Case No: G00BQ439

IN THE CHELMSFORD COUNTY COURT
SITTING IN THE COUNTY COURT AT CAMBRDIGE

Before: **HHJ KAREN WALDEN-SMITH**

- -

Between:

MS SHANTELLE MERRITT	**Claimant**
- and -	
THURROCK COUNCIL (1)	
MIDOS MANAGEMENT CO LIMITED (2)	**Defendants**

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- -

PHILIP McLEISH (instructed by **FINSBURY LAW SOLICITORS**) for **SHANTELLE MERRITT**
MATT HUTCHINGS QC (instructed by **THURROCK COUNCIL)** for **THURROCK COUNCIL**
MATTHEW MILLS (instructed by **BUDE NATHAN IWANIER LLP)** for **MIDOS MANAGEMENT CO LIMITED**

Hearing date: 8 January 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HER HONOUR JUDGE KAREN WALDEN-SMITH:

Introduction

1. The Claimant, Ms Shantelle Merritt, seeks injunctive relief against Thurrock Council and Midos Management Co Limited ("Midos"). Midos, seeks injunctive relief against Ms Merritt.

2. Ms Merritt, and her daughter had been occupying the premises at 30 Queen Mary Avenue, East Tilbury, Essex RM18 8SS ("the property") since 19 August 2019 until 9 December 2020 when the locks were changed. Ms Merritt regained access to the property on 11 December 2020 through the back door, she says by using her back-door key.

3. The property was provided by the First Defendant, Thurrock Council ("the local authority"), to Ms Merritt pursuant to the provisions of section 188(3) of the Housing Act 1996. The property had, in turn, been provided to the local authority by the Second Defendant, Midos, on a nightly basis.

4. The application was made on behalf of Ms Merritt on 11 December 2020 for an injunction to re-admit her to the property and for an injunction to prohibit her from being unlawfully evicted. That application was issued in the County Court in Romford and sent to the County Court at Central London. Despite it being a Romford case it was then transferred from Central London to the County Court at Chelmsford where it was listed before a District Judge for a half-hour hearing. That was plainly insufficient time to deal with this case which required a listing before a Circuit Judge and I made time to hear the matter on the afternoon of 23 December 2020. In light of the closeness to Christmas, Matt Hutchings QC, who was then acting on behalf of both the local authority and Midos, communicated undertakings being given to the court on behalf of the defendants that they would not take any steps to remove Ms Merritt from the property until the matter could be considered further at the hearing which took place before me on 8 January 2021. An order was made to that effect after discussion with Mr Hutchings and Philip McLeish, acting on behalf of Ms Merritt.

5. Between 23 December 2020 and 8 January 2021, Midos instructed their own solicitors (having previously been acting in person) who instructed Matthew Mills to act on their behalf. An application for an injunction was made on 31 December 2020 on behalf of Midos seeking an order to compel her to give up possession of the property and to refrain from attempting to re-enter the property, given her previous act of re-entering the property on 11 December 2020.

6. I have had the benefit of helpful and comprehensive written and detailed oral submissions from Mr McLeish, Mr Hutchings QC and Mr Mills. Unfortunately, as a consequence of the need for the court to deal with the next listed remote hearing, it was not possible to go any further than make a ruling on the injunction sought by Ms Merritt. I indicated to Counsel that I would provide this reserved written judgment to provide full reasons for the decision to refuse that application and release the defendants from their earlier undertaking.

7. I adjourned determination of the application made by Midos to be dealt with in this judgment. Subsequent to the hearing, it was announced that there was to be a further

moratorium on evictions by the execution of writs or warrants of possession in light of the current very severe difficulties being created by the Covid-19 pandemic. In light of that announcement, I invited Counsel to provide any further short submissions that they wished to make with respect to the balance of convenience on the application made by Midos. I received short submissions from both Mr McLeish and Mr Mills. Understandably, Mr Hutchings QC had nothing further to add.

