Neutral Citation Number: [2025] EWCC 7

Case No: J30LV563

IN THE COUNTY COURT AT WANDSWORTH
ON APPEAL FROM THE COUNTY COURT AT BRENTFORD

Wandsworth County Court
76-78 Upper Richmond Rd
London SW15 2SU

Date: 12 March 2025

Before:

HHJ PETER MARQUAND

- -

Between:

Nikki Lumsden	**Claimant/ Appellant**
- and –	
Rachel Charles	**Defendant/ Respondent**

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- -

Andrew McKie (instructed by **Copious Law**) for the **Appellant**
Stephen Bishop (Direct Access) for the **Respondent**

Hearing dates: 11 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 12 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ PETER MARQUAND

HHJ Peter Marquand:

Introduction

1. This judgment concerns an appeal from the order of District Judge Jenkins (the "Judge") dated 12 March 2024 in the County Court at Brentford. The Appellant, Ms Lumsden was the tenant of the Respondent, Ms Charles. The Appellant alleges the Respondent did not protect the deposit paid in respect of an assured short hold tenancy. The Appellant therefore brought a claim against the Respondent under section 214 of the Housing Act 2014 (the "Section 214 Claim"). This section requires the court to make an award of a sum of money of up to 3 times the level of the deposit, if it has not been protected as required by the Housing Act 2014. A number of procedural issues arose and before the Judge and the Appellant sought relief from sanction for a failure to file her evidence at the same time as the Part 8 claim form, as the Civil Procedure Rules (CPR) require. The Judge refused relief from sanction and struck out the claim.

2. The issues I have to decide are first, whether to grant permission to amend the Grounds of Appeal. Secondly, if I do grant permission, whether a matter not argued before the Judge would lead to a different outcome and thirdly, whether the Judge was wrong in the application of the relevant legal test for relief from sanction.

3. I am grateful to Mr McKie for his written and oral submissions on behalf the Appellant. Mr McKie did not represent the Appellant at the hearing below, draft the grounds of appeal or draft the skeleton argument in support of the appeal. He drafted an updated skeleton argument adopting the Appellant's skeleton argument that accompanied the notice of appeal. I am grateful to Mr Bishop for his written and oral submissions on behalf of the Respondent.

Background

4. The Appellant and Respondent had been in the relationship of tenant and landlord respectively for a number of years at 84 Fordmill Road, Catford London SE6 3JR ("the Property"). On 7 December 2016 they entered into their third assured short hold tenancy (the "AST") which was for the period of five years from 7 December 2016 to 6 December 2021. The address in the AST that the Respondent provided as her address under section 48 of the Landlord and Tenant Act 1987 for service of notices upon her was the address of the Property. The Appellant's parents, Mr and Mrs Sheppard were joint tenants. A deposit of £2,100 was paid. Mr and Mrs Sheppard left the Property at some time in May 2019 (from this point on the Appellant was estranged from her parents), but the Appellant remained in occupation as a sole tenant until she vacated the Property on 19 December 2020.

5. On 1 April 2020 the Respondent issued and served proceedings against the Appellant under claim number G0QZ53E1. The basis of the claim concerned payments made by the Respondent to the Appellant for refurbishment of the Property. The details of the claim are not important in this case, but on the claim form the Respondent gave her address as 12 Onslow Road, Richmond TW10 6QF (the "Onslow Road Address").

6. Under section 213 of the Housing Act 2004 a landlord must comply with various requirements concerning any deposit, including using an approved Tenancy Deposit Scheme and providing certain information, all within a prescribed deadline of 30 days.

In this claim, the Appellant alleges that the Respondent failed to comply with those requirements. In such a circumstance, section 214 of the Housing Act 2004 entitles the Appellant, as the tenant, to apply to the court and if the grounds are made out, the court must award a sum of money up to 3 times the amount of the deposit, in this case £6,300.

7. By letter dated 6 May 2022, the Appellant's solicitors wrote to the Respondent at the Property. They did not receive a response and emailed the Respondent at a Yahoo email address in the form of a letter dated 2 August 2022. That too received no response and the Appellant's solicitors wrote to the Respondent at another address, 2 Michels Row, Richmond Surrey TW9 2SU (the "Michels Row Address"). On 16 September 2022 the Appellant's solicitors emailed the Yahoo address, including the Michels Row Address, stating that proceedings would be issued without further notice. On 11 and 19 October 2022 further emails were sent to the Yahoo email address giving further notice of court proceedings and the likely costs. There was no response to any of this correspondence.

