The incurable case of the misidentified tenant: Caroline Shea KC & Thomas Rothwell consider a decision of the Court of Appeal on incorrectly addressed notices

IN BRIEF

▶ In *OG Thomas Amaethyddiaeth Cyf and another v Turner and others*, the Court of Appeal has ruled that for a notice to quit to be valid, it is a fundamental requirement of the common law that notice is given to the tenant.

▶ This implies that a notice addressed to A and received by A cannot be regarded as being a notice given to B, even if A knows that B would have been the correct recipient of it.

Landlord and tenant practitioners will be fully familiar with scrutinising property notices for their substantive validity. Where a notice contains an error, they will also routinely grasp for the 'reasonable recipient' test laid down in the well-known case of *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749.

In last year's decision in *OG Thomas Amaethyddiaeth Cyf and another v Turner and others* [2022] EWCA Civ 1446, [2022] All ER (D) 15 (Nov), however, the Court of Appeal has sounded an important note of caution. The clear message: not all mistakes go to meaning; those that do not are not curable by reference to the *Mannai* test.

An agricultural tale

The *OG Thomas* case concerned a farm in Wales of which Mr Thomas had been granted an oral agricultural tenancy, protected by the Agricultural Holdings Act 1986, by its then owner, Mr Turner. Mr Turner had since died and there was now a new landlord, Mr Owen.

On 30 October 2019, Mr Thomas incorporated a company, OG Thomas Amaethyddiaeth Cyf (or, for readers without a passable knowledge of Welsh, OG Thomas Agriculture Ltd). Mr Thomas was the company's sole shareholder and secretary. The company's registered address was the same as his home address.

On 1 November 2019, Mr Thomas assigned his tenancy of the farm to his company (which he was able lawfully to do because his tenancy, being oral, did not contain any prohibition on assignment). Importantly, he did not tell his landlord that he had done so. Mr Thomas then continued to manage the farming enterprise, albeit now on behalf of the company.

A comedy of errors then followed. On 4 November 2019, unaware of the assignment of the tenancy, Mr Owen served Mr Thomas with notice to quit, which was sent by recorded delivery to his home address. Unsurprisingly, that notice was addressed to Mr Thomas, and not to the company. No counternotice was served under the Agricultural Holdings Act 1986. Mr Thomas subsequently challenged the validity of the notice, which resulted in litigation.

Mannai applied at first instance

Both at first instance and on a first appeal, the notice was declared valid notwithstanding that it had been addressed to Mr Thomas rather than to his newly incorporated company. Applying the approach in *Mannai*, both judges held that a reasonable recipient would have appreciated that a mistake had been made in naming the tenant and would thus understand the notice as having been addressed to the company. In that respect, the relevant facts were that:

a. the landlord was unaware that the assignment had taken place;
b. the notice correctly identified the land demised by the lease as well as the fact that it had previously been granted to Mr Thomas; and
c. the reasonable recipient of the notice would have known that the lease was now held by the company.

One might have thought that a just result on the facts of the case. The Court of Appeal, however, has taken a stricter view. Allowing the tenant's appeal, it has held that, for a notice to quit to be valid, it is a fundamental requirement of the common law that notice is given *to the tenant*. If this substantive condition is not satisfied, the principles in *Mannai* are not even engaged.

Practitioners should therefore take note: *Mannai* is no panacea where the statutory or common law requirements for service are not met.

Notice must be given 'to the tenant'

The judgment of Lewison LJ begins with a consideration of *Mannai* itself. The judge noted that this landmark decision of the House of Lords had always distinguished between substantive requirements on the one hand and requirements to impart information on the other. The former had always been mandatory; compliance with the latter was a matter for contextual interpretation (in the form of the 'reasonable recipient' test). Importantly, if a notice fails to meet the substantive conditions on which its validity turns (for example, it is not served or insufficient notice is given), no question of interpretation in fact arises. In the famous words of Lord Hoffmann: 'If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper.'