8. It is unfortunate that this case has had such a tortured journey through the County Court and it may have been sensible for it to have been dealt with in Central London as it is started life in Romford and given the resources of Circuit Judges in that Court. However, it is an important case that required careful consideration and explanation as it highlights issues with respect to the status of accommodation provided by a local authority pursuant to section 188(3) of the Housing Act 1996 (HA 1996) and the applicability, or otherwise, of section 3 of the Protection from Eviction Act 1977. It also concerns the protection available to a private landlord who grants licences of property to local housing authorities in order to enable those local housing authorities to fulfil their various statutory obligations and exercise their statutory powers, given the lack of available public housing stock.

Factual Background

9. In or about October 2018, Ms Merritt was served with a notice seeking possession of her privately rented accommodation which she occupied with her daughter. She approached the local authority for assistance on the grounds that she was homeless. The local authority accepted that application and provided Ms Merritt accommodation pending the outcome of their enquiries with respect to their housing obligations pursuant to the provisions of section 188(1) of the HA 1996.

> "s.188
>
> (1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant's occupation."

10. On 17 December 2018, the local authority accepted Ms Merritt was eligible for assistance, homeless (not intentionally) and in priority need. The housing duty to Ms Merritt under section 193 of the HA 1996 was therefore accepted.

> "s.193
>
> (1) This section applies where –
>
> (a) The local housing authority –
>
> (i) Are satisfied that an applicant is homeless and eligible for assistance and,
>
> (ii) Are not satisfied that the applicant became homeless intentionally,

(b) The authority are also satisfied that the applicant has a priority need, and

(c) The authority's duty to the applicant under section 189B(2) has come to an end"

11. On 9 July 2019, the Council promulgated its decision that it had discharged its main housing duty by making Ms Merritt an offer of suitable accommodation that she had refused. Ms Merritt requested a review of the decision that the offered accommodation was suitable pursuant to the provisions of section 202(1)(f) of the HA 1996. The local authority exercised its discretion by offering Ms Merrick temporary accommodation at the property pending the outcome of her suitability review request pursuant to the provisions of section 188(3) of the HA 1988:

> "… the duty under this section comes to an end in accordance with subsections (1ZA) to (1A), regardless of any review request by the applicant under section 202
>
> But the authority may secure that accommodation is available for the applicant's occupation pending a decision on review"

12. The property is owned by Almex Properties Limited ("Almex") and managed by Midos. Midos, in accordance with their management agreement with Almex, grant nightly lets to the local authority for the purpose of providing temporary accommodation. The property was offered to Ms Merritt by a letter dated 19 August 2019 on terms that the property was to be used by Ms Merritt and her household, that she was obliged to stay each night at the property and that if she were to be away at all she needed to discuss the same with the local authority's accommodation team, and that if she left or lost the accommodation then there may not be a further duty to provide temporary accommodation. The agreement further provided that pets were not to be allowed and that she could not bring her own furniture into the accommodation (although I understand from the evidence provided by Ms Merritt that she did in fact provide her own furniture). Ms Merritt was informed that applicants who are living in temporary accommodation are required to pay a charge for the occupation and that an advance payment equivalent to 4 weeks' payment must be made when the accommodation is provided. The total charge per week being described as £145.39 per week. The letter dated 19 August 2019 was signed by both Ms Merritt and an individual from the housing team of the local authority, with the declaration being made by Ms Merritt that she had read and understood that she was liable for the weekly costs and that if there was a failure to pay then the accommodation may no longer be available to her.

13. Ms Merritt in fact remained in the temporary accommodation for nearly 16 months before possession was regained on 11 December 2020. There had been a review decision in October 2019. That decision was withdrawn and a further review decision was not issued until 2 November 2020 which upheld the original decision that the local authority had discharged its main housing duty to Ms Merritt. The period of time that passed between the review being sought in July 2019 and the first review decision in October 2019 is not unusual or unreasonable. The real delay was between the withdrawal of that decision and the second decision which was not made until 2 November 2020 upholding the original discharge decision. At least part of that

significant delay is explicable from the impact of the Covid-19 pandemic. Throughout that time Ms Merritt has been in occupation of the temporary accommodation.

