Sumal & Sons (Properties) Ltd v Newham LBC

Court of Appeal (Criminal Division)

08 August 2012

Case Analysis

Where Reported

[2012] EWCA Crim 1840; Official Transcript

Case Digest

Subject: Criminal procedure **Other related subjects:** Landlord and tenant; Sentencing; Local government; Housing

Keywords: Availability; Benefit from criminal conduct; Confiscation orders; Landlords' duties; Licences; Local authorities; Proceeds of crime; Selective licensing areas

Summary: Confiscation proceedings under the Proceeds of Crime Act 2002 were not available where a landlord committed an offence of being the owner of a rented property without a licence contrary to the Housing Act 2004 s.95(1). The right of a landlord without a licence to enforce his right to receive rent meant that the receipt of rent was not a product of a s.95 (1) offence, and there was, therefore, no benefit obtained from the criminal conduct such as to justify a confiscation order.

Abstract: The appellant company (S) appealed against the imposition of a confiscation order following its conviction for being the owner of a rented property without a licence. The Housing Act 2004 s.80 made provision for the introduction by local authorities of selective licensing of rented residential property in the private sector. S was the owner and landlord of a property in an area which was designated a selective licensing area by the respondent local authority. The local authority wrote to S informing it of the need for a license. S did not obtain a license and was prosecuted by the local authority. S was found guilty, after a trial in its absence in the Magistrates' Court, of being the owner of a rented property without a licence contrary to s.95(1) of the 2004 Act. S was committed to the Crown Court for sentence under the Proceeds of Crime Act 2002 s.70. The recorder subsequently fined S and ordered it to pay prosecution costs, and made a confiscation order under the 2002 Act in the sum of £6,450, having found that S had benefited from criminal conduct in the amount of the rent received whilst the property was unlicensed. It fell to be determined whether confiscation proceedings were available in the context of an offence under s.95(1) of the 2004 Act.

Appeal allowed. Section 95(1) of the 2004 Act involved a "regulatory offence", rather than a case of obtaining property by dishonest means. Whether a regulatory offence could, when committed, give rise to the availability of a confiscation order would depend on the terms of the statute or regulations creating the offence, read with the terms of the 2002 Act and set in the context of the facts of the case. It was common ground that the instant case was not one of general criminal conduct. There were, ordinarily, three questions for the court in deciding whether to make a

confiscation order: (a) whether the defendant benefited from the relevant criminal conduct; (b) if so, what the value of that benefit was; (c) what sum was recoverable from the defendant, R. **v** May (Raymond George) [2008] UKHL 28, [2008] 1 A.C. 1028 followed. The focus was, therefore, on the benefit obtained. Section 95(1) taken on its own confined the offence to that of having control of or managing a house which was required to be licensed but was not so licensed. The 2004 Act had, however, to be read as a whole. Under s.96(3), no rule of law relating to validity or enforceability of contracts in circumstances of illegality affected the validity or enforceability of the provisions of a tenancy or licence requiring payment of rent. It followed that the right to recover rent remained enforceable, notwithstanding that a landlord had no licence for the house in question. That was inconsistent with the notion that the landlord was unlawfully obtaining rent as a result of or in connection with his breach of s.95(1). It seemed extraordinary to attribute to Parliament an intention that a landlord of an unlicensed house might lawfully seek to recover in civil proceedings rent due under the tenancy whilst at the same time making it a criminal offence actually to receive such rent so recovered. That was not a tenable proposition. There had to be a causal connection between the criminal conduct and the benefit received from it, R. **v** Nelson (John Stanley) [2009] EWCA Crim 1573, [2010] Q.B. 678 applied. In the instant case, S had continued to receive rent not because of the s.95(1) offence but in spite of it. There was no sufficient causal connection; the continued receipt of the rent was not the product of S's crime. To impose a confiscation order would in substance be in the nature of a fine, and the provisions of s.76 of the 2002 Act read with the provisions of the 2004 Act did not permit it. By the continued receipt of rent S had not "obtained" property "as a result of or in connection with" the criminal conduct. The confiscation order was not, therefore, available and would be quashed (see paras 30-32, 35-37, 39, 43, 45 of judgment).

Judge: Davis, L.J.; Burton, J.; Langstaff, J.

Counsel: For the appellant: Philip Rule. For the respondent: Matthew Paul.

Solicitor: For the appellant: PGA LLP. For the respondent: In-house solicitor.

Significant Cases Cited

R. v Nelson (John Stanley)
[2009] EWCA Crim 1573; [2010] Q.B. 678; [2010] 2 W.L.R. 788; [2010] 4 All E.R. 666; [2010] 1 Cr. App. R. (S.) 82; [2009] Lloyd's Rep. F.C. 663; [2009] Crim. L.R. 811; Times, August 18, 2009; Official Transcript; CA (Crim Div)

R. v May (Raymond George)
[2008] UKHL 28; [2008] 1 A.C. 1028; [2008] 2 W.L.R. 1131; [2008] 4 All E.R. 97; [2009] S.T.C. 852; [2008] 2 Cr. App. R. 28; [2009] 1 Cr. App. R. (S.) 31; [2008] Lloyd's Rep. F.C. 453; [2008] Crim. L.R. 737; (2008) 105 (21) L.S.G. 21; (2008) 158 N.L.J. 750; (2008) 152(21) S.J.L.B. 29; Times, May 15, 2008; Official Transcript; HL