Neutral Citation Number: [2022] EWHC 1239 (Ch)

Case No: CF084/2021CA

IN THE HIGH COURT OF JUSTICE
HIGH COURT APPEAL CENTRE CARDIFF
ON APPEAL FROM THE CAERNARFON COUNTY COURT
ORDER OF HHJ JARMAN QC DATED 20 JANUARY 2022
County Court Case Number: H00CJ088

Cardiff Civil and Family Justice Centre
2 Park Street
Cardiff CA10 1ET

Date: 26/05/2022

Before:

MR JUSTICE ZACAROLI

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Between:

(1) BRENDA ELIZABETH TURNER **(2) MARILYN MARGARET JONES** **(3) ALAN TREVOR JONES**	**Claimants/ Respondents**
- and –	
(1) MR OWEN GWILYM THOMAS	**First Defendant**
(2) O G THOMAS AMAETHYDDIAETH CYF	**Second Defendant/ Appellant**

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Gavin Bennison (instructed by **Ebery Williams**) for the **Appellant**
William Batstone (instructed by **JCP Solicitors)** for the **Respondents**

Hearing date: 19 May 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Zacaroli :

1. This appeal raises the question of the validity of a landlord's notice to quit agricultural premises under the Agricultural Holdings Act 1986 (the "1986 Act"), addressed to, and served upon, the original tenant shortly after the lease had been assigned by the original tenant (without the knowledge of the landlord) to a company of which the original tenant was sole shareholder, director and the company secretary.

2. The appeal is brought by the second defendant with the permission of Steyn J against the order of HHJ Jarman QC dated 20 January 2022, in which he determined that the notice was valid.

The facts

3. There was an agreed statement of facts before HHJ Jarman QC.

4. The land in question is at Pentre Canol, Dyffryn Ardudwy (the "Land"). The freehold reversion is now registered in the name of the claimants (and respondents).

5. The first defendant, Mr Owen Gwilym Thomas ("Mr Thomas") was granted a lease of the Land some time ago (the precise date is not relevant) by the then owner of the Land, Mr O T Morris, by way of an oral agreement (the "Lease").

6. The freehold reversion then passed, on Mr Morris' death, to Jane Louisa Jones. On her death, it passed to Mr Ieuan Ellis Owen ("Mr Owen"), as executor of her estate. Mr Owen was accordingly the landlord under the Lease as at 4 November 2019.

7. On 30 October 2019, Mr Thomas incorporated the second defendant (the "Company"). Mr Thomas became the sole shareholder and officer of the Company and its secretary. Its registered office was the same as Mr Thomas' home address.

8. On 1 November 2019, Mr Thomas executed a deed of assignment of the Lease to the Company. It is common ground that this was effective to vest the leasehold estate in the Company. Thereafter Mr Thomas was the person responsible for the management of the farming enterprise which included the farming of the Land on behalf of the Company.

9. On 4 November 2019, Mr Owen (who had no notice of the assignment of the Lease) served a notice to quit (the "Notice") on Mr Thomas. It was sent by recorded delivery post to Mr Thomas at his home address.

10. The Notice was addressed to Mr Thomas. It stated that it was to "give you notice to quit and deliver up possession of [the Land] … which you hold of me as tenant…" (and then specified the date upon which possession was to be given).

11. No response was received to the Notice until 2 October 2020, when land agents acting for Mr Thomas wrote to Mr Owen's firm of solicitors, confirming their instruction.

The Judgment

12. The Judge dealt with the matter, with the parties' agreement, on the basis of written argument alone. At §7-8 he noted that as the tenancy was an oral one, there are no

contractual provisions governing the form of a notice, or its contents. He also noted that while the 1986 Act contains several references to notices to quit, it contains no requirement that they must be addressed to the tenant in writing.

13. Services of notices under the 1986 Act are governed by s.93. This provides, materially, as follows:

> "(1) Any notice, request, demand or other instrument under this Act shall be duly given to or served on the person to or on whom it is to be given or served if it is delivered to him, or left at his proper address, or sent to him by post in a registered letter or by the recorded delivery service.
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> (2) Any such instrument shall be duly given to or served on an incorporated company or body if it is given or served on the secretary or clerk of the company or body.
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> (3) Any such instrument to be given to or served on a landlord or tenant shall, where an agent or servant is responsible for the control of the management or farming, as the case may be, of the agricultural holding, be duly given or served if given to or served on that agent or servant.
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> (4) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service by post), the proper address of any person to or on whom any such instrument is to be given or served shall, in the case of the secretary or clerk of an incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person in question."

