



29 July 2015

PRESS SUMMARY

Woolway (Appellant) v Mazars (Respondent) [2015] UKSC 53
On appeal from [2013] EWCA Civ 368

JUSTICES: Lord Neuberger (President), Lord Sumption, Lord Carnwath, Lord Toulson, Lord Gill

BACKGROUND TO THE APPEAL

Local authority rates are payable in respect of the rateable occupation of hereditaments. Rates are a tax on property and “hereditaments” are the units of assessment. The statutory definition of ‘hereditament’ in section 115(1) of the General Rate Act 1967 states that it is “*such a unit of ... property which is, or would fall to be, shown as a separate item in the valuation list.*” Where different parts of an office building are occupied by the same occupier, the ordinary practice of the valuer is to enter them as a single hereditament if they are contiguous, but as separate hereditaments if they are not.

The property in question in this appeal, Tower Bridge House, is an eight-storey office block in St Katherine’s Way, London. Mazars, a firm of chartered accountants, occupies the second and sixth floors of the building under separate leases. These floors are separated by common areas in the building and were entered in the 2005 rating list as separate hereditaments. In February 2010 Mazars applied to the Valuation Tribunal for England (“VTE”) to merge the two entries to form a single hereditament. The VTE agreed that the two entries should be merged. The Valuation Officer, Mr Woolway, appealed to the Upper Tribunal (Lands Chamber) on the grounds that the properties were two separate hereditaments. The Upper Tribunal confirmed that the premises could be treated as one hereditament. The Court of Appeal dismissed Mr Woolway’s appeal. Mr Woolway appeals to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Sumption gives the leading judgment and Lord Neuberger, Lord Carnwath and Lord Gill give separate concurring judgments.

REASONS FOR THE JUDGMENT

The question in this appeal is how different storeys under common occupation in the same block are to be entered in the rating list for the purpose of non-domestic rating [1].

Three broad principles apply in answering this question. The primary test is geographical, being based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity. If contiguous units do not intercommunicate and can be accessed via other property of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments. Second, where two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. Third, the question whether the use of one section is necessary to the effectual enjoyment of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the premises. This calls for a factual judgment on the part of the valuer, exercising professional common sense [12]. In the present case neither a geographical nor a functional test was applied [20].

The appeal is allowed therefore. The orders of the Valuation Tribunal and Upper Tribunal are set aside and the Court makes a declaration that the premises demised to Mazars on the second and sixth storeys of Tower Bridge House are to be entered in the rating lists as separate hereditaments [22].

In his concurring judgment, Lord Gill emphasises that the reference to functionality in the tests articulated by Lord Sumption does not refer to the use which the ratepayer chooses to make of the premises. Rather, it is a reference to the necessary interdependence of the separate parts of the property that is objectively ascertainable [39]. The concept of fairness has no place in the application of the three principles laid down by Lord Sumption, which provide straightforward and workable guidance [40]. Contiguity is not the decisive criterion in the geographical tests. Properties that are discontinuous but geographically linked may constitute one hereditament if the occupation of one part would be pointless without the occupation of the other [41]. The discontinuity between the offices in question lies in the fact that the only access between them is through the public part of the building, not whether they are vertically or horizontally adjacent [43].

Lord Neuberger, concurring with Lord Sumption and Lord Gill, concludes that a hereditament is a self-contained piece of property, namely all parts of which are physically accessible from all other parts, without having to go onto other property [47]. Where premises consist of two self-contained pieces of property it would require relatively exceptional facts before they could be treated as a single hereditament. The mere fact that each property may have the same occupier should, normally, make no difference [51]. If, however, one property could not be sensibly occupied or let other than with the other property, they should normally be treated as single hereditament [52]. In order to decide whether two separate self-contained units of property constitute a single hereditament the relationship between the two properties should be considered. The plant, machinery and other fixtures which form part of the property for rating purposes are relevant to this consideration [55]. Two separate self-contained floors in the same office building, whether or not they are contiguous, cannot be said to constitute a single hereditament, at least in the absence of very unusual facts. Once they cease to be self-contained, so that each floor is accessible from the other without going onto other property, then the two hereditaments will normally be treated as having been converted into one larger hereditament [56].

Lord Carnwath agrees with the judgment of Lord Sumption but does not express a concluded view on the treatment of contiguous floors [62].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.uk/decided-cases/index.html