14. The local authority served a notice to quit upon Ms Merritt on 10 November 2020 notifying her that she was to give up possession of the property on 8 December 2020. By emailed letter dated 30 November 2020 the solicitors acting for Ms Merritt asked the local authority to exercise its discretion to provide suitable accommodation pending the appeal pursuant to section 204 of the HA 1996 against the decision on 2 November 2020 to uphold the decision that the main housing duty had been discharged. The local authority has a power to provide interim accommodation pending a section 204 appeal but no obligation to do so and in a detailed decision letter dated 3 December 2020 the local authority set out its reasoning for deciding to exercise its discretion by not providing interim accommodation. There has been no application to the Administrative Court of the High Court to judicially review that decision.

15. Ms Merritt was therefore aware that the time she had spent in temporary accommodation was going to come to an end first when the review decision was promulgated on 2 November 2019, then when the notice to quit was served on 10 November 2020 and then again on 3 December 2020 when the local authority gave detailed reasons as to why it was not providing interim accommodation.

16. In light of the decision of the local authority not to extend the provision of interim accommodation, Midos notified Ms Merritt by email that the property was to be repossessed. In error the email to Ms Merritt said that possession was to take place on 8 December 2020 when the eviction was in fact due to, and did, take place on 9 December 2020. Ms Merritt had been warned to vacate before that date.

17. Ms Merritt found that the locks had been changed on 9 December 2020 when she returned to the property. Midos paid for her to book herself and her daughter into a hotel that night. On 10 December 2020 Ms Merritt and her daughter stayed on a friend's floor and on 11 December 2020 she returned to the property for the purpose of picking up some clothes and other belongings, having been told by Midos that she would not be allowed access to recover her belongings until 14 December 2020. She found that the back door lock could still be opened by her and she regained occupation with her daughter. There were then a number of incidents reported by Ms Merritt in her statement with respect to representatives of Midos endeavouring to regain possession. As I have already set out, the matter came before me immediately before Christmas and undertakings were given not to evict Ms Merritt prior to the adjourned hearing on 8 January 2021.

The claimant's application for an injunction to reinstate her in the property

18. Ms Merritt sought an interim injunction from the court to compel the local authority and Midos to reinstate her in the property on the basis that the letter dated 19 August 2019 headed "Temporary Accommodation Booking" was the grant of a tenancy of property let as a dwelling. As such, she contends that it falls within the protection of section 3(1) of the Protection from Eviction Act 1977 that:

> "Where any premises have been let as a dwelling under a tenancy which is neither a statutorily protected tenancy nor an excluded tenancy and

(a) The tenancy (in this section referred to as the former tenancy) has come to an end, but

(b) The occupier continues to reside in the premises or part of them,

it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises."

19. If, as is contended for by those acting for Ms Merritt, the property was let as a dwelling then Midos were not entitled to change the locks without first obtaining an order for possession from the court and a warrant for eviction.

20. In order to succeed in obtaining an interim injunction Ms Merritt has to satisfy the various requirements set out in the speech of Lord Diplock in *American Cyanamid v Ethicon Limited* [1975] AC 396, which can be summarised as follows:

(i) is there a serious question to be tried – one that is not frivolous or vexatious;

(ii) whether damages would provide an adequate remedy;

(iii) where the balance of convenience lies.

21. It is submitted on behalf of Ms Merritt that there is a serious question to be tried in this matter, which is more than frivolous or vexatious, as she was granted exclusive possession of a self-contained residential property for a periodic weekly term and in consideration of a weekly payment of £145.39. It is said on behalf of Ms Merritt that the property has been let as a dwelling within the meaning of section 3 of the Protection from Eviction Act 1977 so that Midos acted unlawfully by changing the locks and not first obtaining a court order for possession. Both the local authority and Midos deny that there is a serious question to be tried because the property is not let as a dwelling and consequently section 3(1) does not apply. Midos further contend that the property was let pursuant to a licence rather than a tenancy. The local authority submit that it is of no effect whether, as between themselves and Ms Merritt, there was a tenancy as the relationship between them and Midos was one of licensor/licensee and the local authority could not create a proprietary right in the property which it did not itself enjoy.