The court therefore proceeded to consider the substantive common law requirements for a valid notice to quit. One of these requirements was that a notice to quit, if served by a landlord, must be 'given' to his immediate tenant. In the present case, that meant that the notice had to be given to the assignee company, being the person in whom the lease was vested at the time of service.

The court noted, however, that there remained an uncertainty as to what precisely was meant by giving a notice 'to the tenant', at least in the context of written notices to quit. On one view, it might be said that the tenant must simply have received the notice in order for it have been 'given' to him. On another, it might mean that the tenant must not only have received the notice but that the notice must also have been addressed to the tenant, if addressed at all, by either his name or designation.

The tenant accepted that, in order for a valid notice to be served, there was no requirement at common law for that notice to be served on the tenant by name; a reference by designation (eg 'To the Tenant') would suffice. Furthermore, as long as the notice

had been served on the tenant, there was in fact no requirement for the notice to be addressed to anyone at all: *Doe d Matthewson v Wrightman* (1801) 4 Esp 5.

The tenant's case, however, was that where a notice *is* addressed to the tenant by name, the common law requires—as a substantive condition—that the tenant must be correctly identified. That being a mandatory requirement, the principles in *Mannai* would simply not apply. Whereas *Mannai* would help a litigant who had used the wrong language to identify the right person (imagine a notice with a spelling error), it would not assist someone who had used the right language to identify the wrong person (a misidentification case).

The court considered this analysis to be supported by the cases. Whereas, in *Harmond Properties Ltd v Gajdzis* [1968] 3 All ER 263, the court was able to uphold the validity of a notice to quit served on 'Walter Gajdzis' (when the tenant was really called Wladyslaw Gajdzis), the position was different in *R (on the application of Morris) v London Rent Assessment Committee* [2002] EWCA Civ 276, [2002] All ER (D) 75 (Mar). In the latter case, a notice had been served on the original tenant of a flat rather than his assignee. The notice was held invalid on the basis that it had not been given 'to the tenant'. The Court of Appeal observed that this was not a minor error or slip. Indeed, the reasonable recipient in the assignee's position would have assumed that the notice was meant for a third party, and not for himself.

The court also considered the Scottish cases, such as *Ben Cleuch Estates Ltd v Scottish Enterprise* [2008] CSIH 1, 2008 Scot (D) 2/1. There, a break notice which had been misaddressed to the landlord's parent company was declared invalid. Importantly, the Inner House noted that, because the notice had been addressed to the incorrect party: 'the stage of considering how the notice would be understood by the recipient is not reached.'

The court accordingly concluded that these cases (and others) sent a 'clear message': if a notice is addressed to A by his correct name and served at his proper address, it cannot, in law, be treated as a notice given to B. To the extent that there were indications to the contrary in other cases, these were not binding and did not represent the law.

Practical takeaways

What, then, should practitioners note?

First, unless this decision is reversed by the Supreme Court, there now appears to be a substantive rule that a notice addressed to A and received by A cannot be regarded as being a notice given to B, *even if A knows that B would have been the correct recipient of it*. To put it slightly differently, where a notice misidentifies the tenant (as opposed to, for example, misspelling the tenant's name), recourse to *Mannai* will not avail. As Lewison LJ described the facts of this case: 'There was no verbal error: there was a factual one.'

Second, if there is any doubt about the identity of the tenant (and the relevant lease or statutory context provides no more detailed guidance regarding service of the notice), the prudent course may now simply be to address the notice to 'The Tenant' or, if appropriate, not to address it at all but rather to hand it to the person known to be or represent the tenant. Such approaches ought to achieve compliance with the requirements of the common law: see [58].

In conclusion, then, *Mannai* cannot be used to obviate compliance with the substantive requirements of a contract or a statute or the common law. This case has provided useful clarification on the need to distinguish verbal from factual mistakes, and what the consequences of each kind of mistake might be. NLJ

Caroline Shea KC & **Thomas Rothwell,** barristers at Falcon Chambers (*www.falcon-chambers.com*).