14. At §11 and §13-14, he cited authority for the proposition that service of a notice on an assignor of a lease, after assignment to an assignee, was ineffective, including *Old Grovebury Manor Farms Ltd v W Seymour Plant Sales and Hire Ltd* [1979] 1 WLR 1397 ("*Old Grovebury*").

15. At §15-19, he cited authority for the proposition that contractual notices (and statutory notices) are to be interpreted in accordance with how they would be understood by a reasonable recipient of the notice, reading it in context, in particular *Mannai Investment Co Ltd v Eagle Star Assurance Co Ltd* [1997] AC 747 ("*Mannai*").

16. At §20 he summarised the submissions made on behalf of the claimants:

    (1) since Mr Thomas was both the agent or servant of the Company and the person responsible for the management and farming of the land, the Notice had been effectively served on the Company by reason of s.93(2) and/or s.93(3) of the 1986 Act; and

    (2) applying the test in *Mannai*, it would have been clear to a reasonable tenant reading the Notice that the landlord was giving notice to quit the land and terminate the tenancy, and it was up to the Company to serve a counter-notice if it wished to retain

the tenancy, particularly in the context that the landlord had not been informed of the existence of the Company or the assignment.

17. At §22, he referred to the submissions of the Company that, while - had the Notice been addressed to and given to the Company - its delivery to Mr Thomas would have been good service on the Company, that was not the case here. S.93(1) requires the Notice to be given to or served on the person to or on whom it is to be given. Here it was not, and the provisions of that section relating to service on a company only arise if the notice is addressed to and given to a company.

18. The judge concluded that the Notice was valid and effective, giving his reasons in five short paragraphs, which I set out in full:

> "23. In my judgment it is important to bear in mind that Mr Thomas and the company are two distinct persons in law. As a general principle it is clear from the authorities that a notice addressed to and given to an assignor after the tenancy has been assigned is not a valid and effective notice. The assignor may not communicate the receipt of the notice to the assignee who may remain wholly ignorant of it, as was the situation in the Old Grovebury case. It would clearly be wrong in such circumstances to hold the notice to be valid.
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> 24. It is also important to keep in mind the separate issues of whether the notice on its face is valid, and whether there has been good service of it. Section 93, in my judgment, focusses on the latter issue, and sets out what is or may deemed to be good service in different situations.
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> 25. However, the question remains in the present case whether a reasonable recipient would appreciate that the notice contained an error in that it was addressed to Mr Thomas and would appreciate what meaning the notice was intended to convey. If so, then that is how the notice is to be interpreted. Moreover, as is made clear by Arnold LJ in Pease v Carter, what a reasonable recipient would appreciate depends on context.
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> 26. The context here is that Mr Thomas set up the company with its registered address at his home, and naming it with his surname and initials followed by the words in Welsh Amaethyddiaeth Cyf (in English, Agriculture Ltd). He was its sole director and shareholder and acted as its secretary. He assigned the tenancy to the company but it was he who carried on the farming of the land thereafter on behalf of the company. He also knew, or is to be taken as knowing, that the existence of the company or the assignment had not been communicated to the claimants at the time he received the notice.
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> 27. Would a reasonable recipient in those circumstances appreciate that the notice should have been addressed to the company and was intended to be valid to terminate the tenancy?

> In my judgment the answer to that question is yes. It is plain that a reasonable tenant reading the notice could not be misled by it and could be in no doubt of the identity of the intended recipient. There was no prejudice to the company. It was acting in the control of the management of the land through its director, Mr Thomas. There was no material difference as to what was required of him, whether acting as such or on his own behalf, namely ensuring the service of a counter-notice or of quitting the land."

Grounds of Appeal

19. The single ground of the Company's appeal is that the judge was wrong to hold that the Notice was capable of being interpreted, by application of the *Mannai* test, as being addressed to and served upon the Company, in circumstances where the reasonable recipient knew that the server of the notice was unaware of the current tenant's existence.

Respondents' Notice

20. The claimants filed a respondents' notice, either seeking permission to cross-appeal or that the judgment be upheld on additional or different grounds. It is contended that even if the Notice, properly construed, is addressed to Mr Thomas personally, then the fact that the notice was delivered to him at his home address means that it was nevertheless given, in law, to the Company. The grounds specify four bases for that conclusion:

    (1) The Notice was validly served at common law by being served on Mr Thomas, the Company's servant or agent, because a corporate body can only be served through a servant or agent;

    (2) The Notice was validly served on the Company in the manner permitted by s.93(1) of the 1986 Act, by being left at the Company's registered office, as provided for in s.93(4), there being no requirement for the Notice to be addressed to the Company;

    (3) The Notice was validly served on the Company in the manner permitted by s.93(2), by being served on the company secretary (there, again, being no requirement for the Notice to be addressed to the Company);

    (4) The Notice was validly served on the Company in the manner permitted by s.93(3), by being served on the person responsible for the farming of the Land (there, again, being no requirement to address the Notice to the Company).