8. The CPR require that the Part 8 procedure is used for a claim under section 214 of the Housing Act 2004. CPR 8.5(1) requires that when a claimant files a Part 8 claim, they must also file the evidence on which they intend to rely. It is agreed that the relevant limitation period under the Limitation Act 1980 expired on 7 January 2023. The Appellant filed at the County Court a Part 8 claim form that was issued on 23 December 2022. The Respondent was named as the first defendant and Mr and Mrs Sheppard were named as the second and third defendants respectively. The Appellant's parents would be entitled to a share of any award and as required under CPR 19.3 they were named as defendants. However, no address for service for them was provided. The address provided for the Respondent on the claim form was the Michels Row Address. The claim form was not accompanied by any witness evidence nor was the section headed "details of claim" completed. The Appellant asked for "solicitor service" and accordingly the court returned the claim form to the Appellant's solicitors. On 14 March 2023 the Appellant signed a document headed "details of claim for claim form (CPR Part 8)' (the "Details of Claim") and her witness statement in support of the claim (the "Witness Statement").

9. On 14 March 2023, the claim form, Details of Claim and Witness Statement were served by the Appellant's solicitors at the Property address and the Michels Row Address. The Respondent did not file an acknowledgement of service and on 11 May 2023 District Judge Deane gave directions for a hearing on 18 July 2023. At that hearing District Judge Deane removed the second and third defendants from the proceedings and entered judgment in the Appellant's favour. On 28 September 2023 an Interim Third-Party Debt Order was made against the Respondent.

10. In an application dated 11 October 2023 the Respondent applied to set aside the judgment. The Respondent stated that she knew nothing about the case until her bank contacted her as a result of the Interim Third-Party Debt Order. She stated that the wrong addresses had been used (i.e. the Property address and Michels Row Address) and that her email address was one with Gmail, not Yahoo. She also stated that the Appellant was aware of her correct address because of the litigation between them in claim number G0QZ53E1.

11. On 24 October 2023 judgment was set aside and directions given for filing an acknowledgement of service and any evidence in reply by the Respondent.

12. On 13 November 2023, the Respondent filed an acknowledgement of service and made an application to strike out the claim. This was on the basis that there was no evidence (the court's permission being required to rely on evidence not filed with the Part 8 claim form) and therefore there were no reasonable grounds to bring the claim and that it was an abuse of process. On 5 December 2023, the Appellant filed and served a reply and on 10 January 2024 made an application for relief from sanction seeking permission to rely on the Details of Claim and the Witness Statement.

Proceedings before the Judge

13. On 12 March 2024, the Judge had before him 2 applications. First, the Respondent's application to strike out the claim and secondly, the Appellant's application for relief from sanction. The Respondent had emailed the court stating that she was not available to attend the hearing, but no formal application had been made. The Judge decided to proceed in the Respondent's absence.

14. In his judgment, the Judge set out the background including that there were brief details of the claim provided within the claim form, totalling 3 paragraphs, one of those paragraphs consisting just of a single line of text and with no additional evidence included. At paragraph 6 of the judgment the Judge noted that he was not sure whether the 2nd or 3rd defendants had in fact been served with the claim and noted that there was no address for either of them. He stated: "...they should have an address for service included in the claim form and they should be served with the claim and so, I am very confused as to why this has not been the case." The Judge recorded that the Respondent was served at the Michels Row address. The Judge recorded the Respondent's application dated 11 October 2023 and referred to the Onslow Road Address as the one at which she should have been served. The Judge also sets out that the basis of the Respondent's application before him was a failure to comply with CPR 8.5(1) by the Appellant not filing any evidence upon which they intended to rely when filing the claim form.

15. The Judge rejected the Appellant's argument that when the claim form was served on the Respondent it was accompanied by the Witness Statement and so there was no breach of CPR 8.5(1). This finding is not subject to an appeal. Having done so he went on to state at paragraph 13:

> "...I have not heard any evidence that the claim has been served on the 2nd or 3rd defendants and I do not see how it could have been in any event. What is said by the claimant in their evidence is that they are estranged from their parents, being the 2nd and 3rd defendants, and that they are in Egypt. I have not seen any evidence of any attempts to serve them with any of the papers, or find an address for them, or for permission to serve them outside of the jurisdiction."

