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CO/4100/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 8 November 2013

B e f o r e:

MR JUSTICE OUSELEY

Between:
LONDON BOROUGH OF HARINGEY

Claimant

v

KATIA GOREMSANDU

Defendant

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(Official Shorthand Writers to the Court)

Ms X Montes Manzano (instructed by Tony Michael Legal Services) appeared on behalf of the **Claimant**
The **Defendant** appeared in person

J U D G M E N T
(As Approved by the Court)

1. MR JUSTICE OUSELEY: This is an appeal by way of case stated by the London Borough of Haringey as prosecutor against the acquittal by the Highgate Magistrates of the Respondent, Ms Goremsandu, on ten informations alleging offences contrary to s.30(1) of the Housing Act 2004. The Act in s.30 makes it an offence for the person on whom an improvement notice is served to fail to comply with that notice. Appeal to the Residential Property Tribunal suspends the operation of the notice. It is a defence under s.30(4) for a person to show that he had a reasonable excuse for failing to comply with the notice.

2. The informations related to Flats 1, 2 and 3 at 232, West Green Road, Tottenham. The London Borough of Haringey, pursuant to its duties in the Housing Act 2004, had served three improvement notices on the Respondent, who was the manager of the property, in multiple occupation, as the magistrates found.

3. The improvement notices had schedules of works required to deal with hazards. They differed as between the three flats in a number of respects but in two respects they were common. Each of them required a separate boiler system to be placed in the flat for remedying excess cold and each required works to be done to the common parts to provide a secure door system from the street into the flats. The improvement notice in respect of Flat 3 required works to be done to the external communal door. This appears to have been done as a matter of convenience but nothing turns on it. There were other improvement notices which did not lead to summonses.

4. I mention the improvement notice in respect of Flat 4 because of the part which it came to play in the magistrates' reasoning. Flat 4, for these purposes, had the same requirement in respect of the central heating to that flat, namely that a new boiler be provided with radiators.

5. The Respondent appealed, as she was entitled to, to the Residential Property Tribunal. The precise contentions which she put before the Tribunal are not entirely clear from the Tribunal's decision.

6. At all events, crucially here, the Tribunal accepted that instead of a separate central heating system for each flat, the landlord could put in a communal central heating boiler, which would be in Flat 1, which would heat all the flats through the use and renovation of existing pipework.

7. The Respondent also argued for certain other changes to the notices and for a certain amount of extra time in respect of an extension to Flat 4. That is not the subject matter, as I say, of the informations, but what the Respondent placed before the magistrates and how they reacted to it is relevant.

8. Each of the improvement notices as originally served gave the recipient 112 days from the date of the notice to commence the remedial action and a further period of 84 days in which to complete it.

9. The Tribunal varied each of the four notices in relation to central heating by deleting the provision for a separate boiler system and substituting in each notice, whether Flat 1, 2, 3 or 4, the following paragraph of requirements:

> "Renew the boiler in the first floor kitchen and upgrade the existing central heating system to provide radiators in all rooms and circulation areas."

10. In each flat, save Flat 3, this remedial action was to commence within a period of three months from the operative date of the notice and was to be completed within a period of six weeks from the commencement of the works.

11. That language was, however, different in relation to Flat 3. Although the works to the central heating were described in precisely the same way, the remedial action was to commence within a period of three months from the operative date and was to be completed "within a period of six months" from the commencement of the works. The difference was that in relation to Flat 3 the period for completion was six months, as opposed to six weeks for the identical works in the other three flats.

12. In relation to Flat 4, the improvement notice required an extension to be built and the landlord asked for nine months in which to do the works. The Tribunal agreed:

> " . . . that it may well take nine months to build a satisfactory extension and we accept that nine months is a reasonable period in which the works required to rectify the hazards of flames, hot surfaces and food safety and crowding and space may be carried out."

13. It is perfectly clear from that decision that that relates only to Flat 4 because the decision goes through each notice in relation to each flat in sequence. It is equally clear that the nine month period for completion relates only to the works other than the boiler, because for the boiler in Flat 4, remedial action had to commence within a period of two months, (another probably unintended difference from the other flats but unhelpful to the respondent's case) and to be completed within a period of six weeks. For all the other Flat 4 hazards the remedial action had to commence within six months and be completed within three months.

