

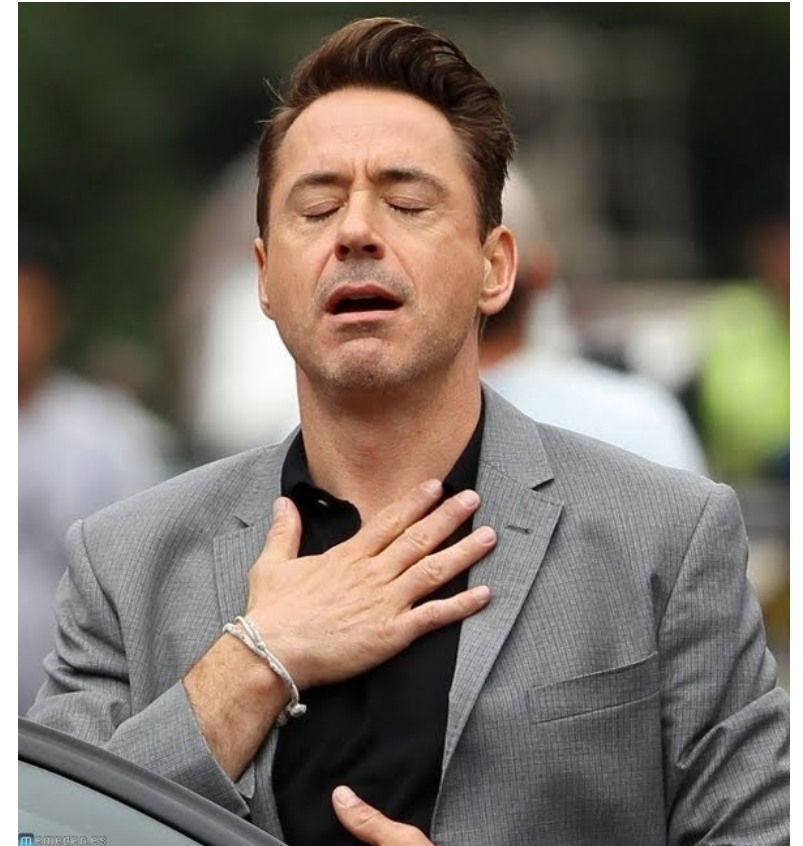
Relief from Forfeiture



Peter Sibley

What is relief from forfeiture?

- *Dendy v Evans* [1910] 1 K.B. 263
- *Shiloh Spinners Ltd. v Harding* [1973] A.C. 691
- Non-payment of rent or other breach?



Other breach: s.146(2)

“(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.”

Other breach: s.146(2)

- *Pakwood Transport Ltd. v. 15 Beauchamp Place Ltd.* (1978) 36 P. & C.R. 112
- *Billson v. Residential Apartments* [1992] 1 A.C. 494

Other breach: s.146(2) – exercise of discretion

- *Magnic Limited v Mahmood UL-Hassan, Nasim Akhtar Malik* [2015] EWCA Civ 224
- *Freifeld v West Kensington Court Ltd* [2015] EWCA Civ 806
- *Hoffman v Fineberg* [1949] Ch. 245
- *Egerton v Jones* [1939] 2 K.B. 702

Other breach: s.146(3) – Costs

- “(3) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Act.”
- *Patel v K&J Restaurants Ltd* [2010] EWCA Civ 1211

Non-payment of rent



Non-payment of rent – County Court – forfeiture by proceedings

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- S.138 of the County Courts Act 1984
- Before trial or hearing – (2) and (6)
- At trial or hearing – (3), Form N27
- After trial or hearing but before possession recovered – (4), (5), (7), (8), (9)
- After landlord recovers possession (9A)

Order for possession on forfeiture (for rent arrears)

In the Claim No.

Claimant

Defendant(s)

On 20 ,

sitting at

heard

SEAL

and the court orders that

1. The defendant give the claimant possession of on or before 20 , and £ per day from 20 until possession is given to the claimant or payment is made under paragraph 5 below.
2. The defendant pay the claimant's costs of £ [The defendant pay the claimant's costs, within 14 days after they are assessed [and in the meantime pay the claimant £ on account of those costs]
3. The defendant pay the total of the sums mentioned above to the claimant [on or before 20 .] [by instalments of £ per , the first instalment to be paid to the claimant on or before 20 .]
4. If the defendant pays the claimant the sums mentioned above on or before 20 this order shall have no effect and the lease will continue.