22. Ms Merritt agreed with the local authority that she was being permitted to occupy the property in furtherance of the local authority exercising its discretion in her favour pursuant to the power set out in section 188(3) of the HA 1996 pending the outcome of her suitability review request (pursuant to section 202 of the HA 1996). Unlike the duty contained in section 188(1) of the HA 1996, section 188(3) provides a discretionary power.

23. For the reasons set out below, the Supreme Court decision of *R (N) v Lewisham LBC, R (H) v Newham LBC* [2014] UKSC 62, provides that a property provided by a local authority pursuant to the duty contained in section 188(1) of the HA 1996 is not a property let as a dwelling. While counsel for Ms Merritt contended that anything said about section 188(3) of the HA 1996 in *R(N) v LB of Lewisham* was not part of the ratio of the decision of the Supreme Court and is therefore obiter, in my judgment that is

neither correct nor, if it were, would it be a reason in this case not to follow the reasoning of the Court. As I pointed out in the course of submissions, it would inevitably be a disincentive to all local authorities if a property provided in accordance with the discretionary power provided by section 188(3) of the HA 1996, required the local authority to obtain a court order before it could recover possession, when a property made available in accordance with the duty contained in section 188(1) of the HA 1996 did not enjoy the protection of section 3 of the 1977 Act. Further, there is no basis upon which it can be said that the same principles should not apply to section 188(3) as to section 188(1) of the HA 1996.

24. In *R(N) v LB of Lewisham*, the Supreme Court, by a majority, determined that the word "dwelling" in the Protection from Eviction Act did not have a precise, technical meaning and had to be interpreted having regard to its legal and factual context: "dwelling", it was said, suggests a more settled occupation of a property than a residence.

25. The core of the reasoning of Lord Hodge is set out in paragraphs 33 to 35 of the decision where he said:

> "[33] In my view there are a number of features that militate against such licences being licences to occupy premises as a dwelling. First, there is the statutory context of the licence in the 1996 Act, namely the provision by the local housing authority to a homeless person of a short term accommodation at one or more locations and in one or more forms of accommodation pending the section 184 decision, the outcome of the review or appeal, of the expiry of the reasonable period under section 190(2). The statutory duty under section 188 of the 1996 Act is to secure accommodation for the applicant, not necessarily at one location, for a short and determinate period. Most significantly, a person who is given temporary accommodation under Part VII of the 1996 Act does not cease to be homeless. To hold otherwise would be to defeat the scheme of the Act … Another way of looking at the matter is that having a roof over your head in such short term accommodation does not give you a fixed abode.
>
> [34] Secondly, consistently with that statutory regime, each licence is a day-to-day or nightly licence which recognises that the authority may require the applicant to transfer to alternative accommodation at short notice. The licence in each case confers private law rights in relation to the property to which it relates, but the licence must be construed and the nature of those rights must be assessed in the context of the authority's duties under the 1996 Act.
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> [35] Thirdly, the imposition of the PEA 1977 would significantly hamper the operation by the authorities of the statutory scheme under the 1996 Act and its predecessor Acts. An authority would not be able to transfer an applicant from one location to another without either his or her consent or, alternatively, the obtaining of a court order. The authority, while awaiting the court order

> for possession, would have to provide accommodation to someone about whom it had made an adverse section 184 decision and to whom it had already given a reasonable opportunity to provide alternative accommodation, thereby tying up scarce housing resources. In a time of strained public finances this may deprive other applicants who may have priority need of suitable accommodation and also restrict the authority's ability to provide accommodation where it has a discretion to do so, as under sections 188(3) and 204(4) of the 1996 Act. Further, there seems little purpose in requiring court proceedings to recover possession as it is difficult to see what a homeless person could advance as a defence to the application, particularly as the 1996 Act contains its own provisions for challenging adverse decisions of the local authority by way of review and appeal to the court"