14. The local authority wrote to the Respondent on a number of occasions, reminding her of the time limits consequent upon that decision. The operative date of the improvement notices as varied was 21 days from the Tribunal decision, which the local authority calculated as being 29 July. The period of three months and then six weeks would run from that. Accordingly, the period for compliance in relation to the six weeks works, if I can put it that way, became, because of a minor error in the Respondent's favour for calculating the operative date, 15 December 2011 (that is for the central heating works) and 15 February 2012 for the other works.

15. Visits by local authority officers show, as the magistrates accepted, that by those dates the works had not been complied with. The magistrates found as fact that although the works had not been completed by 15 February 2012, the Respondent had asked the

Tribunal for the period for completion to be extended to nine months, ie, says the case stated, until the end of March 2012. The Respondent was hence relying on the defence available under the offence-creating provision in the Housing Act 2004 upon the defence that she had a reasonable excuse for not complying.

16. There being no issue of fact that by 15 February 2012 the works had not been completed and there being, on the finding of the Magistrates' no doubt that that was the date by which the works ought to have been done, the defence relied on was one of reasonable excuse. The reasonable excuse relied on was that the Respondent believed that in varying the notices the Tribunal had granted her nine months to complete all the works at 232, West Green Road.

17. The justices found that she had that belief and therefore the Court must approach this case on the basis that she had a genuine honest belief that she had a longer period than in fact was granted by the improvement notices to do the work.

18. The magistrates found as follows in paragraphs 6.5, 6.6 and 6.7:

> "6.5 it was the error in the Tribunal document that had led the respondent to believe that she had 9 months to complete the work.
>
> 6.6 the respondent had a reasonable excuse for not complying with the Improvement Notices: she had applied to the Tribunal for 9 months to complete the work and due to the error in the document, formed the mistaken but understandable belief that she had been granted 9 months to complete the works.
>
> 6.7 the Justices considered whether the reasonable excuse resulting from the error in paragraph 35 of the Tribunal's decision should be limited to the works in respect of Flat 3 or whether it extended to the other flats as well. Paragraph 35 was not the only reference to a 9 month period in which to carry out works and the document was confusing and misleading as to dates. The Justices therefore conclude that the reasonable excuse applied to all three flats and dismissed all ten offences."

19. The first question for the opinion in the High Court is:

> "Were we wrong to conclude that the Respondent's honestly held but mistaken belief that she had nine months in which to comply with the improvement notices resulting from the error in the document containing the Tribunal's decision was capable in law of amounting to a reasonable excuse for not complying with the improvement notices?"

20. The second question was:

> "Were we wrong in not restricting the effect of the error in the document

to the improvement notice in respect of Flat 3?"

21. The reference to paragraph 35 of the Tribunal's decision is the reference to the improvement notice variation in respect of Flat 3, where a period of completion was expressed as six months. It is quite clear from the magistrates' reference that they regarded that and were satisfied that it was indeed a mistake rather than a deliberate extension of time for that one flat.

22. It is evident from the requirement in relation to Flat 4, where the period of six weeks is given for completion but a two-month period for the commencement of works, that the Tribunal was not beyond inconsistencies in its requirements.

23. But the magistrates referred as well to other parts of "the document", as they call it, where there were references to nine months. Their summary of the Respondent's contentions have shown that she relied heavily on passages from paragraph 39 of the report which related to Flat 4. I have already summarised and cited from paragraph 39, which is where the Tribunal explained what works would warrant nine months, and the distinction between the time they gave in respect of the central heating remedial action and the remedial action for all the other Flat 4 works.

24. The first submission made by Miss Manzano for the London Borough of Haringey is that the magistrates erred in allowing an honest but mistaken belief by itself to constitute a reasonable excuse. She points to a number of decisions in relation to offences of strict liability, as undoubtedly this is, in which an honest but mistaken belief does not amount of itself, to a defence, for example, R v Howells [1977] 1 QB 614.

25. However, the real issue is what role an honest but mistaken belief may play in relation to a reasonable excuse defence. There are two helpful decisions. The first is R v Unah [2011] EWCA Crim 1837 [2012] 1 WLR 505. This concerned whether a Defendant had a reasonable excuse for being in possession of an expired counterfeit passport. The Crown Court refused to allow evidence to be given that she had an honest, albeit mistaken, belief in circumstances which might have made, objectively, her belief reasonable. The Court of Appeal held that the mere fact that the Defendant did not know or believe the document to be false could not of itself and without more amount to a reasonable excuse. The circumstances in which the genuineness of such a belief, however, came to be held might be relevant to whether in fact the excuse was a reasonable one. In other words, of itself an honest but mistaken belief is not a reasonable excuse defence. It may be a part of a reasonable excuse defence when the surrounding circumstances to the holding of that belief are taken into account.