16. The Judge went on to consider the test in *Denton* and it was accepted by the Appellant that the breach was serious and significant. The Judge rejected that the inexperience of the fee earner and a misunderstanding of the CPR was a good reason for a breach of the rules and this aspect of the judgment is not in dispute.

17. The Judge considered the 3rd stage of *Denton*, namely all the circumstances of the case, so as to enable the court to deal justly with the application including r.3.9(1)(a)(b). The Judge dealt with this at paragraph 17 onwards and referred to:

    i) Service of the proceedings as being "One of the major issues that I do take into account". The Judge concluded that the claim form did not appear to have been properly served on the first defendant in accordance with CPR 6.3. The Judge went on to detail the Third-Party Debt Order, setting judgment aside and that the Appellant had the Respondent's current address from the claim G0QZ53E1 and referred to this as the address which: "should have been used" and that there was no evidence from the Appellant to the contrary.

    ii) The claim form not including an address for service for Mr and/or Mrs Sheppard and the requirement in CPR 19.3 that they should have been joined as defendants because of their interest in the claim and that they could lose out financially.

    iii) The promptness of the Appellant's application. The Judge concluded that the breach was on 23 December 2022 when the claim was issued and the application for relief from sanction was dated the 10 January 2024. The Judge recorded his opinion that it appeared that the application for relief was only prompted by the Respondent's application to strike out for the failure to comply with CPR 8.5(1).

    iv) The prejudice suffered by the Respondent. The Judge referred to this as being "some prejudice", although he agreed that it was "not substantial in and of itself."

    v) The delay in the proceedings. This was referred to as "huge" as a result of the Appellant failing to use the Respondent's Onslow Road Address and that if relief from sanction was given there would be further delay because, the Judge stated, there would be an ongoing issue of service on the 2nd of the 3rd defendants. The Judge stated that: "delay always causes some amount of prejudice to a party, albeit a delay is not always unreasonable."

    vi) The overriding objective and the Judge did not agree with the Appellant's admission that the Respondent would avoid a successful claim and the only remedy available to the Appellant was to pursue her solicitors for negligence and that would cause additional trouble for the court. The Judge stated that if the Appellant had a claim against her solicitors and it was clear-cut then that could be accepted, but the Judge stated: "I do not need to make a judgement on that issue but would still leave the [Appellant] options which are available to her if I were not to grant relief from sanctions."

    vii) The pre-action timescale being 7 months or so before the claim was issued without good reason for issuing expeditiously. The Judge discussed the value of the claim between £2,100 and £6,300 as not a "huge sum of money". The Judge referred to the significant number of orders from the court, 2 applications and still not being "further along with getting towards final hearing". The Judge stated he needed to deal with matters proportionately and stated that: "we cannot move forward in any event today even if I were to grant relief from sanction because of the issue of service on the 2nd and 3rd defendants".

18. The Judge declined to grant relief from sanction and struck out the claim as there was no evidence upon which the Appellant could succeed.

The Grounds of Appeal

19. Three grounds of appeal were pursued, Ground 1 having been abandoned before the stage of permission to appeal. The grounds are recorded in the notice of appeal as follows:

> Ground 2 – "the learned judge erred, in fact and in turn in law, by wrongly determining service and address of claim (sic) was incorrect, when CPR 6.9 allowed for service at last known address, that (sic) which was obtained from the HM Land Registry – which in turn adversely impacted granting relief.
>
> Ground 3 – "the learned judge erred in fact and in turn in law, by wrongly accounting about service addresses absence (sic) for 2nd and 3rd defendants, when they are (sic) no longer part of the proceedings and further, that issue was not explored during submissions and only raised during judgment as such [the Appellant] was denied opportunity (sic) to argue – which in turn adversely impacted granting relief.
>
> Ground 4 – "the learned judge erred, in fact and in turn in law, by failing to take account of the overriding objective of saving of further resources in light of the Senior Court precedent of *Badejo v Cranston* [2019] EWHC 3343 (Ch) which merited that relief be granted."

