



HERBERT
SMITH
FREEHILLS



UNIVERSITY OF
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HERBERT SMITH FREEHILLS DISABILITY MOOTING CHAMPIONSHIP: OXFORD v CAMBRIDGE

Bond v Blofeld

IN THE SUPREME COURT OF THE UNITED KINGDOM

A. Facts

1. Ms Jane Bond has lived as a tenant at Flat 3, Goldfinger Buildings since 2018, where she has an Assured Shorthold Tenancy. Goldfinger Buildings is owned by Mr Ernie Blofeld, who is Ms Bond's landlord, and freeholder of the building's seven flats.
2. The fixed term of Ms Bond's tenancy ended in 2019, and since then she has had a rolling monthly periodic Assured Shorthold Tenancy. Her rent since January 2020 has been £1200 per month.
3. Ms Bond was born in 1989 with cyanotic heart disease caused by a congenital heart defect which was diagnosed at birth. As an infant, she had successful surgery to correct the defect. She experiences no symptoms of her condition in everyday life but must not do any sports or activities which significantly increase cardiac strain.
4. Ms Bond is employed as the manager of Capital Cinema. In March 2020, all cinemas were closed due to Covid-19 restrictions and she was placed on furlough, receiving 80 percent of her income. By July 2020, Miss Bond has accrued arrears of £2400. This was a result of her reduced income and an increase in her household expenses.
5. In August 2020 Ms Bond became pregnant and started to experience significant shortness of breath, felt tired very easily and began using a wheelchair to get about. Her Consultant Cardiologist told her that this is because the pregnancy is placing additional strain upon her heart due to low oxygen saturation in her blood, with insufficient oxygen able to reach her lungs and other organs. Ms Bond became unable to work in her administrative job at Capital Cinema in September 2020.
6. In the period between September 2020 and December 2020 Ms Bond had a very limited income, and as a result she fell further into arrears and owed Mr Blofeld an additional £2,000.
7. Ms Bond texted Mr Blofeld in November 2020 saying "I'm really sorry about the rent. I'm pregnant and I've got really ill with my heart. I'm trying to sort out my finances and benefits and as soon as I've done that I'll pay back the rent I owe..".

8. Ms Bond's flat is directly next to Flat 4. Flat 4, which has three bedrooms, is occupied by three students: Ms Moira Penny, Ms Elizabeth Scott, and Ms Sarah Highman. Each of the students entered into a separate licence agreement with Mr Blofeld. Under the terms of this agreement, the licensee is entitled to reside in the flat in common with up to two other persons and Mr Blofeld is permitted to enter the flat only for the purposes of inspecting the condition of the flat and carrying out maintenance or repair work.
9. Since Ms Bond became unwell in August 2020, the students in Flat 4 have held house parties at least three times per week. At these parties, the students play extremely loud music, which prevents Ms Bond from sleeping. As a result, Ms Bond has felt even more tired and has struggled to make use of her wheelchair. The students' loud parties contravene the terms of their agreements with Mr Blofeld.
10. In September 2020, Ms Bond told Mr Blofeld about the parties and asked him to intervene, but he replied that this was an issue for her and her neighbours to settle. The parties continued.
11. On 1st January 2020 Ms Bond was served with a section 8 notice on ground 8 of Schedule 2 of the Housing Act 1988, signed by Mr Blofeld. At this point, she owed the £2,000 accrued between September 2020 and December 2020 plus the outstanding £2,400 on the arrears accrued in June and July 2020.
12. Ms Bond gave birth in May 2021. However, due to permanent cardiac function deterioration, she continues to experience severe breathlessness.

B. Proceedings in and Decision of the County Court

13. On 1st July 2020, possession proceedings were issued in Clerkenwell County Court on the basis of ground 8 of Schedule 2 of the Housing Act 1988, and a defence and counterclaim were filed on behalf of Ms Bond.
14. Ms Bond wished to continue the tenancy, as the pressure of moving would be difficult given her current ill-health. Her financial position has improved such that she would be able to pay the monthly rent and, over time, pay off the arrears.
15. Ms Bond's lawyer argued in the defence that Ms Bond was disabled within the meaning of section 6 of the Equality Act 2010, that the arrears had accrued because of her disability, and therefore the possession proceedings amounted to unlawful discrimination arising from disability under section 15 and section and 35(1)(b) of the Equality Act 2010.
16. Ms Bond also brought a claim of nuisance against Mr Blofeld on the basis that Mr Blofeld was liable for the nuisance created by the students in Flat 4 because he had failed to take any action to curb the unreasonably noisy parties.
17. In her judgment, District Judge Em noted that ground 8 of Schedule 2 of the Housing Act 1988 was a mandatory ground. However, per *Akerman-Livingstone v Aster Communities Ltd* [2015] UKSC 15, [2015] AC 1399, the Equality Act 2010 could be used to defend a possession claim brought on mandatory grounds.

