Case No: H00CJ088

IN THE CAERNARFON COUNTY COURT

Caernarfon Justice Centre
Llanberis Road
Caernarfon
Gwynedd
LL55 2DF

Date: 03/12/2021

Before :

HIS HONOUR JUDGE JARMAN QC

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Between :

(1) BRENDA ELIZABETH TURNER	**Claimants**
(2) MARILYN MARGARET JONES	
(3) ALAN TREVOR JONES	
- and -	
(1) OWEN GWILYM THOMAS	**Defendants**
(2) O G THOMAS AMAETHYDDIAETH CYF	

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Mr William Batstone (instructed by **JCP Solicitors**) for the **claimants**
Mr P R Williams (of **Ebery Williams Solicitors)** for the **defendants**

Hearing dates: 26 November 2021

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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 remotely at 10.00am 3 December 2021 may be treated as authentic.

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HIS HONOUR JUDGE JARMAN QC

HH JUDGE JARMAN QC:

1. The claimants are the registered proprietors of about 20 acres of agricultural land (the land) known as Pentre Canol, Dyffryn Ardudwy, Gwynedd and claim possession of it from the first defendant, Mr Thomas, or his company, the second defendant (the company). An oral tenancy (the tenancy) was granted to Mr Thomas to occupy the land, which attracted security of tenure under the Agricultural Holdings Act 1986 (the 1986 Act). By a letter dated 4 November 2019 (the letter) addressed to Mr Thomas at his home address, Bodlondeb, Dyffryn Ardudwy, Gwynedd, LL44 2EU (Bodlondeb), the claimants' predecessor enclosed a notice to quit the tenancy (the notice).

2. At that time they did not know that by a deed dated 1 November 2019, Mr Thomas had assigned the tenancy to the company. The company is a private limited company incorporated on 30 October 2019. Its registered office is Bodlondeb, and Mr Thomas is its sole director and its sole shareholder. The main issue between the parties is whether the notice was valid, given that it was addressed to Mr Thomas and not to the company. The parties have sensibly agreed that this issue is suitable to be determined on consideration of the papers and written submissions, and such determination was so ordered by consent on 20 August 2021. This is my written determination of that issue.

3. The assignment by an individual to a company of a tenancy protected by the 1986 Act, where as here there is no restriction on such assignment, is a common mechanism to avoid (legitimately) the landlord's ability to determine the tenancy on the death of the tenant. In this case, after the assignment, Mr Thomas carried on farming the land, but did so on behalf of the company instead of on his own behalf as he had done before the assignment.

4. A tenant to whom such a notice is given may claim the protection of the 1986 Act by serving on the landlord, no later than one month from the giving of the notice, a counter-notice in writing requiring that section 26(1) of the 1986 Act shall apply to the notice, in which event the notice to quit shall not have effect unless on application by the landlord, the Agricultural Land Tribunal Wales (the First-tier Tribunal in England) consents to its operation. No such counter notice was served in this case.

5. The notice was expressed to be given under the 1986 Act and was sent by first class recorded delivery post with the letter to Bodlondeb. It was signed by Ieuan Ellis Owen of Robyns Owen Solicitors as sole executor of the late Jane Louisa Jones, who was the aunt of the claimants and who bequeathed the land to them. It is likely that Mr Thomas received the letter and notice the next day, which was a Tuesday, 5 November 2019.

6. There was no response to the letter until 2 October 2020, when property consultants Davis Meade wrote to Robyns Owen, saying that they had been appointed to act as agents for Mr Thomas or the company. They enclosed copies of an advice dated 30 September 2020 from PR Williams, as author of Scammell Densham and Williams Law of Agricultural Holdings (10th Ed), to the effect that the notice was invalid and ineffective because the tenancy had been assigned to the company, and the notice was not addressed to the company. This was the first time the claimants' predecessors knew of the company's existence and of the assignment.

7. As the tenancy is an oral one, it is not suggested that there is a contractual provision as to the form of such a notice or its content.

8. The 1986 Act contains several references to notices to quit but not a requirement that such a notice must be addressed to the tenant in writing. The ways in which a notice should be served is dealt with in section 93, which so far as material provides that:

> "(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.
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> (5) Unless or until the tenant of an agricultural holding has received—
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> (a) notice that the person who before that time was entitled to receive the rents and profits of the holding ('the original landlord') has ceased to be so entitled, and
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> (b) notice of the name and address of the person who has become entitled to receive the rents and profits, any notice or other document served upon or delivered to the original landlord by the tenant shall be deemed for the purposes of this Act to have been served upon or delivered to the landlord of the holding."