20. However, the Appellant's skeleton argument included the following:

    i) In the submissions in relation to Ground 2 it stated:

    > "There was valid service because the address provided to the Claimant in the Lease pursuant to section 48 of the Landlord and Tenant Act 1987 was [the Property address]. By operation of CPR 6.8(b), the claim form may be served at 'section 48 address' being an address given by a defendant which they may be served."

    ii) In the submissions it stated that the Judge was wrong to conclude that the Appellant waited a year to seek relief from sanction as the court had previously considered the claim both on the papers and in hearings and as such any procedural irregularity was impliedly waived by District Judge Deane by way of informal permission being granted or the court by implication correcting an error of procedure under CPR 3.10. It was not until the Respondent made the strike out application dated 13 November 2023 that the issue of non-compliance was raised. Furthermore, at paragraph 8.11 of the skeleton argument it stated:

    > "To the extent that the [Judge] was exercising a discretion, he did so on flawed facts in the sense that matters were taken

> into account which ought not to been, or which were left out of account when they ought not to have been. As to this, it is submitted that the following factors should have been in the [Judge's] mind:
>
> 1) that there was a breach of CPR 8.5(1) because evidence was not filed on the Part 8 claim form and/or no application was made pursuant to CPR 8.5(8) to extend time for the filing of evidence so as to otherwise modify the requirement;
>
> 2) that the breach was not a continuing one in the sense that the evidence in support had been provided in March 2023;
>
> 3) that it was accepted by the [Appellant] to be a serious and significant breach for which there was no good explanation;
>
> 4) that the breach was not deliberate;
>
> 5) that the policy behind the rule is (a) to inform the Defendant of the case it has to meet and (b) to prevent a party attending a final hearing without having filed evidenced first;
>
> 6) that there had been a final hearing before District Judge Deane at which no issues had been raised as to the admissibility of or reliance upon the [Appellant's] evidence;
>
> 7) that the claimant had not made an application for permission earlier because District Judge Deane had considered the papers in May 2023 and not raised any issue, had given judgment in July 2023 (which had been set aside), and the request for permission was responsive to the [Respondent's] application to strike out in mid-November 2023;
>
> 8) that there could still be a fair trial;
>
> 9) that no court date had been jeopardised and the matter was ready for final hearing;
>
> 10) the [Respondent] had suffered no real prejudice."

21. CPR 52.17 requires the court's permission to amend an appeal notice. The notes to the White Book at paragraph 52.17.1 indicate that where the proposed amendment raises something argued in the lower court, if the application is made promptly and it may not prejudice the other parties it may be permitted, subject to general principles governing amendments. The principles on an appeal on a point <u>not</u> raised at trial are identified in

the White Book at paragraph 52.21.1.1. Referring to the authorities, the paragraph (insofar as it is relevant to this case) states the appellate court will be cautious in allowing a new point to be raised, but where that is a question of law the appellate court will only allow it to be raised if 3 criteria are satisfied. First, the other party has had adequate time to deal with the point. Secondly, the other party has not acted to its detriment on the basis of the failure to raise the point earlier and thirdly, the other party can be adequately protected in costs.

22. I granted permission to appeal at an oral hearing on 14 November 2024 where the argument was based upon the skeleton argument. No application to amend the grounds of appeal was made and my order does not include such permission. During the hearing of the appeal, Mr McKie orally applied for permission to amend the Grounds and that was opposed by Mr Bishop. Mr McKie's argument was that the Respondent had been fully aware since November 2024 of the skeleton argument and the points that it raised. It was in the interests of justice to allow the argument on section 48 the Landlord and Tenant Act 1987 (the "Section 48 Ground"). It was clear that it was the basis for permission to appeal being granted and the Respondent had dealt with it in her skeleton argument. None of the other matters had come as a surprise to the Respondent and they had been dealt with in her skeleton. Mr Bishop submitted that the arguments in the Appellant's skeleton argument that I have referred to at paragraph 20 (ii) above were not in the Grounds. As to the Section 48 Ground, it was not raised and it should have been. It been argued before another District Judge by a different counsel in a hearing in October 2023. This was therefore not a case where a new counsel discovered a new point. Mr Bishop also stated that he had not been provided with the skeleton argument until 3 February 2025 and he was taken by surprise over the Section 48 Ground. He had to amend his skeleton argument. However, he accepted that he had had time to deal with it.

23. During the hearing, I was not specifically addressed on the application of the tests in *Denton* to such an application. However, after the hearing I gave the parties an opportunity to deal with this in writing. Mr McKie accepted that the principles in *Denton* were applicable. He accepted that it was a serious and significant breach. However, he said there was a good reason, which was the matter was considered as part of counsel's later skeleton argument and the issue was developed in that way, which is not uncommon when drafting updated arguments to put the case in a slightly different way from that raised in the original grounds. On the 3rd stage of *Denton*, Mr McKie said there was no prejudice to the Respondent given that they been able to fully develop their submissions in response to these amended points at the hearing and provided a full response to the Appellant's case. The points had been in the oral renewed application for permission to appeal and it would be in the interests of justice that the Appellant should be able to rely upon the amended grounds for the purposes the full appeal hearing.