26. Of equal assistance is the decision of R v Y(A) [2010] EWCA Crim 762 [2010] 1 WLR 2644. This concerned whether a person in possession of various terrorist documents could have a reasonable excuse for possessing them on the grounds that he intended to give them to Somali Muslims to be deployed in self-defence against opposing forces in the invasion and occupation of Somalia.

27. It was held in that case, see in particular paragraph 25, that the question of whether that amounted to a reasonable excuse was an issue which had to be left to the jury. It is

implicit in that decision that the reasonableness of the excuse is an objective one for the jury to decide. Accordingly, there are two components to this defence: First, if a belief is relied on it must be an honest belief. That much was found by the magistrates. Second, there have to be reasonable grounds for the holding of that belief. That is an objective question.

28. The first submission, therefore, by Ms Manzano is that the magistrates simply failed to ask themselves whether there was a reasonable basis for Ms Goremsandu, the Respondent, holding the belief, which they accepted she honestly did, about the time for the completion of the works. In my judgment, that submission is correct. They do not set out the facts which say what the reasonable basis for that belief was and there were a number of factors which they would have required to address, including the structure of the Tribunal's decision, flat by flat, including the structure of the differing time limits, flat by flat, and the basis upon which they concluded that the references to the time limit in Flat 3 was a mistake without dealing with the reasonableness of not realising it was a mistake. There may have been other matters, only touched upon in the evidence, for example the letters sent by the local authority to her dealing with the time limit which they would also have had to consider.

29. However, it is possible that in paragraph 6.6 the magistrates did, by use of the words "understandable belief" intend to convey that they found that that belief was a reasonable belief, notwithstanding that such language does not appear and notwithstanding that the first question does not raise any issue at all about whether they were right in relation to the reasonableness of the view held, but simply ask whether an honestly held but mistaken belief was capable in law of amounting to a reasonable excuse.

30. However, in case I have misunderstood the basis of their decision, I deal with the second submission, which is that if they reached a conclusion that there was a reasonable basis for the Respondent's belief, that was not a rational conclusion for them to come to. I am satisfied that if they applied their minds to it, they came to a completely untenable decision, one properly described as irrational.

31. First of all, there was no justification at all for contemplating that any reasonable person who had read the documents could have thought that the nine-month period applied other than to the works in Flat 4 or to the central heating in relation to Flat 3. There is simply no rational basis upon which, that the document relied on by the Respondent, as they found it was, could have led to the conclusion that the nine-month period applied to all the works. That, I accept, is the finding in relation to belief but it could not possibly have been held that there was a reasonable basis for such a belief. The question, as Ms Manzano points out, is one they could also only answer offence by offence and the circumstances in relation to the flats were different. The magistrates, if finding there was a reasonable excuse, would have had to address the differences in the Tribunal's decision as between the works in Flats 1, 2, 3 and, for these purposes, 4 as well, given the weight put on it.

32. Moreover, once the decision is read and it is understood that the works to the central heating boiler are the same works in Flats 1, 2, 3 and 4, there was no basis for

supposing that six weeks was other than the correct completion date for those works. So far as Flats 1 and 2 are concerned, it clearly was because that is the time set out. There is no reasonable basis for anyone reading the requirements in relation to those flats as subject to a time limit that is only mentioned in relation to Flat 3.

33. If the argument is that the time limit in Flat 3 is to be read as applying to Flats 1 and 2 where different time limits are expressed in relation to Flats 1, 2, that is completely illogical. It is the converse which is obvious. It is also perfectly obvious that the reference to six "months" in the Flat 3 notice is a typographical error for "weeks" and the position in relation to Flat 3, whatever it might be as a matter of technicality, could not apply to Flats 1 and 2.

34. I should add that the Tribunal's rationale for the time limit shows exactly why the time limit of six weeks was chosen. It was chosen to be less than the 84 days in the original notices because there was to be a more readily installed communal system. It would be irrational then to suppose that in relation to such a system there had been a general extension to six months rather than 84 days.