Discussion

21. It is important to distinguish between two different questions. First, whether the Notice was given to the correct person. Second, whether as a matter of construction the Notice complied with the statutory or contractual requirements.

22. As to the first question, where a lease has been assigned, then a notice to quit given to the assignor is ineffective, for the reasons explained by Lord Russell of Killowen in

Old Grovebury (a case concerned with a notice served under s.146 of the Law of Property Act 1925, but the logic of which applies equally to a notice to quit under the 1986 Act), at p.1399A-C:

> "When you have a situation such as this where a lease is liable to be forfeited, section 146 makes provision for a notice to be served before a writ is issued by the lessor asking for forfeiture. If at the end of the day in those proceedings forfeiture is ordered—or rather no relief from forfeiture is granted—then the term will have been terminated with effect from the issue of the writ—whether it is "issue" or "service" matters not in this case. The person who is interested and concerned in whether the term should be forfeited or not is clearly the person to whom the term has been assigned; and, as I have said and I agree with the judge, it is perfectly clear that this term was assigned to the first defendant; it ceased to be vested in the second defendant; it became vested in the first defendant."

23. Mr Bennison accepted, however, that if the Notice is to be construed as being addressed to the Company, then by delivering it to Mr Thomas it was effectively served on or given to the Company (because Mr Thomas is the appropriate agent of the Company, or the person responsible for farming the land, within one or other of the deemed basis of service within s.93 of the 1986 Act).

24. His submissions concentrated therefore on the second question.

25. Following the decision of the House of Lords in *Mannai* a contractual notice is to be determined on an objective basis by asking how a reasonable recipient would have understood the notice. Lord Steyn, at p.772, approved the following statement of the correct test by Goulding J in *Carradine Properties Ltd v Aslam* [1976] 1 WLR 442, 444: "Is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it?".

26. Lord Hoffmann noted (at p.774) that the clause in the lease did not require the tenant to use any particular form of words, but that: "He must use words which unambiguously convey a particular meaning." At p.775 he explained the distinction between the "meaning of words" and "the question of what would be understood as the meaning of a person who uses words". It is the latter which is the correct enquiry under English law, and is to be undertaken by examining not only the words and the grammar but also the background.

27. He gave as an example the case of *Doe d. Cox v Roe* 4 Esp. 185:

> "…the landlord of a public house in Limehouse gave notice to quit "the premises which you hold of me … commonly called …The Waterman's Arms." The evidence showed that the tenant held no premises called The Waterman's Arms; indeed, there were no such premises in the parish of Limehouse. But the tenant did hold premises of the landlord called The Bricklayer's Arms. By reference to the background, the notice was construed as referring to The Bricklayer's Arms. The meaning was objectively

> clear to a reasonable recipient, even though the landlord had used the wrong name. We therefore will in due course have to answer the question: if, as long ago as 1803, the background could be used to show that a person who speaks of The Waterman's Arms means The Bricklayer's Arms, why can it not show that a person who speaks of 12 January means 13 January?"

28. It is common ground that the same test applies to statutory notices: see *Pease v Carter* [2020] EWCA Civ 175. Mr Bennison placed particular reliance on the formulation of the test by Arnold LJ in that case, at §39:

> "(i) A statutory notice is to be interpreted in accordance with [*Mannai*], that is to say, as it would be understood by a reasonable recipient reading it in context;
>
> (ii) If a reasonable recipient would appreciate that the notice contained an error, for example as to date, and would appreciate what meaning the notice was intended to convey, then that is how the notice is to be interpreted."

29. Mr Bennison contended that although HHJ Jarman QC correctly identified the test (at §25 of this judgment: "would [a reasonable recipient] appreciate what meaning the notice was intended to convey") he failed to apply it correctly. That was because since Mr Thomas (and thus the reasonable recipient) knew that the landlord was unaware of the assignment of the lease to the Company, Mr Thomas could be sure that the landlord intended the Notice to say precisely what it did say, i.e. that it notified *Mr Thomas* that he must quit the Land.

30. He submitted that adopting what he called the "two-stage approach" suggested by Arnold LJ in *Pease v Carter*:

(1) The reasonable recipient would appreciate that the notice contained an error (because it purported to be addressed to Mr Thomas as tenant of the Lease, when the tenant was in fact the Company); but

(2) The reasonable recipient would know that the meaning the landlord had intended to convey was precisely what was written in the Notice (i.e. that it be addressed to Mr Thomas) because, since the landlord did not know of the assignment, he could not have intended anything else.