24. Mr Bishop's submissions were that there was no evidence about why the breach occurred. An argument that grounds of appeal often change/develop was not a good reason. As to stage 3 of the test, this was a relief from sanction application in a relief from sanction case and was not proportionate bearing in mind the value of the claim. The application was not prompt. My order for directions for the appeal had been breached by late service of the skeleton argument and Mr Bishop's time to deal with

the issue was restricted and this is one more breach of the CPR in a case with several such breaches.

25. There was a further development at the hearing of the appeal in that Mr McKie confirmed that he was abandoning the argument set out in Ground 2 of the appeal as originally drafted. In other words, in relation to service of the claim form he solely relied upon the Section 48 Ground.

26. CPR 3.9 concerns relief from sanction and states:

> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need—
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders.
>
> (2) An application for relief must be supported by evidence."

27. The test in *Denton and others v TH White Ltd* [2014] EWCA Civ 906 is well known in its application to CPR 3.9. The first stage is to identify and assess the seriousness and significance of the failure to comply with any rule, practice direction or court order which engages rule 3.9(1). The second stage is to consider why the default occurred. The third stage is to evaluate all the circumstances of the case, so as to enable the court to deal justly with the application including factors in CPR3.9(1) (a) and (b).

28. Ground 2, 3 and 4 as originally drafted raise issues that go to the exercise of the Judge's discretion. The factors set out at paragraph 20(ii) above are not specified within those grounds of appeal, but they are an amplification of the same argument, namely that relevant matters were not taken into account. The Section 48 Ground was not argued in the court below, but the Respondent has dealt with the point and has not acted to her detriment and could be adequately protected in costs, if necessary. Although Mr Bishop argued that the Section 48 Ground should have been made before the Judge, it was not. However, I will take this argument into account when it comes to the application of the 3 stages in *Denton*.

29. Turning to those stages now, it is accepted by the Appellant that the failure to make the application earlier was serious and significant. I do not accept that there is a good reason for failing to deal with this earlier in relation to all of the proposed amendments. Once the argument is identified an application should have been made to amend the grounds of appeal. The whole purpose being to make sure that the parties know what argument they have to meet on the appeal. It goes to compliance with the overriding objective of dealing with matters fairly and at proportionate cost. Turning to the 3rd stage of the *Denton* test the following features are against allowing the amendment. There has been a failure to comply with the rules, particularly in the context of a case where the issue on appeal concerns a failure to comply with the rules by the Appellant. The are a

number of breaches of the CPR in the case. Additional cost will have been incurred by the Respondent in amending the skeleton argument. The application was not made formally and was not made promptly. I do not accept that because I gave permission to appeal without identifying the amendments that in some way absolves the Appellant from first, pointing out the amendments during the oral permission hearing and secondly, making a prompt formal application to amend. This is even more pertinent because the Respondent was not present at the oral permission hearing (and for the avoidance of doubt there was no obligation on the Respondent to be present). In addition, the breach was serious and significant and there was an absence of a good reason, as I have found. I also bear in mind here for the Section 48 Ground that this was not a brand-new point, it having been raised at the application in October 2023. The factors in favour of granting relief from sanction are that without doing so the Appellant's claim will fail as the Section 48 Ground, if not permitted to be advanced, will determine the appeal. The Section 48 Ground and the matters in paragraph 20 (ii) were matters on which I considered there to be a real prospect of success at the permission to appeal hearing and I should consider whether it is right to deprive the Appellant of advancing those arguments at the full appeal. Furthermore, albeit at short notice, the Respondent has been able to deal with the arguments that were raised.

30. The circumstances are such that I consider it would be within the range of acceptable decisions to refuse relief from sanction, given the significant failure to comply with the rules in relation to appeals and lack of promptness, notwithstanding the factors that are in favour of granting relief that I have identified above. However, I consider that it would be too Draconian a step to prohibit the Appellant from advancing these arguments at the appeal, given that the Respondent has been able to deal with them. The failure to comply with the CPR and directions lies with her legal advisers and she should not be debarred from making arguments that I have previously considered had a real prospect of success when such a procedural step would resolve the appeal against her. Therefore, taking into account the points I have raised above I grant permission to amend the grounds to include the Section 48 Ground and the matters at paragraph 20 (ii).

