



20 May 2020

PRESS SUMMARY

Cardtronics UK Ltd and others (Respondents) v Sykes and others (Valuation Officers)
(Appellants)
[2020] UKSC 21
On appeal from [2018] EWCA Civ 2472

JUSTICES: Lord Reed (President), Lord Kerr, Lord Carnwath, Lady Black, Lord Kitchin

BACKGROUND TO THE APPEAL

These appeals concern the treatment for rating purposes of ATMs situated in supermarkets or shops owned and operated by the retailers. There are two main issues: (1) whether the sites of the ATMs are to be properly identified as separate hereditaments (see below for definition) from the stores; and, if so (2) who was in rateable occupation of the separate hereditaments? The appeals in this case are designated as lead appeals. Appeals relating to some 10,000 other sites have been stayed pending the final decision in these cases. The appellants in this case are the valuation officers; the respondents are the retailers, banks, and ATM operators.

In each of these appeals the ATMs are installed and operated not directly by the retailers but under contractual arrangements with related banking companies. The ATMs fall into four categories:

1. External ATMs (e.g. Sainsbury's Worcester store): these ATMs are found in the external walls of stores and can be used 24 hours a day. They are chained to the floor of the cash room of the stores and are connected to the stores' electricity supplies. The money dispensed is owned by the bank but kept in the cash room of the stores.
2. Internal ATMs (e.g. some Tesco stores): these ATMs are available only for use within the stores and can only be accessed within the stores' opening hours. For all other practical purposes the arrangement are the same as with the external ATMs.
3. Convenience store ATMs (e.g. Lonsdale's Harefield store): these ATMs are similar to other external ATMs. However, because of the much-reduced floor space of these stores, the maintenance and loading of the ATMs lead to greater interference with the stores' workings.
4. Moveable ATMs (the only example on appeal being at Tesco's Nottingham store): these ATMs can be unbolted from the floor and moved without difficulty.

Hereditament is defined in s.115(1) of the General Rate Act 1967 ("the 1967 Act") as "property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item on the valuation list". This is adopted into the current statutory scheme by s.64(1) of the Local Government Finance Act 1988 ("the 1988 Act"). As to the definition of rateable occupation, s.65(2) of the 1988 Act provides that "whether a hereditament is occupied, and who is the occupier" are to be determined by reference to the rules which would have applied under the 1967 Act. By virtue of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 (SI 2000/540) ("the

2000 Regulations”), an ATM must be assumed to have no effect on the rateable value of the hereditament on which it is sited.

At first instance the Valuation Tribunal for England held that all of the ATMs were situated on hereditaments which were rateably occupied separately from the host stores. This was overturned by the Upper Tribunal (Lands Chamber) which held that that, save for the moveable ATM, all of the ATMs were situated on hereditaments separate from the host stores; but that only the external ATMs were rateably occupied separately from the host stores. This was overturned on appeal by the Court of Appeal which held that none of the ATMs were rateably occupied separately from the host stores.

JUDGMENT

The Supreme Court unanimously dismisses the appeals. Lord Carnwath gives the sole judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

There are two aspects to the argument of whether the sites of the ATMs are capable of identification as separate hereditaments [28]. First, with regard to the 2000 Regulations, the statutory assumption that certain plant (e.g. ATMs) has no effect on rateable value applies only to the valuation of the hereditament. It does not follow that this applies to the logically prior question of whether there is a hereditament that needs to be valued [33]. Second, previous case law establishes that a hereditament is a self-contained piece of property (i.e. property all parts of which are physically accessible from all other parts, without having to go onto other property) [34]. The Upper Tribunal was entitled to find that there should be no difficulty in defining the boundaries of fixed ATMs so as to satisfy the geographical test for self-containment [35], with the exception is the moveable ATM, which, as they found, had the qualities of “impermanence and mobility” [39].

The second question is whether the retailers or the banks were in rateable occupation of the ATMs [40]. A lodging house, which is treated as a single hereditament in the occupation of the landlord, is a useful example. While the landlord’s control of the premises does not interfere with, and indeed supports, the enjoyment by the lodgers of their own rooms for their own purposes, there is still only one hereditament in the occupation of the landlord [46]. On the facts the Upper Tribunal held that the retailers’ retained occupation of the ATM sites but had conferred on the banks rights which substantially restricted the retailers’ use of those sites. This was because the presence of the ATMs furthered the retailers’ general business purposes and the operation of the ATMs provides the retailers with an income [48]. Both the parties derived a direct benefit from the use of the sites for the same purpose and shared the economic fruits of the activity for which the space was used. This is sufficient to support the conclusion that the internal ATMs remained in the occupation of the retailers [49].

External ATMs are to be treated the same as internal ones. That an external ATMs is available to a wider market at all times, and is physically separated from the other facilities in the stores, does not detract from the Upper Tribunal’s finding that the retailers remained in occupation of the ATMs, nor that they were any less a part of the retailers’ businesses. The difference is no greater than the difference between an internal or external ATM in a bank building. Thus, the external ATMs remained in the rateable occupation of the retailers [52].

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:

<http://supremecourt.uk/decided-cases/index.html>