

CAMDEN LONDON BOROUGH COUNCIL v SHORTLIFE COMMUNITY HOUSING LTD & ORS (1992)

Ch.D (Millett J) 4/3/92

HOUSING - LOCAL GOVERNMENT

LEASE OR LICENCE : SHAM AGREEMENTS : TENANTS' COOPERATIVE

Shortlife Community Housing Ltd holding licence for temporary occupation of flats providing each of its members with exclusive possession - no protected tenancies.

Application by the council for a declaration that none of the defendants were entitled to protected tenancies rather than short-term tenancies of flats which had been made available to the first defendant ('SCH') for use as short-life housing until the council should require them for modernisation or demolition. The other 62 defendants were members of SCH who had each been let into exclusive occupation of a flat under a document which explained that SCH held a licence from the council which was simply a permission to occupy and not a tenancy. Nevertheless the defendants now contended on the basis of Street v Mountford (1985) that they were protected tenants.

HELD: Once SCH was incorporated it could no longer fulfil the "tenant condition" under s.28(3) Housing Act 1980 as whether or not an unincorporated association could be regarded as an "individual" an incorporated body could not. The occupiers holding from SCH were in exclusive occupation and paid rent but the council had never intended or assumed that SCH would grant rights of exclusive possession to them. No tenancy of any flat was created.

Declaration granted.

Anthony Mann QC and Jacqueline Baker instructed by Winkworth & Pemberton for the council. Terence Gallivar instructed by Alan Edwards & Co for Shortlife Community Housing. David Watkinson instructed by Birdman & Partners for the 62 occupants of the flats.

Council can recover flats

Camden London Borough Council v Shordlife Community Housing Ltd and Others

Before Mr Justice Millett
[Judgment March 4]

Occupants of flats intended to be short-life housing were not entitled to tenancies but only to short-term licences and therefore the local authority owners of the buildings were entitled to an order for possession.

Mr Justice Millett so held in the Chancery Division when granting a declaration that neither Shordlife Community Housing Ltd (SCH) nor any of the 62 other defendants, occupants of flats in Gray's Inn Road, were entitled to protected tenancies rather than short-term licences.

Mr Anthony Mann, QC and Miss Jacqueline Baker for the council; Mr Terence Gallivan for SCH; Mr David Watkinson for the 62 occupants of flats.

MR JUSTICE MILLETT said that the London Borough of Camden sought a declaration that it was entitled to possession of three blocks of flats at Gray's Inn Buildings containing a total of 65 mostly single-bedroom flats, held by SCH under what purported to be licences granted by the council between 1978 and 1985.

The 62 individual defendants claimed to be in occupation as tenants of SCH and SCH claimed to be in possession of the three blocks of flats under one or more tenancies.

The questions were: (i) whether SCH had a tenancy or tenancies of the blocks or any part of them, and (ii) if so, whether any of such tenancies were protected by Part II of the Landlord and Tenant Act 1954. It was common ground that unless both questions were answered in the affirmative the council was entitled to succeed against all defendants.

From 1966 to 1978 the three blocks were used to house council tenants, but then the council made them available to SCH for use as short-life housing until it required the buildings for modernisation or demolition.

That policy had been adopted in order to avoid a waste of housing during a period of acute shortage and to prevent them being invaded by squatters and vandalised.

SCH was formed in 1970 as an unincorporated association, a tenants' cooperative, and it was registered as a charity. It paid to the council a nominal rent of 50p a week for each property. The council regarded it as an extension of its own social housing programme and the council was a net provider not a recipient of funds.

Persons let into occupation automatically became members

of SCH. They were required to sign a document expressed to be made between the council and SCH which in terms stated "SCH holds a licence from the council (which is simply a permission to occupy and is not a tenancy)".

It described the weekly payments as rent and stated "members must pay rent". It contained no provision for termination, save that notice would be given "as soon as practicable after receipt of termination of licence from the owners of the premises".

In 1983 SCH was incorporated as a company limited by guarantee, with the same objects as those of the unincorporated association. All the flats were self-contained and occupants were given their own keys and enjoyed exclusive possession, as their predecessors had done.

In *Street v Mountford* ([1985] AC 809) the House of Lords had held that, save in exceptional circumstances, the grant of exclusive possession of residential accommodation for a term at a rent created a tenancy.

Ordinarily the only intention which was relevant was the intention to grant exclusive possession. Mr Mann relied on the many special features of the present case as special circumstances which negated the creation of a tenancy despite the grant of exclusive possession but his Lordship considered that his argument was based on a misreading of Lord Templeman's speech in *Street v Mountford*, where he had held that the test for distinguishing between the grant of a tenancy or of a licence was the presence or absence of a legal right to exclusive possession.

What was created depended not on the parties' professed intentions but on the legal effect of the transaction into which they had entered. The only three examples of exceptional circumstances given by Lord Templeman were (i) where circumstances negated any intention to create legal relations at all (ii) where possession was

referable to some other legal relationship such as vendor and purchaser or master and servant and (iii) where the grantor had no legal power to create a tenancy, as in the case of a requisitioning authority.

As Lord Templeman had pointed out, while the right to exclusive possession distinguished a tenancy from a licence, not every occupier with exclusive possession was a tenant.

Owners and trespassers did not rely on anyone's consent. Purchasers and employees might be given the legal right to exclusive possession but in such cases the right may be referable to a legal relationship other than that of landlord and tenant.

Where, however, the only legal relationship was that of grantor and grantee of a legal right of exclusive possession, then a tenancy was created.

It followed that in the absence of some other legal relationship to which it could be attributed, the grant of a legal right of exclusive possession by a body with power to grant it to a body with power to take it did create the relationship of landlord and tenant and there was no room for special circumstances to negative the consequences of the transaction.

That was not to say that special circumstances in the wider sense were irrelevant. They might negate an intention to create legal relations or to grant exclusive possession but that was all. Were it otherwise there would be no standard by which "exceptional circumstances" could be evaluated.

It was common ground that each licence of a flat was intended to create legal relations. But each licence was the consequence of a wider and continuing relationship between the parties, that existing between a local authority with housing responsibilities and a short-life housing organisation. That was, however, not a relationship to which a legal right of exclusive possession could be attributed.

Having considered in detail whether, in the light of all the evidence, the parties intended SCH to have a legal right to exclusive possession of any of the flats, and if so whether at the material time the council had the legal power to carry that intention into effect, his Lordship concluded that once incorporated SCH could not fulfil the "tenant condition" prescribed by section 28(3) of the Housing Act 1980, in that whether or not an unincorporated association could be regarded as an individual or as individuals, a body corporate could not be so regarded: any purported grant of a tenancy to SCH made after 1980 would have been *ultra vires* the council and void.

His Lordship was also satisfied that unless the parties expressed an intention differed from their true intention, or failed to reflect that intention, their professed intention plainly demonstrated by the terms of the documents that no legal right to exclusive possession was to be granted.

The strength of SCH's case lay in the fact that all the flats were self-contained, were adapted for occupation by persons enjoying exclusive possession and had previously been so occupied by council tenants. SCH had exercised complete control over allocation of flats, had handed keys to the occupants and no keys had been retained by the council or by SCH.

SCH fixed the rents and collected and retained them for its own benefit. The council however did not intend, or even assume, that SCH would grant rights of exclusive possession to the occupants.

The council's claim succeeded. No tenancy of any flat was created and the declaration sought by the council would be granted.

Solicitors: Winckworth & Pemberton; Alan Edwards & Co, Notting Hill; Bindman & Partners.