26. Further in paragraph 45 of the decision, Lord Hodge said as follows:

> "Pulling together the threads of the case law, in my view the following can be stated (i) the words "live at", "reside" and "dwell" are ordinary words of the English language and do not have technical meanings, (ii) those words must be interpreted in the statutes in which they appear having regard to the purpose of those enactments, (iii) as a matter of nuance, "dwelling" as a general rule suggests a more settled occupation than "residence" and can be equated with one's home, although "residence" itself can in certain contexts (such as the two-home cases) require such an equation, and (iv) under the 1996 Act a person remains homeless while he or she occupies temporary accommodation provided under sections 188(3), 190(2), 200(1) or 204(4) of the 1996 Act so long as the occupation is properly referable to the authority's performance or exercise of those statutory duties or powers. In my view it is consistent with this approach to conclude in the context of PEA 1977 that an overnight or day-to-day licence of accommodation pending the making of a decision under section 184 or on review or appeal does not show any intention to allow the homeless applicant to make his or home in that accommodation."

27. It is argued on behalf of Ms Merritt that the provision of accommodation pursuant to the provisions of section 188(3) of the HA 1996 is much more "significant at law" than the provision of housing pursuant to the duty in section 188(1) of the HA 1996 in *N v LB of Lewisham.*

28. I do not accept that submission. Section 188(1) of the HA 1996 creates a duty: the local housing authority must secure accommodation for an applicant who they have reason to believe may be homeless, eligible for assistance and have a priority need; whereas section 188(3) of the HA 1996 only creates a discretionary power, which arises when a decision has been made and the duty to secure accommodation has come to an end, but a review of a decision is sought. It was submitted on behalf of Ms Merritt that fulfilment of the section 188(1) duty is much more likely to be short term than accommodation

provided pursuant to the discretion power within section 188(3). There was no evidence to support that submission and I do not accept that is the case as the accommodation that the local authority has a discretion to provide under section 188(3) is when a review is sought. Such a review is likely to take less time than the decision itself.

29. Further, it is clear from the speech of Lord Hodge in *N v LB of Lewisham*, particularly paragraph 45, that a person remains homeless when accommodated in property provided pursuant to the discretionary power in section 188(3) of the HA 1996 and in that context accommodation pending a review does not make the property a home or a property "let as a dwelling."

30. The letter dated 19 August 2019 made it clear that the property was being offered as "temporary accommodation" and was "pending the outcome of your Suitability Review Request." It was therefore properly referable to the local authority's exercise of its statutory power. It was submitted on behalf of Ms Merritt that the agreement was for a tenancy in that she had the benefit of exclusive possession of the property for a period of 16 months, that she was obliged to pay a weekly sum for her occupation and that, despite the express provision that she was not to bring her own furniture into the property, she was in fact asked to do so. Reliance is placed upon the speech of Lord Templeman in *Street v Mountford* [1985] AC 809 that the legal consequences of granting residential accommodation for a term at a rent with exclusive possession, with the grantor providing neither attendance nor services, are that a tenancy is created regardless of whether it is called a licence. I do not find that Ms Merritt was a tenant and the reference to the well-known passages of Lord Templeman in *Street v Mountford* do not assist Ms Merritt. The local authority, which allowed Ms Merritt into occupation of the property, were only entitled to use the property on a temporary, nightly, basis. The local authority did not have a proprietary interest in the property which it could then divest upon Ms Merritt and had insufficient interest to create a sub-tenancy with Ms Merritt binding on Midos as a result of it being a licensee of Midos. Even if the local authority did have sufficient interest to create a sub-tenancy with Ms Merritt that would come to an end upon the termination of the license between Midos and the local authority: see *Barrett v Morgan* [2000] 2 AC 264 per Lord Millett and *Islington LBC v Green, O'Shea & Barrett* [2005] EWCA Civ 5.

