted that this was one of those cases where the defender required to bear those consequences.

- [9] In any event, the solicitor for the pursuers stressed that, on the facts, there had been no dispute when matters were focused before the sheriff. It was accepted that the defender's claims for job seekers' allowance and housing benefit etc were outstanding and that an appeal was due to take place on 20 May 2015. However, the solicitor for the pursuers submitted that even if that appeal were to be determined in favour of the defender, the financial outcome for her would not deal with the substantial arrears which had accrued during the period when she had voluntarily left the tenancy and the country. The updated figure for arrears was given as £3,984. Decision
- [10] In my opinion, nothing said by the defender in support of her appeal served to merit the decree granted by the sheriff being recalled. The defender's financial position is extremely difficult and largely arises through her own decision to go to Poland, a decision which appears to have been wholly ill-conceived. On appeal, nothing was said about any colourable health issues and the formulation adopted by the sheriff in his note, viz. "speculative and woolly" applied equally to the defender's assessment of her current predicament and any ability to remedy the situation going forward. I have concluded that it was entirely reasonable for the sheriff to grant decree for recovery of possession and that this appeal should be refused. In the course of her submissions, the solicitor for the pursuers also referred to the case of *City of Edinburgh Council v Forbes* 2002 Hous. L. R. 61 in which Sheriff Principal Nicholson observed, at paragraph 7-16, that "...reasonableness is not itself a fact but instead a concept or conclusion determined by an exercise of judgement."
- [11] Similarly, in my view, appeals in cases of this nature should never amount to an appellant, in effect, requesting that the court should give the appellant "a second chance" or should find greater sympathy with the appellant's predicament or should be invited to consider material not presented to the sheriff when decree was granted. In advancing appeals in such cases, both parties and their legal advisors must be aware that cogent and compelling reasons for suggesting that the sheriff erred in the aforementioned exercise of his judgment are required. Too often, as it would appear in this case, appeals are lodged with grounds which (to use the sheriff's phraseology once again) are speculative and woolly. In effect, they serve to buy more time for an appellant whose overall circumstances suggest that eviction is not just reasonable but inevitable and where there is no material available to suggest that the sheriff in question plainly erred.
- [12] I have awarded the expenses of the appeal to the pursuers on the summary cause undefended scale. BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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