

## Possession proceedings stay is here to stay (well, until 24 June 2020)!

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*On 11 May 2020, the Court of Appeal, in **Arkin v Marshall**, confirmed that the stay on possession proceedings (other than squatter actions) introduced by Practice Direction 51Z in response to the Covid 19 pandemic is lawful.* Further, to all intents and purposes, it is incapable of variation by the courts save in the most exceptional circumstances. The stay will continue until 24 June 2020, or such later date as may be introduced.

By way of reminder, the underlying case is a mortgage possession action brought by a Lender through its appointed receiver, Mr Arkin, against a Borrower, Mr Marshall. Directions for the progress of the claim had been agreed by the parties the day before PD 51Z came into effect. Some of the directions were required to be completed prior to 24 June and others shortly afterwards, with a 3 month trial window from October 2020.

The Borrower took the view that the stay discharged the parties from the obligation to take any steps required by the directions prior to 24 June. The Lender did not accept the stay applied, but also contended that if it did, it should be lifted.

In the County Court, the Judge agreed with the Borrower and also ordered the extension of the directions to dates after 24 June. The Lender appealed on a number of grounds, including that PD 51Z was unlawful on the basis that it was not authorised by the Civil Procedure Rules, that it was inconsistent with Coronavirus Act 2020, human rights legislation and the principle of access to justice.

Before the case reached the Court of Appeal, PD 51Z was amended to provide that the stay would not apply, amongst other things, to applications for directions which are agreed by the parties.

The Court of Appeal rejected all the Lender's legality challenges. In relation to the Lender's argument that the stay ought to be lifted the Court of Appeal conceded that judges retain a theoretical power to do so. However, the exercise of that power must be informed by the nature of the particular stay and the purpose for which it was imposed. The purpose of PD 51Z is to ensure that the administration of justice and enforcement of possession orders do not endanger public health by the unnecessary transmission of Covid 19. As a result, the Court of Appeal had great difficulty in envisaging any case where the circumstances would be so exceptional as to justify lifting the PD 51Z stay. Therefore, in practice, it would almost always be wrong to lift it as indeed it would be in this case.

Finally, the Appeal Judges commented that, while a stay remains in place, neither party can apply to the court to enforce compliance with case management directions, whether they had been agreed or not. Accordingly, the County Court judge had been wrong to extend the dates of the directions originally agreed between the parties in this case. They ordered that this aspect of his decision should be reversed, unless the parties now agreed the revised dates and thereby this aspect fell to be dealt with by the court under the exemption to the stay.

Whilst not obliged to do so, the parties were at liberty to undertake, voluntarily, any agreed steps during the stay. Any failure to do so could be drawn to the court's attention by the other party when the court sets revised directions once the stay is lifted. That guidance may give some small crumb of comfort to the Lender.

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