

**Judgment 33/2010**

**Susan May Cotterill v Charles Ozanne  
– Court of Appeal – (Civil Appeal 423) -  
23rd August 2010**

---

**Eviction from domestic premises – tenant’s application to the Court of Appeal for leave to appeal and for stay of execution pending appeal – test to be applied – applications refused by a single judge of appeal.**

**IN THE COURT OF APPEAL OF GUERNSEY**

The 23rd day of August, 2010 before The Honourable Michael Jacob Beloff, QC,  
sitting as a single judge.

SUSAN MAY COTTERILL

Applicant/Tenant

v

CHARLES OZANNE

Respondent/Landlord

In the matter of the applications by the Applicant for leave to appeal from the order for her eviction made by the Royal Court on the 13<sup>th</sup> July, 2010 and for a further stay of execution of that order pending hearing of the appeal;

THE SINGLE JUDGE this day, having considered on the papers the submissions received from the Applicant and from Advocate S. R. Geall for the Respondent, ISSUED JUDGMENT in the attached terms and:-

1. REFUSED leave to appeal; and
2. REFUSED a further stay.

K.H. TOUGH  
Registrar of the Court of Appeal



**IN THE COURT OF APPEAL OF GUERNSEY**

**BEFORE:**

**THE HON MICHAEL J BELOFF QC**  
**sitting as a single judge**

**BETWEEN:**

**SUSAN MAY COTTERILL**

**Applicant/Tenant**

**V**

**CHARLES OZANNE**

**Respondent/Landlord**

**Cases and Texts referred to: -**

*Cotterill v Le Marquand* 2009-10 GLR 113

*McNamara v Gauson* Royal Court Judgment 14/2010 at paras 22-34

*Glazebrook v The Housing Committee of the States of Jersey* CA 22002/217 at para 20

The Law giving the Court Increased Power to stay Execution in Actions for Eviction ("the 1946 Law")

The Stay of Evictions Laws 1946 and 1954 ("the 1954 Law")

The Rent Control Guernsey Law 1976 (as amended) ("the 1976 Law")

**Determination**

1. This application for stay pending an appeal to the full court comes before me in the following way. On 13 July 2010 the Royal Court granted an eviction order against the Applicant ("the decision") with execution stayed by the Jurats until 3<sup>rd</sup> August 2010. Despite the Judge's prompting, the Applicant did not apply for a stay on that date. On 16<sup>th</sup> July 2010 she issued a notice of appeal but, again, did not apply for a stay. On 27<sup>th</sup> July 2010 by letter the Greffier advised her of how she, if so minded, could apply for a stay, which on the same day she duly did. On 30<sup>th</sup> July 2010 the Respondent landlord by Counsel opposed the application. On the same day the Royal Court dismissed it. On 4<sup>th</sup> August 2010 the Greffier by telephone advised her again how, if so minded, she could apply for leave to appeal the refusal of a stay to a single judge of this Court, and on 5<sup>th</sup> August 2010 confirmed that advice in writing. On the 5<sup>th</sup> August the Applicant made the application advised. On the same day again the Bailiff sitting as such single judge referred the matter to a single judge of the Court of Appeal outside Guernsey to consider the matter on the papers and stayed the eviction order until that single judge had determined the application. I am that single judge.

2. The Applicant's name features in a reported case *Cotterill v Le Marquand* 2009-10 GLR 113 which concerns an eviction order sought against her by a previous landlord. In that ("the first Cotterill case") case Sumption JA delivering the judgment of the Court commented on the Courts powers of stay contained in the Law giving the Court Increased Power to stay Execution in Actions for Eviction ("the 1946 Law") and the Stay of Evictions (Amendment) Law, 1946 and 1954 ("the 1954 Law"). (although mentioning them as "the Law" only which could give rise to misunderstanding on the part of the unwary reader since the same anonymous description had been given previously in the judgment to the Rent Control Guernsey Law 1976 (as amended) ("the 1976 Law") in the following terms.

*"7. Guernsey law offers only limited protection to tenants against an eviction which is in accordance with the terms of the tenancy agreement. There are no statutory tenancies and no statutory security of tenure. A periodic tenancy determinable on notice may be brought to an end in accordance with its terms if notice to quit has been served by the Sergeant, or without notice on the ground of non-payment of rent or other material breach. If the tenant remains in possession after the landlord has become entitled to possession, the landlord may bring proceedings for eviction, and is entitled as of right to an eviction order, subject only to the Court's power to stay the order. A limited discretion to stay the order has existed by custom for many years. But since 1946 it has been enlarged and regulated by statute. Section 2 of the Law Giving the Court Increased Power to Stay Execution in Actions for Eviction empowers the Court to stay execution during such time and on such conditions as it thinks reasonable. Section 3 of the Law sets out a number of factors which the Court is required to take into account in exercising that power."*)

3. The 1946 Law provided (so far as material)

*"2. When the tenant or sub-tenant of a dwelling house or other premises is proceeded against for eviction from any dwelling house or premises, the Court may, have taken into consideration the position of the parties and all the circumstances of the case, make an order that execution of any order for eviction from the said premises be suspended during such time and upon such conditions as the Court may consider reasonable.*

