Property: What is a "Good Reason" for an extension of time to Appeal under. s204 Housing Act 1996

Adam Swirsky

S. 204(2A) of the Housing Act 1996 gives the court a discretion to extend the time for an applicant to appeal against a s. 202 review where there is a "good reason" for the applicant to be unable to bring the appeal in time and (in an appropriate case) for any delay in applying for permission. Historically, applications to extend time have been treated relatively harshly. In particular, a number of cases have suggested that the fact that a party is not professionally represented could play only a very limited part in the assessment of whether or not there was a "good reason" for a departure from the normal time limit (eg. **R (Hysaj) v Secretary of State for the Home Department [2015] 1 WLR 2472**).

The matter came before the Court of Appeal for consideration in **Tower Hamlets London Borough Council v Al Ahmed [2020] EWCA Civ 51**. In that case the applicant lodged his appeal out of time and asked for an extension of time. The reason he gave for the delay was that his lack of legal representation amounted to a "good reason". In the county court permission to extend time was granted but, on appeal to the High Court, that decision was reversed, the Judge rejecting the suggestion that the lack of professional representation coupled with reliance on advice from Crisis amounted to a "good reason".

On a second appeal to the Court of Appeal, the court pointed out that the requirement of a "good reason" provides a straightforward statutory test to which no gloss is or should be applied, whether a reason or conjunction of reasons amounts to a good reason is a question of fact and value judgment and that the question whether a reason, or combination of reasons, is to be categorised as "good" can be considered at large and without any preconceptions as to what may qualify and what may not qualify as a contributor to the ultimate decision as to whether a reason is good (paragraph 24). The court also rejected the contention that an application under s. 204(2A) should be considered by analogy to the well-known test in **Denton v TH White Ltd [2014] 1 WLR 3926** or to other decisions dealing with the requirements of the CPR, pointing out that an application made under s. 204 is materially different from the procedural cases where it has been held to be reasonable, as a general rule, to expect litigants in person to comply with relevant rules of court.

International: Mohamed v Breish & Ors [2020] EWCA Civ 637

Dominic Bright

What are the aspects, scope, and effect of the "one voice" principle ("the principle")?

That is, where the government has recognised the existence of a foreign state (or the government of a foreign state), the court is bound to treat the state as a sovereign state (and the government as the government of a sovereign state) in the determination of disputes before it.

Aspects

Popplewell LJ – with whom Males and King LJJ agreed – set out the three *aspects*.

First, the principle "is engaged by recognition of foreign governments as de facto governments, and that such recognition says nothing about the de jure status or constitutional lawfulness of the government under local law."

Secondly: "The basis for the principle is rooted in the constitutional allocation of the roles of the executive and the judiciary in this country. It is the consequence of the constitutional separation of powers which dictates that it is the sole prerogative of the executive to determine what foreign states and governments to recognise."

Thirdly, "the Court must not express a contrary view for any purpose, which would include such contrary view as an essential step of its reasoning. To do so would undermine the very fabric of the doctrine."

Scope & effect

Males LJ succinctly summarised the *scope and effect* as follows (with emphasis added):

> "(1) When a question arises in an English court as to the *existence* or *identity* of a foreign government, that question must be determined in accordance with *English* law.
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> (2) Despite the 1980 change of policy (whereby in general [Her Majesty's Government "HMG"] no longer recognises governments as distinct from states), it is open to HMG to certify to the court that it recognises (or does not recognise) a particular body as the government of a foreign state.
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> (3) When HMG recognises a body as the government of a foreign state, that body *is* so far as the English court is concerned *the* government of that foreign state for *all* purposes, so that the court is not entitled to reach a contrary conclusion; to do so would infringe the one voice principle, which is a fundamental principle of our constitutional law.
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> (4) Thus acts done by a *recognised* foreign government cannot be challenged on the ground that the body in question is not a *valid* or *lawful* government under the law of the state concerned; that does not, however, preclude a challenge on other grounds which do not involve asserting that the body in question is not the government.
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> (5) The one voice principle is *separate* and *distinct* from other doctrines such as act of state, sovereign immunity, judicial review and Crown act of state."

Covid-19, frustration, and force majeure

Richard Colbey

The Covid19 crisis will give rise to litigation in numerous forms, the most frequent of which may arise out of contracts that cannot be performed because of it. The cavalier attitudes airlines have taken to their statutory obligations to refund consumers when flights are cancelled has attracted the most publicity, but many other contracts, consumer and commercial, will have been rendered impossible to perform.

Occasionally *force majeure* clauses will govern the position but the doctrine of frustration which has rarely surfaced in practice, is likely to become more frequently considered, where there is no such clause. It applies where a contract becomes impossible to perform through the fault of neither party. This includes legal impossibility. If the lockdown decrees under the Coronavirus Act 2020 prevented performance, then both parties' obligations would be discharged.

The termination of the underlying purpose of a contract may frustrate it. *Krell v Henry* [1903] 2 KB 740, involving the rental of a flat on Pall Mall to view the cancelled coronation of Edward VII remains the exemplar of this principle. Although the flat could still have been occupied the renter

was entitled to his money back. Where goods or services were ordered specifically for a purpose rendered nugatory by Covid19, such as viewing a sporting event, that line of authority may be dusted down to obtain discharge of the contract.

The position is partially governed by the Law Reform (Frustrated Contracts) Act 1943. This does not define frustration, but governs its consequences. Broadly speaking, any consideration given for a frustrated contract has to be returned but there is a discretion by virtue of s1(2) of that Act give the court a power to allow a party who has incurred expenses in connection with the performance of that contract to retain or claim some or all of those amounts. It might be a caterer who had bought a lot of food in anticipating of serving it at a frustrated function could seek to retain a deposit up to the cost of the food, but not, of course, for any profit element. Conversely s1(3) gives a similar power when one party has received a benefit from the contract to order that party to make payment up to the equivalent of the value of the benefit.