18. Under section 15 of the Equality Act 2010 it must be shown that “the eviction is ‘because of something arising in consequence of B’s disability’”. Judge Em said that the arrears accrued by Ms Bond were not something “arising in consequence of her disability.” Unlike in cases such as *Akerman-Livingstone v Aster Communities Ltd*, where the tenant’s behaviour which led to possession proceedings was a direct result of their disabilities, Ms Bond had been unable to pay her rent. Mr Blofeld sought to evict Ms Bond because of the arrears and, given that Ms Bond owed Mr Blofeld £2,400 in July 2020, it could not be said that the arrears had arisen in consequence of Ms Bond’s disability.
19. Furthermore, even if it could be said that the arrears had arisen in consequence of Ms Bond’s disability, using the proportionality test endorsed in *Akerman-Livingstone v Aster Communities Ltd*, Mr Blofeld’s objective in regaining possession of Flat 3 and vindicating his property rights was sufficiently important to justify limiting Ms Bond’s rights.
20. On the question of the claim for nuisance, while the students who reside in Flat 4 are licensees, not tenants, it is appropriate, in the circumstances of this case, to apply the rules that govern the liability of a landlord for their tenant’s nuisance. A non-occupier landlord is not liable for acts of nuisance by his tenants unless the landlord authorises the nuisance or participates directly in it: *Coventry v Lawrence* [2014] UKSC 46, [2015] AC 106. Mr Blofeld had not authorised the nuisance or directly participated in it.
21. Accordingly, Mr Blofeld’s application for a possession order was granted. Ms Bond’s claim against Mr Blofeld for nuisance failed.
22. Ms Bond appealed to the Court on Appeal on both the possession claim and the claim for nuisance. As a result the possession order was suspended pending the appeal, and Ms Bond was permitted by the court to continue living in Goldfinger Buildings.

C. Appeal to the Court of Appeal

23. In the Court of Appeal, Ms Bond submitted:
 - a. Em J had erred in her interpretation of the requirement under section 15 of the Equality Act that the unfavourable treatment must be “because of something arising in consequence of B’s disability.” The causal connection between the arrears and her disability was satisfied.
 - b. On the question of proportionality, Mr Blofeld was in a different position to social housing landlords, such as the landlord in *Paragon Asra Housing Ltd v Neville* [2018] EWCA Civ 1712, and his objective was not sufficiently important to justify limiting her equality rights to freedom from discrimination on the grounds of disability.
 - c. As regards the nuisance, it was a mistake to apply the rules governing the liability of landlords for their tenants’ nuisance because Mr Blofeld is not the landlord of the students who reside in Flat 4: *Cocking v Eacott* [2016] EWCA Civ 140, [2016] QB 1080.

24. Mr Blofeld argued:
- a. For the reasons given by Em J, no defence to the possession proceedings could be raised under the Equality Act because the arrears had not arisen in consequence of Ms Bond's disability.
 - b. In any event his attempt to vindicate his property right, the sole source of his income being the rent and fees from the seven flats he owned, was an important objective which could justify limiting Ms Bond's rights.
 - c. As regards the nuisance, the reasoning of Em J could not be faulted.
25. Mallory LJ, giving the judgment of the Court of Appeal, was not persuaded that the arrears accrued by Ms Bond were not "something arising in consequence of her disability." All that was required was a loose causal link between the arrears and Ms Bond's disability, and that was clearly met here: *Risby v London Borough of Waltham Forest* UKEAT/0318/15 . The fact that part of the arrears pre-dated her present disability was not significant. To say otherwise would undermine the protection of the Equality Act.
26. Mallory LJ noted that Lord Neuberger in *Akerman-Livingstone v Aster Communities Ltd* at [55] had described how "Section 35(1)(b) provides a particular degree of protection to a limited class of occupiers of property, who are considered by Parliament to deserve special protection... Further, once the possibility of discrimination is made out, the burden of proof is firmly on the landlord to show that there was no discrimination contrary to section 15(1)(a), or that an order for possession is proportionate under section 15(1)(b), of the 2010 Act." As such, the burden was on Mr Blofeld to show that an order for possession was proportionate. The issue here was the weight to be given to Mr Blofeld's vindication of his property rights as a private landlord. He added "where possession proceedings are brought by a private landlord, the landlord's property rights will rarely, if ever, be of sufficient importance to justify limiting a tenant's right against disability discrimination."
27. On the question of nuisance, Mallory LJ agreed with the reasoning of Em J.
28. Accordingly, the Court of Appeal (a) allowed Miss Bond's appeal in relation to possession proceedings, holding that she had a full defence to the possession action by Mr Blofeld; and (b) dismissed Miss Bond's appeal in relation to the claim in nuisance.

D. Appeal to the Supreme Court

29. Mr Blofeld was granted permission to appeal to the Supreme Court on the following ground:

The Court of Appeal erred in two regards in its interpretation of section 15 of the Equality Act 2010. First, it had interpreted the requirement for a causal link between the tenant's disability and the reason for repossession proceedings too widely. Secondly, as a matter of public policy it could not be the case that where possession proceedings are brought by a private landlord, the landlord's property rights will rarely, if ever, be of sufficient importance to justify limiting a tenant's right against disability discrimination.

30. Miss Bond was granted permission to cross-appeal on the following ground:

The Court of Appeal erred in holding that it was appropriate to apply, in the circumstances of this case, the rules governing the liability of landlords for nuisances committed by their tenants.

E. Authorities

Pursuant to rule 4(2) of the Rules of the Championship, the following cases only may be cited in the moot:

Risby v London Borough of Waltham Forest UKEAT/0318/15

Akerman-Livingstone v Aster Communities Ltd [2015] UKSC 15, [2015] AC 1399

Pnaiser v NHS England [2016] IRLR 170

Birmingham City Council v Stephenson [2016] EWCA Civ 1029, [2016] HLR 44

Paragon Asra Housing Ltd v Neville [2018] EWCA Civ 1712, [2019] 1 P & CR 8

Sedleigh-Denfield v O'Callaghan [1940] AC 880

Coventry v Lawrence [2014] UKSC 46, [2015] AC 106

Cocking v Eacott [2016] EWCA Civ 140, [2016] QB 1080

You are further permitted to refer to:

- Any other cases to the extent that they are referenced in the cases above; and
- Such other legislation and such academic commentary as may be relevant.