*3. In considering the position of the parties and the circumstances of the case, with a view to deciding whether the Court should suspend execution of an eviction order, and if so, during what times and upon what terms such execution should be delayed, the Court shall take into account the following matters, inter alia: -*

*(a) Whether any rent lawfully due from the tenant or sub-tenant has not been paid, or any other obligation of the tenancy has been broken or not performed."*

The 1954 Law provided (so far as material)

*"1. The power of the Court under the Law giving the Court increased power to stay execution in actions for eviction registered on the Records of this Island on the 31<sup>st</sup> day of August, 1946, (hereinafter referred to as "the principal Law") to suspend execution of an order for the eviction of a tenant or sub-tenant shall henceforth extend to enable the Court to suspend during such time not exceeding six months as the Court may consider reasonable execution of any order for the eviction of an occupier of any premises other than an occupier whose occupation was in its inception unlawful and the provisions of that Law shall apply accordingly.*

*2. The principal Law and this Law may together be referred to as the Stay of Evictions Laws 1946 and 1954."*

4. It is obviously important to identify the basis upon which the eviction order was made. The Tenancy Agreement was entered into on 18<sup>th</sup> May 2009 and was to last, save as otherwise provided, from that date until 31<sup>st</sup> May 2010 (Clauses 1 and 8.1). The monthly rent was specified in Clause 2 and failure to pay instalments due for 14 days or more was a ground for immediate termination of the tenancy. (Clause 8.2). The action for eviction dated 24<sup>th</sup> May 2010 specified both non-payment of rent and expiry of the agreement as grounds for an order; but given that, at the date of the hearing, a finding by the Magistrates Court on 22<sup>nd</sup> June 2010 of arrears of rent was under appeal the Respondent proceeded on the expiry ground only.
5. In the first Cotterill case this Court commented on the protection of a tenant's rights under Guernsey law.

*"8. The only statutory provision which protects a tenant with rights under the Rent Control (Guernsey) Law 1976 is Section 14 of that law. As amended, this provides:*

14. (1) No proceedings shall be commenced in the Ordinary Court by the landlord of a controlled dwelling in respect of which a reference or application has been made under the provisions of this Law for the eviction of the tenant of such dwelling within twelve months of the date of the latest assessment, re-assessment or review of the decision of the Rent Officer in respect of the basic rent thereof or, if an appeal has been lodged in respect of the basic rent of the dwelling under section ten of this Law, within twelve months of the determination or abandonment of such appeal.

(2) The provisions of the foregoing subsection shall not apply if the Ordinary Court is satisfied that the eviction proceedings are founded upon matters wholly independent of the operation of this Law.”

6. The Court further commented on these statutory provisions as follows

*“11. ....the effect of that sub-section is to prevent the landlord from commencing eviction proceedings within twelve months of the assessment or the latest re-assessment or review of a controlled rent. It cannot therefore apply to premises such as Flat 1, 8 Park Street, which have never had an assessed rent. At the time when Mr. Le Marquand commenced his eviction proceedings, Miss. Cotterill had made an application for an assessed rent, but there is no provision in the Law which protects tenants who have a pending application to the Rent Officer at the time of the proceedings. The Law does not even protect tenants who have a controlled rent at the time of the judgment, if it was assessed after the proceedings had begun. It follows that in this case the tenant is not protected by Section 14(1). There is therefore no scope for the operation of the proviso in Section 14(2).”*

*“12. ....In a case where Section 14(1) would otherwise protect the tenant, the effect of Section 14(2) is that it will not protect her if the landlord’s eviction proceedings are ‘founded upon matters wholly independent of the operation of this Law.’ Read literally, these words suggest that Section 14(1) can apply only where the eviction proceedings are ‘founded upon’ the operation of the Rent Control Law. However, it cannot really mean that. There are no circumstances in which the operation of the Rent Control Law ever could be the foundation of a right to evict, unless perhaps the tenancy agreement expressly provided for termination upon the tenant applying for or obtaining a statutory assessment of the rent. That is of course a possibility, but it is rather a remote one. We do not think that the draftsman of a provision such as Section 14 for the protection of tenants can have intended to limit its application to agreements in those terms. It is clear, in our judgment, that the purpose of Section 14(2) is to restrict the operation of section 14(1) to cases where the landlord is seeking an eviction in order to deprive the tenant of the benefit of a statutory controlled rent. If the Court is satisfied of that, then the tenant obtains a twelve month respite after the registration of an assessed, reassessed or reviewed rent, during which he can occupy the premises without having eviction proceedings brought against him. That involves an enquiry into the landlord’s motives for seeking to evict the tenant, which is a question of fact..... If Section 14(2) had arisen for decision (which in this case it did not), the Bailiff would have been required to refer to the jurats the question whether, when Mr. Le Marquand decided to terminate Miss. Cotterill’s tenancy, he was aware of the risk that she would apply to the Rent Officer for an assessed rent and, if so, whether that was the real reason, or one of the real reasons, for his decision. The application of section 14(2) would have depended*