To the defendant

The court has ordered you to leave the property by the date stated in paragraph 1 above. However that order will not take effect if you pay the arrears of rent, any use and occupation charge, and costs by the date stated above. Payment should be made to the claimant, not to the court. If you need more information about making payment, you should contact the claimant.

If you do not make the payment or leave the property, the claimant can ask the court, without a further hearing, to authorise a bailiff or Sheriff to evict you. In that case, you can apply to the court to stay the eviction; a judge will decide if there are grounds for doing so.

(If detailed assessment of costs is ordered)

The claimant will send you a copy of the bill of costs with a notice telling you what to do if you object to the amount. If you do object, the claimant will ask the court to fix a hearing to assess the amount.

(If there is an order to pay money, made in a county court)

If you do not pay the money owed when it is due and the claimant takes steps to enforce payment, the order will be registered in the Register of County Court Judgments. This may make it difficult for you to get credit. Further information about registration is available in a leaflet which you can get from any county court office

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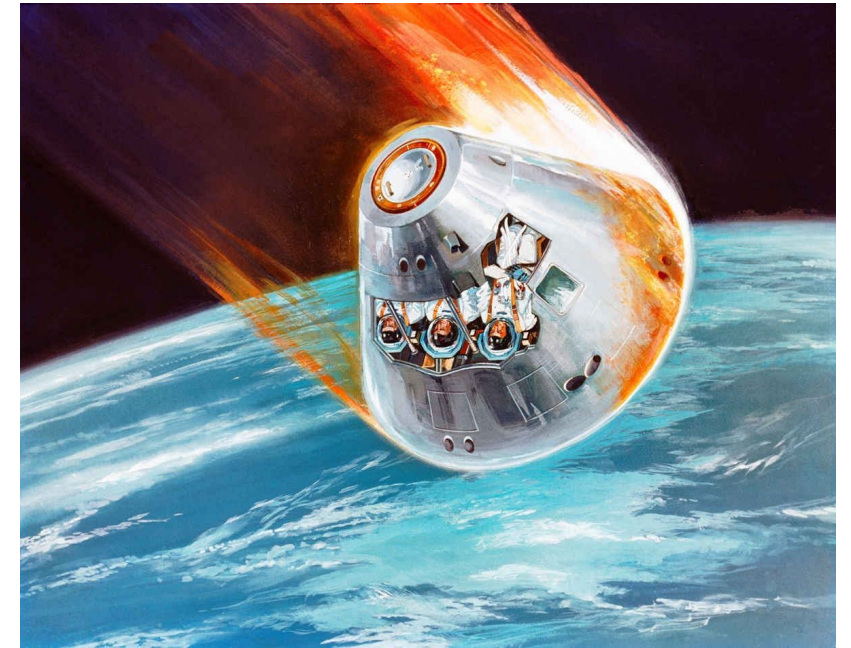
N27 Order for possession on forfeiture (for rent arrears) (January 2002)

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Non-payment of rent – County Court – forfeiture by peaceable re-entry

S.139(2) of the County Courts Act 1984

“Where a lessor has enforced against a lessee, by re-entry without action, a right of re-entry or forfeiture as respects any land for non-payment of rent, the lessee may at any time within six months from the date on which the lessor re-entered apply to the county court for relief, and on any such application the court may, if it thinks fit, grant to the lessee such relief as the High Court could have granted.”



Non-payment of rent – High Court – forfeiture by proceedings

- S.38(1) of the Senior Courts Act 1981 provides:
“(1) In any action in the High Court for the forfeiture of a lease for non-payment of rent, the court shall have power to grant relief against forfeiture in a summary manner, and may do so subject to the same terms and conditions as to the payment of rent, costs or otherwise as could have been imposed by it in such an action immediately before the commencement of this Act.”
- *Inntreprenneur Pub Company Ltd v Langton*
[2000] 1 E.G.L.R 34



Non-payment of rent – High Court – forfeiture by proceedings

- Common Law Procedure Act 1852
- S.212 – similar to s.138(2)
- S.210 – 6 months from recovery of possession

Non-payment of rent – High Court – forfeiture by peaceable re-entry

- Inherent equitable jurisdiction
- *Keshwala v Bhalsod* [2021] EWCA Civ 492
- *Pineport Ltd v Grangeeglen Ltd* [2016] EWHC 1318 (Ch)



Thank you for listening

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