35. The second question raised by the magistrates is whether they should have restricted the effect of the error to Flat 3 but that, with respect, is to mistake the issue. The issue in relation to Flat 3 is not whether the works were completed; the magistrates have found that the language of the notice was a mistake, that the offence was committed subject only to the defence of a reasonable excuse. The magistrates had no difficulty in interpreting and applying the notice as if it contained as intended a six-week rather than a six-month time for completion.

36. Could a reasonable person have understood in relation to the central heating system that the reference to six months was other than a mistake for six weeks? In my judgment to answer to that is no. Any reasonable person reading that would have understood full well that the time limit was stated as six months in error and would have realised that the time limit was six weeks.

37. If there had been some basis upon which the connection of Flat 3 to the communal system was thought to be likely take a bit longer or could have been delayed a bit, then there might have been a basis upon which it could have been held that there was a basis for the six months being other than an error obvious to any reasonable person. But that is not an exercise the Respondent attempted, nor the path the Magistrates' went down. Accordingly I answer the first question, whether they were wrong to conclude that the Respondent's honestly held but mistaken belief was capable in law of amounting to a reasonable excuse: yes, they were wrong to conclude that.

38. I answer the second question as to whether they were wrong in not restricting the effect of the error in the document to the improvement notice in respect of Flat 3: again, yes, they were wrong, in the sense that the error could not rationally apply to Flat 3 or any of the Flats.

39. The upshot of all that is that the appeal is allowed, the decision of the magistrates cannot stand and the informations are sent back to them with the direction to convict in each case and to move to sentence.

40. MS MANZANO: I am grateful for your Lordship's decision. I do have an application for costs in this case. I have a schedule prepared by those instructing me.

41. MR JUSTICE OUSELEY: Have you served it on Ms Goremsandu?

42. MS MANZANO: My Lord, not yet.

43. MS GOREMSANDU: It would of course have to be reviewed because I cannot accept at all times big amounts of money for very little works done.

44. MR JUSTICE OUSELEY: Let me see what they are asking for and then you can --

45. MS GOREMSANDU: Could I ask something? So basically we've got to to go back to the magistrates again to look at --

46. MR JUSTICE OUSELEY: Yes, go back to the magistrates. They will then reconvene, they will convict you on each information and they will then proceed to sentence you.

47. MS GOREMSANDU: Would it be looked at as a new case or as a continuation?

48. MR JUSTICE OUSELEY: Yes, the same case goes back. The magistrates will let you know when you have to attend, I'm sure.

49. MS GOREMSANDU: So I need to wait for a letter from the magistrates?

50. MR JUSTICE OUSELEY: Yes.

51. MS GOREMSANDU: Okay, fine, but would it be looked at as a new case?

52. MR JUSTICE OUSELEY: I know nothing about it. This is the same case. It will be as if instead of acquitting you back in 2012, they had convicted you. So they will simply convict and then move to sentence.

53. MS GOREMSANDU: So your decision is that they have to look at it as me being guilty rather than to look at it again whether I'm guilty or not?

54. MR JUSTICE OUSELEY: Yes, because if I had only answered the question one way they might have to go back and consider whether there were reasonable grounds, but I have also concluded that they could not rationally conclude that there were reasonable grounds and so they have no option but to convict.

55. MS GOREMSANDU: So I will be convicted one way or another?

56. MR JUSTICE OUSELEY: I beg your pardon?

57. MS GOREMSANDU: So I will be found guilty one way or another?

58. MR JUSTICE OUSELEY: You will be found guilty, yes.

59. MS GOREMSANDU: I have no defence?

60. MR JUSTICE OUSELEY: You have no defence.

61. MS MANZANO: My Lord, the first document is a summary schedule, a costs analysis sheet setting out the number of hours spent by those instructing me, counsel's time. The second spreadsheet is a breakdown of legal costs.

62. MR JUSTICE OUSELEY: Can I just ask you this: the magistrates have been at fault here, it's their error of law. You say you are still entitled to ask for your costs against her. I appreciate you couldn't make an application against the magistrates.

63. MS MANZANO: My Lord, my submission will be yes, costs would have been awarded below for the prosecution had the magistrates appropriately convicted the defendant and the fact that we've had to come through the entire system and this process to make the magistrates come to that conclusion and that finding means that we've had to spend further time and costs to deal with this.

