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# Possession is at least 9/10ths of the law: *Barkatali v Davies* [2020] EWHC 753 (Ch)

*Barkatali v Davies* [2020] EWHC 753 (Ch) is an interesting recent decision on possession proceedings in estates, and regarding the Inheritance (Provision for Family and Dependants) Act 1975 (the “1975 Act”). It was handed down on 27 March 2020.

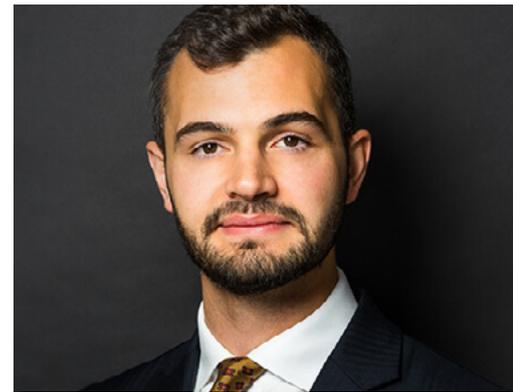
The applicant (“A”) was living as if a civil partner with the deceased for more than two years before death. He therefore qualified to apply under the 1975 Act (s. 1(1A)). He was evicted from the deceased’s flat by the respondent (“R”), who was the beneficiary under the deceased’s intestacy. However, nobody had taken out letters of administration, and R did not have a right to possession. A therefore sought an injunction that R deliver up the keys to the flat, and that A be prevented from evicting R in the future.

A relied on *Lewis v Warner* [2018] Ch 450 to argue that he would in due course be entitled to the flat on an application under the 1975 Act. That argument failed. Morgan J considered that the facts in *Lewis v Warner* justified a 91-year-old with health problems being granted a specific property under the 1975 Act in that particular case, but

did not mean that any applicant had any right to expect an order relating to a specific property. Strikingly, Morgan J considered that, where A had no means-based argument, he did not even raise a serious issue to be tried on this aspect of his case under the test in *American Cyanamid v Ethicon* [1975] AC 365.

Next, A argued that R had no right to evict A. R was not administrator, and so had no better title to the property than did A. Again, Morgan J dismissed this argument. He held that he would not grant an injunction to permit A, who would otherwise have no right of possession, to regain and remain in the property, notwithstanding the fact that R had acted badly, perhaps even unlawfully, in evicting R. A could not create a right of possession out of nothing.

**The case, short though it is, is important in two respects. First, it shows that attempts to seek specific property under the 1975 Act are very challenging. The court did not even consider the argument that A would gain the property under the 1975 Act met even the low threshold of a serious issue to be tried in this case. Second, it shows how hard it can be for a licensee to**



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remain in a property after the death of the licensor. Ordinarily, in an estate administration the personal representative can seek possession even if the licensee will take the property as beneficiary once the estate is administered: see *Williams v Holland* [1965] 1 WLR 739. This case makes it clear that a licensee will not be able to obtain an injunction to regain possession even if dispossessed by the eventual beneficiary, unless the personal representative steps in to assist.

It should be remembered that this was a case decided only on A’s application for an injunction. However, it gives a vivid example of the challenges facing those who wish to stay in the property of the deceased after death when they had been relying on the deceased’s title to the property as their own basis for possession.

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