31. In any event, the agreement entered into by Ms Merritt was not consistent with the granting of a tenancy to her which was clearly and unambiguously headed as being temporary accommodation. The agreement made it clear that she had an obligation to stay there every night. While the factual circumstances of *Westminster City Council v Clarke* [1992] 2 AC 281 were more extreme, the occupation of rooms in a hostel by those identified to be vulnerable with the provision of services, the same principles apply. This property was occupied by Ms Merrett as temporary accommodation pending review. There was nothing to suggest it was stable accommodation and to read the letter of 19 August 2019 otherwise would go against the purpose for which Ms Merritt was allowed into the property. As the local authority were exercising their discretion to provide temporary accommodation under section 188(3) of the HA 1996 pending a review decision, the local authority needed to be able to bring occupation to an end speedily. Reference was made by Mr McLeish, on behalf of Ms Merritt, to the decision of the Court of Appeal in *Mohammed v Manek and RB of Chelsea & Kensington* (1995) 27 HLR 439. In *Mohammed* Nourse LJ referred to the transient

nature of the occupation meaning that the Protection of Eviction Act 1977 does not apply. In this case, while Ms Merritt has in fact remained in occupation for 16 to 17 months, that has only been as a consequence of the difficulties experienced by the local authority in completing the review. It does not alter the nature of the occupation being transient. Ms Merritt has benefitted from that delay in that she has been able to stay in the property for much longer than would initially have been envisaged.

32. I am satisfied that Ms Merrett was only occupying the property as a licensee of the local authority and not as a tenant and that the property was not let to her as a dwelling and she is therefore not entitled to the protection of section 3(1) of the Protection from Eviction Act 1977. While dealing specifically with the situation where accommodation is provided pursuant to the local authority's duty pursuant to section 188(1) of the HA 1996, the Supreme Court decision in *N v LB of Lewisham* is equally applicable.

33. Ms Merritt is not able to establish that she has a serious question to be tried in circumstances where there is, in my judgment, clear Supreme Court authority that applies to this case. In the circumstances, she fails at the first hurdle in seeking the interim injunction and not only must her application fail but the defendants must be released from their undertaking. Looking briefly at the other two limbs of *American Cyanamid*, this is not a case where damages would be an adequate remedy for Ms Merritt, but I am not satisfied that the balance of convenience lies in her favour. The provision of accommodation pending a review pursuant to the power under section 188(3) is transitory. Ms Merritt has not been allowed into this property on the basis that she is being provided with settled accommodation. The local authority must be able to move quickly in regaining possession in order to enable that accommodation to be available to other potentially vulnerable people seeking review of a decision by the local authority that has gone against them. Ms Merrett's continued occupation of the property is precluding others from being accommodated and at an ongoing cost to the local authority and/or Midos. Fundamentally, an interim injunction would tie up limited resources and undermine the purpose of the local authority providing temporary accommodation and would compel a private body, Midos (as managing agent for the owner of the property), to provide accommodation to Ms Merritt when it has no responsibility to do so. The coming into force of the Public Health (Coronavirus)(Protection from Eviction)(England) Regulations 2021/15, which extends the moratorium on evictions by the execution of a writ or warrant of possession until 21 February 2021, does not alter where the balance of convenience lies. The purpose of the statutory instrument is plainly concerned with delaying the eviction of tenants, or former tenants, and the attendance on the dwelling house. For the reasons I have already set out, Ms Merritt was not granted a tenancy of the property and the licence to occupy was terminated on 9 December 2020. Ms Merritt is therefore to be treated as a trespasser for the purpose of possession proceedings and the moratorium expressly does not apply to trespassers.

