Argyle Farmers Limited v Hinderton Estates Limited & Hopkins **(05.05.2020 unreported)**

High Court, Manchester District Registry

Validity of general notice to quit agricultural holding under s.26(1) AHA 1986

Joe Ollech, instructed by George Fellowes of Loxley Solicitors, represented the successful defendant landlord in a claim that concerned the service and validity of a general notice to quit a tenancy of an agricultural holding protected by the provisions of the Agricultural Holdings Act 1986.

The circumstances of the hearing, and the decision itself, give rise to some points Covid-19 procedural tips, and some legal aspects which may be of interest.

The claim was brought by the tenant alleging trespass by the landlords in padlocking a number of gates in August 2019 and thereby evicting it from fields it claimed to occupy under an annual periodic tenancy. In their defence the landlords relied upon a simple notice to quit that had been served in September 2017, to which the defendant had not served a counter-notice, and upon that basis counterclaimed for possession.

At the date the notice was served there was an ongoing dispute between the parties as to whether the claimant was indeed the tenant under the tenancy. The claimant had asserted that it was the assignee of the tenancy. The landlords, for their part, considered that the tenancy remained vested in an individual ("R") who was the original tenant under the lease, and that any purported assignment by him to the claimant had been void under s.6(5) of the AHA 1986.

R was also a director of the claimant company. The notice itself was posted to R at his home address, which was also the registered address of the company. The body of the letter addressed itself to R personally, or to such person or persons as claimed to be the tenant of the holding, and *inter alia* gave notice to quit the holding.

That particular argument as to the claimant's status was not later pursued by the landlords, and by their defence they conceded that the claimant was a lawful assignee of the tenancy at the date of the notice to quit. There were additional claims for damages by the claimant, and a counterclaim for mesne profits by the defendants, and a number of factual issues with regard to the alleged acts of trespass.

With regard to the hearing of the trial, it was listed to be heard over two days on 4 and 5 May 2020, with five witnesses of fact. The Covid 19 pandemic and lockdown guideless had an inevitable impact on this listing, and at least one of these witnesses had health issues and would not have been able to cope with a remote hearing or access video technology.

However, the parties reached agreement that the matter could proceed as a trial focussed on the central issue of the validity of the notice, the landlords in particular agreeing that for this purpose only they were prepared to take the claimant's witness evidence as read without the need for cross examination.

In the absence of cross examination it was suggested, and the court accepted, that there was no need for the added fuss of a video hearing. By focussing on the critical issue and agreeing the evidence the need for complicated arrangements were avoided, and the trial proceeded simply by way of telephone conference. The trial bundles were circulated in hard copy. Other documents, such as skeleton arguments and PDF e-bundles of authorities were sent by email. The authorities were used on-screen individually by the Court and counsel.

As to the issue regarding the notice itself, the tenant's complaint in respect of the notice was (a) that it had not been properly served and/or was ambiguous in that it had been addressed to R rather than to the company or to R in his capacity as director of the company, (b) that its meaning was otherwise unclear, and (c) that contrary to the decision of the Court in *Mills v Edwards* [1970] 1 QB 379 it did not expressly state that it was a notice given pursuant to s.26(1) of the AHA 1986.

The first two arguments are relevant to notices to quit generally, and the court's decision in the landlords' favour a reminder of the enduring significance of *Mannai Investment Co Ltd v Eagle Star Assurance* and the importance of having regard to the objective factual matrix. In the circumstances of the then dispute as to the identity of the tenant the Court accepted that the reasonable recipient would not be in any doubt as to why it was addressed as it was, and that that the claimant clearly fell within the alternative phrasing "or other person or persons who claim to be the tenant". It was also artificial to consider objectively that R, being simultaneously a director of the company, would fail to understand that he or the company were being put on notice. Further justification on the basis of agency, e.g. by R's express authority under the articles of association to exercise the powers of the company, was not required.

The third argument is of particular interest to agricultural practitioners, although as the case was allocated to a District Judge on the day who gave an ex tempore judgment it will remain an unreported decision.

Mills v Edwards may be raised by agricultural tenants as authority for the proposition that a notice to quit under the AHA 1986 must expressly state whether it is given under s.26(1) or s.26(2). The Court, however, accepted the submissions made on behalf of the landlords that this approach depends on a very narrow (and incorrect) reading of *Mills v Edwards*. The issue in *Mills v Edwards* was whether a landlord who had given a notice that clearly stated that it was given because of a failure to comply with a notice to remedy, could rely on it instead as a general notice to quit when it transpired that it had been given to early to take effect for the stated reason. He could not.

In reaching that conclusion the Court considered and applied the earlier decision of the Court of Appeal in *Cowan v Wrayford* [1953] 1 WLR 1340 in which Lord Denning MR said:

> *In order that a notice to quit an agricultural holding should be good, it must be clear and unambiguous:* ***and for that purpose it must either be a simple notice without stating reasons at all, in which case it will operate under section 24 (1); or it must be a notice stating reasons as prescribed by subsection (2), in which case it will operate under subsection (2).***

Reference to s.24 was reference to the AHA 1948 then in force. The modern equivalent is s.26 under the 1986 Act.

In short, the key is that that it must be clear whether the landlord is trying to serve a general notice to quit, or a notice that relies on the Cases in Schedule 3. Of course, it would be best practice to make it crystal clear by spelling out expressly which sub-section is being relied upon. But *Cowan v Wrayford* and *Mills v Edwards,* properly understood, say that a notice will be valid so long as it is sufficiently clear what it is supposed to be. If no reasons are given then it can only be a s.26(1) general notice to quit because it cannot be a s.26(2) notice to quit, and vice versa.

It followed that the tenant's claim for an injunction and damages was dismissed, and an order for possession on the landlords' counterclaim was granted.

The case is an object lesson in how important it is for agricultural tenants and their professional advisers to make sure that if served with a general notice to quit they serve a counter-notice under s.26(1) – even if they consider that it may be invalid - if they wish to invoke the protection of Tribunal consent to the operation of the notice. It is also an unusual case, because it is rare that such opportunities are indeed missed. Simple notices to quit that succeed without further ado are not usually seen in agricultural landlord and tenant cases. To ignore a notice to quit entirely in the belief that it is invalid is a high-risk strategy.