

Agricultural Holdings Act tenancies

Are your rent reviews valid?

Mason -v-Boscawen is an interesting case that is causing concern for both landlords and tenants who have Agricultural Holdings Act 1986 (“the Act”) tenancies where VAT is charged. The case concerns the rent payable and has a consequential effect on the rent review cycle.

The Facts

The facts are relatively straight forward. The landlord had elected to charge VAT on his commercial and agricultural rents but not the residential rents. VAT was charged on 90% of the rent on the Holding. The obligation on the tenant was to pay the rent and “all other taxes rates charges assessments and outgoings whatsoever ... charged or imposed ...”. We are not told whether the apportionment between the residential element of the Holding and the remainder was agreed or not. The inference is that it was not contested.

The Issues

The tenant, farming 225 acres, and probably registered for VAT, failed to pay his rent and the landlord served Notice to Pay and the tenant did not pay. After 2 months the landlord served a Notice to Quit pursuant to Case B of Schedule 3 of the Act and the tenant referred the matter to arbitration. The matter was referred to the court which decided the matter just before Christmas. The question before the court was whether rent for the purposes of Case B included VAT. If it did the notice succeeded, if it did not it overstated the rent due and was invalid.

The Decision

There was detailed discussion on VAT and the VAT Act 1984. The court decided that rent was the totality of the amount payable by the tenant for his use and occupation of the land and as a result the notice was held to be good and the tenant stands to be evicted. As at the time of writing no appeal has been lodged.

The Resulting Problems

The judgment raises several questions in that it does not include certain information that contextualises the claim and it does not (quite properly) consider others that advisers are now considering. There is comment about the rent review cycle and the judge remarks in his judgment that it is likely to cause problems and asks that Parliament address those by way of legislation. However these observations do not constitute a finding of the court that binds future protagonists as is it deemed to be merely judicial comment. It was not asked to determine whether the same interpretation of the meaning of rent applied to both Case B and section 12.

For instance, we do not know when the landlord elected to charge VAT. Did this coincide with a rent review cycle or was it introduced mid cycle? If it was mid cycle could the tenant successfully challenge the right of the landlord to add VAT to the rent as it would appear from this case to result in an unauthorised rent review in contravention of section 12 of the Act. Does the reduction in VAT last December mean that the landlord cannot increase the rent when VAT is increased next December?

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The court has not determined whether the change in VAT triggered a rent review so will arbitrators appointments for this year's Candlemas and Lady Day rent reviews be valid? There will be some cases where the appointment of an arbitrator for Michaelmas 2008 rent reviews could be questioned. What about outstanding notices of reviews this Michaelmas? What about next December when VAT is increased? Can the landlord increase the rent or will the wording of the Act prevent it? There was no reference in the case to other variable periodical payments either capable of being demanded or, by custom, actually demanded by the landlord on an annual basis. Take for example insurance premia or drainage rates - if these are rent (being a charge referred to in the clause in this case) does any variation of the amount demanded by the landlord trigger a rent review? These, along with many other matters, might now need to be considered as a result of this case.

Being Pragmatic

Given that the tenant farmed 225 acres he should have been registered for VAT and therefore could have recovered this tax it would seem that this case is one that could and perhaps should have been avoided. This case raises more questions than answers which is unhelpful. It does not appear that it is to be appealed and thus those questions remain unanswered. In most cases the desire for a working relationship between landlord and tenant will render argument otiose but in some cases there will be issues of principle involved which will come at a price.

If you find yourself in a position where there are issues relating to the rent review process and you want to discuss not just the legal issues but the practical implications that your decision may have, please do not hesitate to telephone me on the number below.

For further information please contact:



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