31. The Respondent filed a Respondent's notice dated 18 December 2024. That notice sought to uphold the Judge's decision on a different basis, namely that the claim form was not served within the 4-month time limit and that no application had been made to extend time for service and therefore the claim should have been struck out for lack of service. The Respondent's notice was also filed out of time but included an application to extend time. Mr McKie raised no objection to the Respondent's notice, and I grant permission to rely upon it. However, given the concession made by Mr McKie that it is only the Section 48 Ground that is being relied upon in relation to service, if that Section 48 Ground is decided against the Appellant, then service will not have been valid and the claim will be void.

The Law

32. There was no real dispute about the law and despite a large number of authorities being included in the bundle and I was not referred to any of them. Under CPR 52.21 the appeal is a review (none of the exceptions applied) and the appeal court will allow an appeal where the decision of the lower court was wrong (the matters in CPR 21.21 (b) not being relevant). When it comes to the exercise of the judge's discretion, appeal courts: "will not interfere with the lower court's decision on such matters unless

satisfied that the lower court erred in law, erred in fact or reached a conclusion which falls outside the generous ambit within which reasonable disagreement is possible" (Commentary in the White Book paragraph 3.9.21). The approach to evaluative decisions is set out in paragraph 76 of *Re Sprintroom Ltd* [2019] EWCA Civ 932 as follows:

> "So, on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, 'such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion'."

33. *Abdulle and others v Commissioner of Police of the Metropolis* [2015] EWCA Civ 1260 makes it clear that the appeal court will not lightly interfere with case management decisions.

34. The Landlord and Tenant Act 1987 provides:

> "**48 Notification by landlord of address for service of notices**.
>
> (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
>
> (2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.
>
> (3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant."

35. CPR 6.8 provides:

> "**Service of the claim form where before service the defendant gives an address at which the defendant may be served**
>
> Subject to rules 6.5(1) and 6.7, and except where any other rule or practice direction makes different provision—

> (a) the defendant may be served with the claim form at an address at which the defendant resides or carries on business within the UK and which the defendant has given for the purpose of being served with the proceedings; or
>
> (b) in any claim by a tenant or contract-holder against a landlord, the claim form may be served at an address given by the landlord under section 48 of the Landlord and Tenant Act 1987 or section 39 of the Renting Homes (Wales) Act 2016."

CPR 6.5(1) and 6.7 are not relevant to this case.

Conclusions

The Section 48 Ground

36. Mr McKie's submissions were that section 48 of the Landlord and Tenant Act 1987 was clear and there was nothing to the contrary in the statute. Where the statute provided that the landlord must give notice then it was incumbent upon the landlord, when he or she changed their address, even as a former landlord, to provide a further notice of the address to which documents should be served. Furthermore, on the evidence there was no suggestion that the Property address or Michels Row Address were wrong and the Appellant had not provided a response to any pre-action correspondence. The Respondent's position that the other set of proceedings meant that the Appellant should have looked at the Onslow Road Address as the last known address, but this ignored the interplay between CPR 6.9 and 6.8. CPR 6.8 contained specific provisions about serving upon a landlord. There was no authority and nothing in the CPR to state that section 48 was no longer applicable to a former tenant and therefore that the Appellant was not entitled to rely upon it for service. The argument by the Respondent that it was only applicable whilst the relationship of landlord and tenant was in existence was misconceived and the answer was found within section 48 and CPR 6.8.

37. Mr Bishop's submissions were that the lease came to an end on 7 January 2020 the claim form was issued two years later. Even if section 48 continued to be applicable the Respondent as landlord had given further notice of her new address by virtue of the claim form in the case number G0QZ53E1. However, Mr Bishop submitted that there was no existing landlord and tenant relationship and that there was no obligation on the tenant to give an address: how could a landlord serve any updated address under section 48? The proposal by the Appellant was not a practical one. In any case, the wording of CPR 6.8 referred to "a tenant" and "a landlord" which was not consistent with a "former tenant" and/or "former landlord". The purpose of section 48 was to deal with service charge notices under the statute and the clear intention was to know the address of the landlord to deal with matters under the Landlord and Tenant Act 1987 Act. There was no wording to support an argument that it applied to a former relationship. To interpret CPR 6.8 to apply to former relationships would be to strain the construction and create an unworkable situation.