31. Mr Bennison accepted that, had the landlord known of the assignment of the lease to the Company, then his argument would not work. That is because (again adopting the two-stage approach):

(1) The reasonable recipient would appreciate the Notice contained an error (for the same reason as if the landlord was unaware of the assignment); and

(2) The reasonable recipient would know that the meaning the landlord had intended to convey was that the Notice was addressed to the Company.

32. The reason, he said, that a different conclusion is reached depending on whether the Landlord knew, or did not know, of the assignment of the Lease, is because, although the process of construction of a notice is an objective one, the critical issue is what the reasonable recipient would, objectively, have understood as to the meaning which the landlord (subjectively) intended to convey.

33. I cannot accept these submissions.

34. The starting point is that 1986 Act does not lay down any requirements as to the form or content of a notice to quit. Such a notice may be given orally and, if in writing, it need not identify the tenant. It would be sufficient that it was addressed to "the tenant" provided it was clear to which lease and premises the notice referred. Mr Bennison accepted that had it been in that form, then by giving it to Mr Thomas (without more) or posting it to his address (which is also the registered office of the Company) it would have been a valid and effective notice delivered to the Company.

35. The only (but in this case critical) requirement, therefore, is that the notice conveys to the tenant an instruction to quit the premises the subject matter of the lease.

36. As I have already noted, the test under *Mannai* is whether, in the context in which the Notice was given, the reasonable recipient would have understood it to have been addressed to the Company as tenant under the Lease.

37. The relevant context includes the following:

    (1) The Notice correctly identified the Lease as the one that had been granted to Mr Thomas (because it referred to "you", i.e. Mr Thomas, as the person holding the Land "of me" as tenant);

    (2) The Notice correctly identified the Land that was the subject of that lease;

    (3) The lease had been assigned to the Company; and

    (4) The landlord was unaware of that assignment.

38. On the basis of those facts, I am satisfied that the reasonable recipient would have no doubt that the Notice was intended to convey an intention to require the person who was in fact the tenant of the Lease to deliver up possession of the Land. Since the reasonable recipient would have known that the Company was, in fact, the tenant under the Lease, he would therefore have understood the Notice to be addressed to the Company.

39. Mr Bennison's submission to the contrary requires, in my judgment, too much to be read into §39 of the judgment of Arnold LJ in *Pease v Carter*, and risks reading §39(ii), in particular, as a separate – two-stage – requirement additional to the overall test set out in §39(i) (which itself accurately states the *ratio* in *Mannai*).

40. As to this, I do not accept that Arnold LJ, in *Pease v Carter*, intended to modify or depart from the test in *Mannai*. Insofar as he identified two questions in §39(ii) of his judgment, this was doing no more than paraphrasing or illuminating the test derived directly from *Mannai*.

41. I reject, therefore, the contention that – in the two-stage approach suggested by Arnold LJ – the reference to the reasonable recipient understanding what meaning the landlord intended to convey, is a reference to the *subjective* intentions of the landlord. As was emphasised by the House of Lords in *Mannai* on numerous occasions, construction, even of a unilateral notice, is an objective process: what matters is what the Notice would be understood to mean to the reasonable recipient.

42. In answering that question, I regard the Landlord's subjective intention as irrelevant. I accept that the Landlord's actual knowledge (or, more importantly, what the reasonable recipient would have known as to the Landlord's actual knowledge) is a relevant factor. It is a relevant part of the context. In this case, it provides an obvious explanation for *why* the Landlord addressed the Notice to Mr Thomas, and demonstrates how and why it contains an obvious error. That is relevant to the conclusion the reasonable recipient would reach, that the landlord intended to serve it on the person who was in fact the tenant, but mistakenly identified Mr Thomas as that person.

43. I do not regard this, as Mr Bennison submitted, as falling into the trap of the extreme argument rejected by Lord Steyn in *Mannai* (at p.773B-C), "…that whenever a notice to determine refers to a break clause, and whatever the other circumstances of the case, the notice must be valid." Rather, the Judge's approach (and the claimants' argument on this appeal) is an orthodox application of the test as expressed by Goulding J in *Carradine Properties Ltd v Aslam* (approved by both Lord Steyn and Lord Hoffmann in *Mannai*): the Notice was quite clear to a reasonable tenant reading it, in that it would be obvious that it was intended to be addressed to the Company because it was the Company alone that met the description of the person holding the Land under the Lease from Mr Owen. It is plain, in my judgment, that the reasonable recipient could not have been misled by the Notice.

44. This conclusion makes it unnecessary to address the argument raised by the respondents' notice.

45. For these reasons, notwithstanding the arguments attractively presented by Mr Bennison, both in writing and orally, I dismiss this appeal.