64. MR JUSTICE OUSELEY: All right. I will hear what Ms Goremsandu has to say.

65. MS GOREMSANDU: Because I represent myself, I'm very short of money, I couldn't afford a solicitor or barrister. But basically, logically, when the magistrates looked at the case, the first appearing to the magistrates, the local authorities barrister produced a bill and it was not reduced because I was acquitted, so they accepted the full costs. I was under the impression that if I am acquitted on some points there should be a reduction in the bill but there was no reduction, so I don't think I should be paying twice as if I'm judged twice to be making a payment.

66. MR JUSTICE OUSELEY: I understand why lay people -- and, indeed, sometimes judges -- balk at the amount of legal costs that can be run up. But, dealing with the principle, do you wish to contest the making of any order against you?

67. MS GOREMSANDU: Yes.

68. MR JUSTICE OUSELEY: Why?

69. MS GOREMSANDU: Because I am not guilty of those offences. This action is taken against me out of maliciousness and hatred towards me from this lady here at the back of the court.

70. MR JUSTICE OUSELEY: I'm not going to debate that. It's very difficult to say a case is malicious when you've lost it. It's not going to help you to try and run that argument, I'm afraid. I'm going to move on, Ms Goremsandu, I'm not listening to you saying this case is brought maliciously.

71. MS GOREMSANDU: I want to contest it, the outcome of that course.

72. MR JUSTICE OUSELEY: What do you want to say about the amount?

73. MS GOREMSANDU: We're talking about the bill?

74. MR JUSTICE OUSELEY: Yes.

75. MS GOREMSANDU: If I said to you when we went to the Magistrates' Court, although I was acquitted, still the magistrates accepted the bill for costs of the barrister and the local authority. There was no reduction on the basis that I have been acquitted on some points. So for them to claim again this money doesn't make sense.

76. MR JUSTICE OUSELEY: It makes sense to me, I'm afraid.

77. MS GOREMSANDU: But why should I be charged twice if I was acquitted and then coming back to say, "No, it was wrong"? I came to be charged, it doesn't make sense. I won my case before on ten counts so they shouldn't have paid all the monies. I think I shouldn't pay this bill, I don't have to pay this bill.

78. MS MANZANO: My Lord, if I may assist the Court on that particular issue, below at the Magistrates' Court there was an application for costs.

79. MR JUSTICE OUSELEY: Against you?

80. MS MANZANO: No, we made an application for costs against the defendant.

81. MR JUSTICE OUSELEY: Having lost?

82. MS MANZANO: We won on five offences and lost on ten. The full application would have been £5,366 but the magistrates reduced it accordingly to £2,755, so there was a significant reduction below. So what the Respondent is saying is, in fact, wrong.

83. MR JUSTICE OUSELEY: Well, I can't deal with those costs, I can only deal with costs here.

84. MS MANZANO: My Lord, just to deal with that particular issue.

85. MS GOREMSANDU: If that's the case, then I would like to dispute the amount here because there is a way of disputing it, isn't there? There is a costs office here where I can dispute the amount separately.

86. MR JUSTICE OUSELEY: I am going to assess these costs summarily, it seems to me, particularly in view of the hour. But first of all an order for costs should be made, Ms Goremsandu, and I do make an order for costs against you. I do so because the case that your arguments persuaded the magistrates, I accept, is really untenable.

87. Secondly, I turn to the amount. The amount is, by today's standards, not so large as to make it worth your while going through the detail of the costs. There is the odd item that one can take issue with, for example chasing counsel for her skeleton argument, which you will see -- bottom right, first page -- didn't take long. But in my judgment, if

this went off for detailed assessment, which would be the other way of dealing with it, there are bound to be -- there always are -- some reductions.

88. I am going to make a round judgment reducing the costs in total to £4,000, which will include VAT. So the order for costs will be paid in the sum of £4,000, including VAT. Thank you very much.

89. MS MANZANO: I am grateful, my Lord.

90. MS GOREMSANDU: Can I ask, is your decision final? Can I appeal against it?

91. MR JUSTICE OUSELEY: If you want to appeal you need to ask for a certificate that there is a point of law of general public importance. There isn't. You can't go to the Court of Appeal, you have to go to the Supreme Court and I'm not going to certify the question. It is over.

92. MS GOREMSANDU: I'm not talking about the costs amount, I'm talking about the outcome.

93. MR JUSTICE OUSELEY: I appreciate you're talking about the substance. No, it's over.

94. MS GOREMSANDU: I cannot appeal at all, not even to the Supreme Court?

95. MR JUSTICE OUSELEY: You can't appeal at all.