38. Section 48 states that the address given applies as the address for service of notices and: "including notices in proceedings". In other words, it goes beyond just notices in and under the act itself. Similarly, CPR 6.8 states that address can be used "in any claim" and its use is not restricted to claims under the Landlord and Tenant Act 1987 between

a tenant and a landlord. The purpose of CPR 6.8 is set out in the heading to the rule namely that service can be affected at an address given by defendant where the defendant is either a business within the UK and has given the address for that purpose or is a landlord who has provided an address under section 48. To say that this provision covers a former landlord is, it seems to me, contrary to the drafting of the rule. The drafting envisages a current relationship between a business and a claimant under CPR6.8(a) as the address for service must have been provided for the purposes of the proceedings. This supports an interpretation that the relationship between a landlord and tenant must also be current. Furthermore, the phrasing of any claim by "a tenant" against "a landlord" supports a current relationship. In this case if the question had been asked: is this a claim between a tenant and a landlord the answer would have been "no". This is a claim by a former tenant against a former landlord. I am reinforced in this conclusion by the practical difficulties that Mr Bishop identified if my interpretation was not correct.

39. In any case, even if my conclusion above is wrong, I find that adequate notice was given by the Respondent of her address for service under section 48 by virtue of the address that she gave on the claim form for the claim G0QZ53E1.

40. Accordingly, I dismiss this ground of appeal and it follows that the claim was never served and is therefore void. The Respondent is therefore successful in upholding the Judge's order on the Ground she advanced in the Respondent's Notice.

41. It is therefore not strictly necessary for me to go and consider the other grounds of appeal, but I will do so for completeness.

Ground 3

42. Mr McKie's submissions were that the 2nd and 3rd defendants had been removed as parties from the claim. This was not brought the Judge's attention and it was only addressed in the judgment and the Appellant's counsel was not given an opportunity to address that aspect. The Judge should not have taken into account the lack of an address for service for the 2nd and 3rd defendants or applied too much weight to that consideration, as it had been dealt with by the July 2023 order. Mr Bishop's response was that CPR 19.3 required Mr and Mrs Sheppard to be identified in the claim form and for it to be served upon them and no addresses for service were given (as required by CPR 6.6(2)). The Appellant stated she was estranged from them, but no application was made. There was no evidence about what was brought to the attention of the district judge in July 2023 when they were removed from the proceedings and the Judge was entitled to take into account the lack of CPR compliance. There was a procedural defect and it was not correct to say that that breach did not happen and therefore cannot be taken into account. Mr Bishop submitted that it was clear from the transcript that the Judge had asked the Appellant's counsel if there was anything else to take into account having given the judgment and counsel replied "no". The Appellant's counsel was given an opportunity to address the issue, but did not do so.

43. There are 2 distinct issues here. First, the issue of compliance with CPR 19.3 and secondly, the issue of the 2nd and 3rd defendants' removal from the proceedings at the hearing in July 2023. The Judge deals with the issue of non-compliance with CPR 19.3 at the beginning of the judgment together with the other issues about service on the Appellant and in his opinion, the failure to use the correct address for service, namely

the Onslow Road Address. At the end of paragraph 18 of the judgment, where he dealt with the CPR 19.3 issue, the Judge states "I am taking that into account that there seems to be an additional set of procedural issues." I cannot think of anything that the Appellant's counsel at the time could have submitted that would have assisted the Appellant as factually what the Judge stated was correct, namely, the CPR had not been complied with because there was no address for service for the 2nd and 3rd defendants. They had not been served and no application had been made to deal with this issue. The part of the judgment that deals with the second issue is paragraph 25, the penultimate paragraph of the judgment, which states:

> "Ordinarily, a claim of £2,100-£6,300 would be allocated as a small claim being less than £10,000. However, this claim would be normally be (sic) a multitrack claim as it is a part 8 claim but we are not talking about a huge sum of money. At the moment, we have to deal with court proceedings where there have been a significant number of orders from the courts, two applications, and we are no further along with getting towards a final hearing. So, in my view, matters do need to be dealt with proportionately and I do need to take into account the other potential issues and the fact that we cannot move forward in any event today even if I were to grant relief from sanctions because of the issue of service on the 2nd and 3rd defendants."