9. The effect of the provisions in section 93 has been considered by the editors of textbooks on agricultural law. In paragraph 53.18 of Scammell, Densham & Williams Law of Agricultural Holdings (10th Ed 2015), it is said that:

> "The effect of s 93(3) of the AHA 1986 is that service on an agent is due service, provided the agent was authorised to

> receive such notice on behalf of his principal. The person responsible for the control of the management or farming, as the case may be, of the agricultural holding, is deemed to be agent for the tenant. In contrast to the common law position, there is no need for the agent or servant to be authorised to receive the notices being served.

10. Section 93(5) provides for a situation where there has been a change in the identity of the landlord, but there is no corresponding provision where there has been a change in the identity of the tenant.

11. In paragraph 22.29 of Muir Watt & Moss Agricultural Holdings (15th Edition), this difference is commented upon as follows:

> "If, therefore, a tenant assigns his tenancy, then even if the landlord has no notice of the assignment, it would appear that the service on the original tenant would not be good service."

12. The question of the validity of such notices is therefore governed by common law, and has given rise to much litigation. In *Frankland v Capstick* [1959] 1 WLR 203, a notice under section 70 of the Agricultural Holdings Act 1948 of an intention to claim in respect of dilapidations named not the landlord, but his son, who had been acting as his father's agent in negotiations. It was held that the notice was clearly given on behalf of the landlord and was valid. Sellers LJ, in giving the lead judgment of the Court of Appeal, pointed to the fact that the tenant knew that the son had been acting as agent for his father and continued "There cannot be any mistake about it."

13. In *Pickard v Bishop* [1975] 2 EGLR 1, a notice under the 1986 Act to pay rent, specified that it should be paid to A as landlord, but he had vested his interest in two trustees. The Court of Appeal held that the notice to pay was invalid as it directed payment to the wrong party.

14. In *Old Grovebury Manor Farms Ltd v W Seymour Plant Sales and Hire Ltd* [1979] EWCA Civ 2, the Court of Appeal dealt with a notice served under section 146 of the Law of Property Act 1925. Lord Russell, holding that the notice was invalid as having been served on the wrong defendant, said this at paragraphs 3 and 4:

> "A notice was served--the terms of which I need not refer to--on October 1 1976, purporting to be a notice under section 146(1) of the 1925 Act. That section requires that, before any proceedings are launched for forfeiting the term on the ground of breach of covenant, such a notice should be served. That notice was served on the second defendant; and the one short point is whether it is correct to hold, as the learned judge held, that the notice should have been served on the first defendant, namely the assignee.
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> 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 learned 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."

15. One of the leading authorities is the House of Lords case of *Mannai Investment Co Ltd v Eagle Star Assurance Co Ltd* [1997] AC 747, which dealt with whether a notice to determine a lease was invalid because it specified the wrong date for termination. Lord Hoffmann, giving one of the three majority speeches said:

> "The clause does not require the tenant to use any particular form of words. He must use words which unambiguously convey a particular meaning, namely an intention to terminate the lease on 13 January. In *Hankey v.Clavering* [1942] 2 K.B. 326, where the notice to quit said "21 December" instead of "25 December", Lord Greene M.R. said, at pp. 328, 330, ". . . the whole thing was obviously a slip" on the part of the landlord but that the notice was invalid "however much the recipient might guess, or however certain he might be" that it was a mere slip. So even if the recipient was certain that the landlord actually wanted to terminate his tenancy on the right date, which was 25 December, so that the necessary intention was unambiguously communicated, the notice was bad. One is bound to be left with a feeling that something has gone wrong here. Common sense cannot produce such a result; it must be the result of some rule of law. If so, what is that rule and is it correct?"

16. Lord Hoffmann continued:

> "Nor do I think that a decision overruling the old cases will create uncertainty as to what the law is. In fact I think that the present law is uncertain and that only a decision of this House, either adopting or rejecting the *Hankey v. Clavering* rule of construction, will make it certain. So, for example, in *Carradine Properties Ltd. v. Aslam* [1976] 1 W.L.R. 442, 444, Goulding J. said that the test for the validity of a notice was: "Is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it?" and he went on to say that the reasonable tenant must be taken to know the terms of the lease. This test was approved by the Court of Appeal in *Germax Securities Ltd. v. Spiegal* (1978) 37 P. & C.R. 204, 206 and, as will be apparent from what I have already said, I think that it was the right test to adopt."