*on their finding about that.”*

7. It may be - if I have correctly understood the plenary Court’s analysis - that further consideration may be given as to whether the Court’s reference in paragraph 12 of the relevance of an awareness by the landlord of a risk that the tenant would apply to the Rent Office for an assessment of rent sits entirely harmoniously with its reference in paragraph 11 to the absence of protection even for tenants who have a pending application to the Rent Officer, but in this case the issue, for reasons explained in the next paragraph, does not arise. Suffice to say that I am in respectful agreement with the Court in its reference in paragraph 14 to the obscurity of the language of Section 14(2).
8. The record shows the Applicant implemented her decision to go to a Rent Officer on 24<sup>th</sup> May 2010. Her application to the single judge suggested she did not receive the action for eviction until 25<sup>th</sup> May 2010. But whichever came first, directed in accordance with the judgment in the first Cotterill case, the Jurats found (the matter being in issue) that the reason for the intended termination was the arrears of rent and not the Applicant’s decision to go to the Rent Officer to assess a basic rent under section 3 of the 1976 Law. (see the Decision p.1 )
9. The Applicant’s grounds of appeal to this Court refer to Section 14(1) of the 1976 Law. (and also to section 8 which is concerned, however with the review of the Rent Officers’ decision by a Committee - a matter immaterial to the proposed appeal.) The Judge of the Royal Court clearly considered that leave to appeal from the Royal Court was required; as did Counsel for the Respondent, see para 4.1 of his opposition to the stay application. I agree. The Decision turned on the Jurats’ findings of fact, not on the Law, which had been established in the first Cotterill case; the matter in dispute was the Respondent’s right to evict the Applicant to which no monetary value has been attached.
10. The Court of Appeal (Guernsey) Law 1961 provides in Para 15 (d) that an appeal shall not lie to the Court of Appeal under this Part of this Law: -  
  

*"without the leave of the presiding judge of the court whose decision is sought to be appealed from or of the Court of Appeal, where the value of the matter in dispute does not exceed the sum of two hundred pounds sterling, unless there was in contest in the suit a question of law;"*
11. There is, it appears, a possible difference of approach in the two islands as to the test for granting leave to appeal where it is required. In Guernsey the test appears to be whether the appeal has "a real prospect of success" see the discussion by the Deputy Bailiff in McNamara v Gauson Royal Court Judgment 14/2010 at paras 22-34. In Jersey the test is rather that

"there is a clear case of something having gone wrong" *Glazebrook v The Housing Committee of the States of Jersey* CA 22002/217 para 20. In this jurisdiction I must loyally apply the Guernsey test but it may well be that the Jersey test, if substantively distinct, will need to be reformulated or refined since some might argue that if something has 'clearly' gone wrong, leave to appeal would be a necessary, but not sufficient judicial response; on the postulated basis it could plausibly be suggested that the appeal itself should succeed. This, however, is a matter for the Jersey Courts.

12. Applying the Guernsey test I can see no real prospect of success in the appeal. There is no basis on which it could be said that the findings of the Jurats, who heard the evidence, including that of the Applicant, saw the relevant documents (which included letters of 29<sup>th</sup> March, 12<sup>th</sup> April and 19<sup>th</sup> April notifying the Applicant that there would be no renewal of her lease past the expiry date, because - as the Respondent's agent explained, - of the Applicant's arrears) and were given a proper direction, were perverse. The Applicant's without prejudice statement in support of her application for a stay betrays a misunderstanding of Section 14(1) of the 1967 law. That she has since the decision ie on 18<sup>th</sup> June 2010 had a basic rent assessed is not to the point. Section 14(1) inhibits a landlord from commencing proceedings against a tenant whose basic rent has been assessed; here the landlord (Respondent) commenced the proceedings before that assessment, even if he only raised the expiry ground by way of amendment on 24<sup>th</sup> June. If rent assessment could be under the 1976 Law section 14(1) a trump card the Applicant played it too late. There is no basis for granting leave to appeal.
13. There being no real prospect of success in the appeal I cannot sensibly grant a stay further than that already enjoyed. The decision does not indicate on its face that the Jurats considered the Stay of Evictions Laws, 1946 and 1954; but then no stay was actually applied for before them. But they did consider a stay and there is no material before me to suggest that the Applicant could in any event take advantage of that law, even if (assuming they were not familiar with it from other cases) it had been drawn to their attention. It appears from findings by the Magistrates Court on 2<sup>nd</sup> June there remain not inconsiderable arrears of rent; the previous lease has long since expired; the Applicant has already had the benefit of two stays, one granted by the Jurats one by the Bailiff, and it would be unfair to the Respondent in such a situation, (who seems, on the basis of his Agents evidence before the Royal Court already to have been somewhat indulgent to the Applicant) absent countervailing sympathetic facts of some magnitude, (as to which there is no evidence or even assertion before me) not to allow the eviction order to be enforced forthwith.
14. I accordingly

(i) refuse leave to appeal.

(ii) refuse a further stay.

M J Beloff QC

Judge of Appeal

23 August 2010