44. The judgment indicates that the Judge was not aware that a decision had been made by another judge in July 2023 to remove the 2nd and 3rd defendants from the proceedings. However, paragraph 25 demonstrates that the Judge had already reached a concluded view that relief from sanction should be refused and the use of "in any event today even if I were to grant relief from sanctions" before the reference to the issue of service on the 2nd and 3rd defendants indicating that this issue was the "icing on the cake". The Appellant had an opportunity to address the Judge on this point but did not do so. In any event, the Judge cannot be said to have fallen into error in the circumstances as the fact that the Judge was not aware that the claim had been dismissed against the 2nd and 3rd defendants was not material to his decision. I dismiss this ground of appeal.

The remaining Grounds

45. Mr McKie's submissions were that the Judge had not taken all the circumstances into account in particular the items that I have set out at paragraph 20 (ii) above. On the question of delay Mr McKie said the Judge was wrong because procedural non-compliance was not raised until 13 November 2023, District Judge Deane had considered the papers in May 2023 and not raised any issues, there could be a fair trial without jeopardising any court dates and the Respondent had not shown any prejudice. Mr McKie also relied upon the other matters set out in paragraph 20 (ii) which are numbered 1 to 10. Stepping back the Judge placed too much weight on issues of service and the procedural elements concerning the second and third defendants and delay which was combined with a complete failure to consider the matters in paragraph 20 (ii) above. The Judge did not set out other factors taken into account which was wrong.

46. Mr Bishop's submissions were that CPR 8.5(8) was breached when the claim form was filed. There was no credible argument that the delay was less than a year before the Appellant sought to remedy the default, to argue otherwise was disingenuous. It was a fact that the 2nd and 3rd defendants' addresses were not on the claim form and it had not been served on them, in breach of the CPR. He submitted that it was necessary to look

at the case as a whole and consider proportionality, as the Judge did. The consideration of potential action against the Appellant's solicitors was permissible and it cannot be a good reason to allow the case to continue to avoid potential negligence action against the Appellant's solicitors. The case was not progressed expeditiously and the Judge was well within the ambit of his discretion.

46 I do not accept the argument put forward by Mr McKie on the question of the period of time during which the Appellant had been in breach. The fact of the matter was that the breach of the CPR had occurred when the proceedings were issued and the sanction that applied was that the Appellant could not rely on any evidence as a consequence of not having filed it with the proceedings. That is what the relief from sanction application was designed to address and to say that the Judge should have considered a shorter period because it had not been addressed at an earlier point or had not been identified at an earlier stage, does not alter the amount of time that has elapsed and the duration of the breach before any application for relief. The Judge was correct at paragraph 19 when he stated that the application was more than a year after the breach.

47 However, it is clear the Judge goes on to consider the circumstances of that at paragraph 20 referring to the submissions of the Appellant's then counsel concerning a lack of prejudice to the Respondent. This must mean and I infer it does mean, that the Judge considered that the Respondent was aware of the case that she had to meet, that there could still be a fair trial and that there was no jeopardy to court dates. It is also implicit that the Judge accepted the breach was not deliberate and having recited the procedural history about the hearings before District Judge Dean at paragraph 7, he was aware that no issue had been raised about the procedural defects during earlier hearings. The Judge, particularly in an extempore judgment, does not always set out every matter that is being considered and there is no obligation to do so, but it is clear that the Judge had in mind the circumstances that the Appellant says he should have done and that I have set out at paragraph 20 (ii) above. The Judge also considered the potential claim against the Appellant's solicitors and the manner of his consideration of this issue is not wrong.

48 I do not find that the Judge reached a decision that was outside the ambit of decisions that were open to him and certainly not one that could be categorised as perverse. I consider the Judge took into account those matters that he should have done and did not take into account matters that should have been excluded from that consideration. Accordingly, I reject the remaining grounds of appeal.

Summary

49 The Appellant appeals the decision of the Judge below to refuse relief from sanction for having failed to file the witness evidence in support of a Part 8 claim for damages under section 214 of Housing Act 1987. The result of the Judge's decision was the claim was dismissed as there was no evidence upon which it could succeed. I have rejected the Appellant's argument that service of the claim form at an address given under section 48 of the Landlord and Tenant Act 1987 was valid after the end of a tenancy. This argument was not raised before the Judge below. In any case, I have also rejected the other grounds of appeal against the exercise of the Judge's discretion and for those reasons the appeal is dismissed and the Judge's order affirmed.