17. The other members of the court in the majority were Lord Steyn and Lord Clyde, who gave similar reasons for their conclusions. The former in his speech said:

> " There is no justification for placing notices under a break clause in leases in a unique category. Making due allowance for contextual differences, such notices belong to the general class of unilateral notices served under contractual rights reserved, e.g. notices to quit, notices to determine licences and notices to complete: *Delta Vale Properties Ltd. v. Mills* [1990] 1 W.L.R. 445, 454E-G. To those examples may be added notices under charter parties, contracts of affreightment, and so forth. Even if such notices under contractual rights reserved contain errors they may be valid if they are "sufficiently clear and unambiguous to leave a reasonable recipient in no reasonable doubt as to how and when they are intended to operate": the *Delta* case, at p. 454E-G, *per* Slade L.J. and adopted by Stocker L.J. and Bingham L.J: see also *Carradine Properties Ltd. v. Aslam* [1976] 1 W.L.R. 442, 444. That test postulates that the reasonable recipient is left in no doubt that the right reserved is being exercised. It acknowledges the importance of such notices. The application of that test is principled and cannot cause any injustice to a recipient of the notice. I would gratefully adopt it…"
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> "Like Lord Hoffmann I would hold that the correct test for the validity of a notice is that posed by Goulding J. in *Carradine Properties Ltd. v. Aslam* [1976] 1 W.L.R. 442, 444: "Is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it?"

18. In *Pease v Carter* [2020] EWCA Civ 175, the Court of Appeal held that the principle in *Mannai* applies also to statutory notices, in that case under the Housing Act 1988. Arnold LJ, giving the lead judgment and after a review of the authorities, said this at paragraph 39:

> "The conclusions which I draw from this survey of the authorities are as follows:
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> i) A statutory notice is to be interpreted in accordance with *Mannai v Eagle*, that is to say, as it would be understood by a reasonable recipient reading it in context.
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> 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.
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> iii) It remains necessary to consider whether, so interpreted, the notice complies with the relevant statutory requirements. This involves considering the purpose of those requirements.

> iv) Even if a notice, properly interpreted, does not precisely comply with the statutory requirements, it may be possible to conclude that it is "substantially to the same effect" as a prescribed form if it nevertheless fulfils the statutory purpose. This is so even if the error relates to information inserted into or omitted from the form, and not to wording used instead of the prescribed language."

19. In paragraph 7.05 of Agricultural Law by Christopher Rogers (4th edition 2016), he dealt with whether a notice is invalid for inaccurately stating the identity of the landlord or tenant. After citing the *Frankland* case, he said this:

> "An unqualified notice will not, for instance, be invalid if the name of either landlord or tenant is inaccurately stated, provided the identity of the person giving notice and the intended recipient are beyond reasonable doubt."

20. Mr Batstone, on behalf of the claimant submits that in the absence of any other person appointed as secretary to the company, Mr Thomas was the person responsible for the discharge of the company's administrative functions and is to be taken as fulfilling the role of company secretary. He was also the agent or servant of the company and responsible for the control of the management and farming of the land. Accordingly the notice was given to the company by being delivered to Mr Thomas as the company's effective secretary, as permitted by section 93(2), and/or by being delivered to him as the agent or servant of the company responsible for the management or farming of the land, as permitted by section 93(3).

21. He further submits that 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 if the company wished to retain the tenancy it should serve a counter-notice, particularly in the context that the landlord had not been informed of the existence of or assignment to the company.

22. Mr Williams, for the company, emphasises that section 93(1) requires the notice to be given or served on the person to or on whom it is to be given. Here it was not, and the provisions in that section relating to service on a company only arise if the notice is addressed and given to a company. He accepts that if it was so addressed and given to the company, then its delivery to Mr Thomas, who had responsibility for the management or farming of the land, or in his capacity as secretary of the company, would amount to good service on the company.

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.

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.

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.

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.

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.

28. Accordingly, in my judgment the notice is valid and effective. I will hand down this judgment in writing. I would be grateful if the parties could within 14 days of my doing so file a draft order agreed if possible, together with written submissions on any consequential matter which cannot be agreed, and I will determine the same in a supplemental written judgment.