The second defendant's application for an injunction against the claimant for her to give up possession and desist from re-entering

34. After the first hearing before me on 23 December 2020, Midos issued an application for an injunction to compel Ms Merritt to vacate the property and refrain from seeking to re-enter. This application has been made in the context that after possession was obtained by the changing of the locks, Ms Merritt and her daughter regained entry through the back door and have remained in the property.

35. For the reasons set out above, I have determined that Ms Merritt only occupied the property as a licensee of the local authority. The local authority itself was only a licensee of Midos and could not grant a tenancy which could then bind Midos once the local authority's own interest had been terminated. The accommodation was clearly to be temporary and the housing of someone pending the outcome of a review pursuant to the power contained in section 188(3) of the HA 1996 is transient and does not attract the protection of section 3(1) of the Protection from Eviction Act 1977.

36. In those circumstances, Midos has a good arguable claim to possession. It is the mirror to the finding that Ms Merritt does not have a serious issue to be tried and the first hurdle of *American Cyanamid* is overcome.

37. Damages cannot be an adequate remedy as Midos are seeking to enforce their right to possession of real property and, having brought to an end the licence under which Ms Merritt has been occupying the property, Ms Merritt is a trespasser on that property as she has no right to occupy. A property owner is entitled to enforce its private law rights against a trespasser by way of an injunction: see *Manchester Corporation v Connolly* [1970] Ch 420; *SoS for the Department of Environment, Food and Rural Affairs v Meier* [2009] UKSC 11 and, more recently, *University College London Hospitals NHS Foundation Trust v MB* [2020] EWHC 882 (QB).

38. As the granting of an interim injunction in favour of Midos would be tantamount to final relief, it should only be granted if there is clearly no defence to the action (see Injunctions (13th Ed. 2018) Bean LJ, Burns QC and HHJ Parry). For the reasons I have already set out when considering Ms Merritt's application for an injunction, it is clear that there is no defence available to Ms Merritt.

39. It would be wrong to grant injunctive relief to enforce Midos's right to possession of the property if it were arguable that the same interfered with any public law rights that Ms Merritt may enjoy. Recovering possession of temporary accommodation does not interfere with those pubic law rights but, in any event, her reliance on article 8 rights does not impact upon Midos as a private body.

40. It is clear that there is no defence to the claim brought by Midos and that inevitably means that the balance of convenience falls more in favour of Midos. In more normal times, pre-pandamic I would be clear that the balance of convenience lay in favour of Midos in order that this property could be freed up to provide accommodation to another. Midos does not have any obligation to keep Ms Merritt housed and she has no rights to compel them to do so. Her previous breaking into the property after the locks were changed is clear evidence that it is appropriate for there to be some restraint on her behaviour.

41. The moratorium on the execution of writs or warrants of possession does not directly apply to this matter. Midos does not require a warrant for possession in the circumstances of this case. However, the current Covid-19 pandemic cannot be ignored. For a significant period of time last year there was a moratorium on possession claims being heard. That moratorium did not apply to trespassers. Even when that was lifted, there was a moratorium on evictions and, as set out above, that moratorium has been extended until 21 February 2021. Again, that moratorium does not apply to trespassers. The reason for that moratorium is clear. With the rapid spread of the virus,

there is a public health requirement for as few people as possible to be outside their own homes.

42. As a consequence, while I find that Midos is entitled to the interim injunction sought, I will suspend the enforcement of that injunction until the expiry of the moratorium on execution of any writ or warrant of possession on 21 February 2021, with the parties having liberty to apply for a further suspension should circumstances change or the moratorium extended further. In granting the injunction but suspending its enforcement, the order is consistent with Midos's rights for an injunction while not running contrary to the current restrictions introduced as a consequence of public health requirements.

Conclusion

43. For the reasons set out in detail, the interim injunction sought by Ms Merritt is refused and the interim injunction sought by Midos is granted, subject to the suspension until expiry of the current moratorium on evictions.

44. In order to avoid delay in this matter, I have handed down this judgment with counsel to agree a form of order and for the parties to make written submissions on consequential matters (such as costs) in accordance with a mutually agreeable timetable.