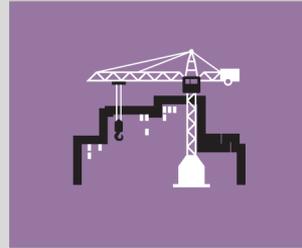




PD 51Z: staying possession claims

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What this talk will cover

- What is PD 51Z and what does it do?
- What are the exceptions to the stay?
 - (a) injunctions
 - (b) trespassers
 - (c) exceptional cases?
- Directions
- How is this working in court?





What is PD 51Z?

- Brought in 26 March 2020
- PD in force until 30 October 2020

- Stay on proceedings brought under CPR Part 55
- Stay until 90 days from 27 March 2020
- Purpose: Covid-19 and court administration

- Exceptions extended on 20 April 2020



The Practice Direction

1. This practice direction is made under rule 51.2 of the Civil Procedure Rules (“CPR”). It is intended to assess modifications to the rules and Practice Directions that may be necessary during the Coronavirus pandemic and the need to ensure that the administration of justice, including the enforcement of orders, is carried out so as not to endanger public health. As such it makes provision to stay proceedings for, and to enforce, possession. It ceases to have effect on 30 October 2020.
2. Subject to paragraph 2A, all proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession are stayed for a period of 90 days from the date this Direction comes into force.



Cont...

2A. Paragraph 2 does not apply to:

- (a) a claim against trespassers to which rule 55.6 applies;
- (b) an application for an interim possession order under Section III of Part 55, including the making of such an order, the hearing required by rule 55.25(4), and any application made under rule 55.28(1); or
- (c) an application for case management directions which are agreed by all the parties.

3. For the avoidance of doubt, claims for injunctive relief are not subject to the stay in paragraph 2, and the fact that a claim to which paragraph 2 applies will be stayed does not preclude the issue of such a claim.



Which claims are affected?

- Any claim brought under CPR 55
- 55.1(a): possession claim: a claim for the recovery of possession of land (including buildings or parts of buildings)
- 55.2(1): Part 55 procedure must be used for:
 - a possession claim by a landlord, former landlord, mortgagee, licensor; a possession claim against trespassers; a claim for relief from forfeiture



Effect of stay

- Halts proceedings
- *Grant v Dawn Meats UK* [2018] EWCA Civ 2212: when lifted, the position between the parties is the same as when the stay was imposed
- Directions
- What you can do during a stay: *Arkin v Marshall* [2020] EWCA Civ 620
- Limitation





Effect on enforcement

- Stays all proceedings seeking to enforce an order for possession by a warrant or a writ
- Does not stay enforcement of money judgments or injunctions





Exception: injunction

- PD 51Z(3): claims for injunctive relief are not subject to the stay
- *University College London Hospitals Foundation Trust v MB* [2020] EWHC 882 (QB)
- When might you want an injunction?



Exception: Trespassers

- PD 51Z(2A)(a): a claim against trespassers to which rule 55.6 applies



Exception: Trespassers

- PD 51Z(2A)(a): a claim against trespassers to which rule 55.6 applies
- CPR 55.1(b): possession claim against trespassers: a claim for the recovery of land which the claimant alleges is occupied only by a person who entered or remained without consent
- Does not include a former tenant or sub-tenant





Exception: Trespassers

- PD 51Z(2A)(a): a claim against trespassers to which rule 55.6 applies
- CPR 55.6: where the claim has been issued against persons unknown, the claim must be served on those persons by attaching copies to the main door, inserting copies addressed to the occupiers through the letter box, or placing the claim on stakes in places which are clearly visible



Trespassers: the approach of the court





Exception: interim possession orders (trespassers)

- Failure to comply with the possession order is a criminal offence
- The only claim is for against trespassers for the recovery of premises
- The claimant has the immediate right to possession and has had that right throughout the period of unlawful occupation
- The claim is made within 28 days of the date the claimant first knew that the defendant was in occupation
- The claim cannot be made against a defendant who entered or remained on the premises with the consent of a person who at the time had an immediate right to possession





Exceptions: exceptional circumstances

- *Arkin v Marshall* [2020] EWCA Civ 620

Directions

- PD 51Z(3): claims can be issued
- PD 51Z(2A)(c): applications for case management directions which are agreed by the parties
- *Arkin v Marshall* [2020] EWCA Civ 620: can comply
- Cannot apply to enforce agreed directions
- Relevance after stay
- Likely wrong otherwise for a court to make directions during the stay for post the expected lifting



How is this working in court?

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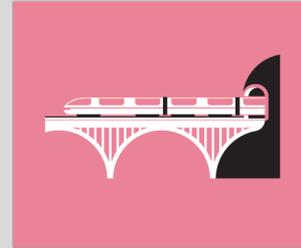
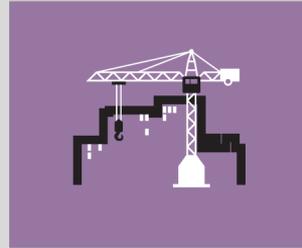
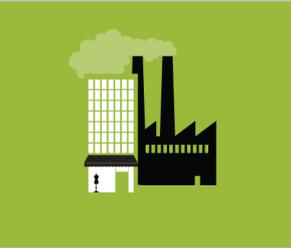
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