



14 May 2021

PRESS SUMMARY

Hurstwood Properties (A) Ltd and others (Respondents) v Rossendale Borough Council and another (Appellants)

[2021] UKSC 16

On appeal from [2019] EWCA Civ 364

JUSTICES: Lord Reed (President), Lord Hodge (Deputy President), Lord Briggs, Lord Kitchin, Lord Leggatt

BACKGROUND TO THE APPEAL

This appeal concerns whether the appellant local authorities, Rossendale Borough Council and Wigan Council, have reasonable grounds for claiming non-domestic (business) rates from the respondent companies which are the registered owners of various unoccupied commercial properties. The local authorities' claims are test cases representative of 55 similar cases in which the value of unpaid rates varies from a few thousand pounds to millions of pounds.

Under section 45 of the Local Government Finance Act 1988 (the “**1988 Act**”), non-domestic rates are charged for a property if four conditions are satisfied on a given day. One of these conditions is that the ratepayer is the “*owner*” of the whole of the property and section 65(1) defines ‘owner’ thus “[*t*]he owner of a hereditament or land is the person entitled to possession of it”. A further condition is that the property falls within a class currently set out in the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 (the “**2008 Regulations**”). Under the 2008 Regulations, rates are charged on all non-domestic properties other than those excluded in regulation 4. Regulation 4(k) excludes a property “*whose owner is a company which is subject to a winding-up order made under the Insolvency Act 1986 or which is being wound up voluntarily under that Act*”.

The rates avoidance schemes involved granting a short lease of the unoccupied property to a special purpose vehicle (“**SPV**”), such that the SPV became the “*owner*” and liable to the non-domestic rates liability rather than the respondent company. The SPV was then dissolved or put into liquidation to escape rates liability.

The appellants claim that they are entitled to the unpaid business rates from the respondents, either because the lease to the SPV was ineffective to make the SPV the ‘owner’ of the unoccupied property under the 1988 Act, applying *WT Ramsay Ltd v Inland Revenue Comrs* [1982] AC 300 (*Ramsay*) (the *statutory interpretation ground*), or because the SPV should be ignored, relying on *Prest v Petrodel Resources Ltd* [2013] UKSC 34 (*Prest*) (the *‘piercing the corporate veil’ ground*). The respondents applied to the High Court to have the local authorities’ claims struck out. The High Court agreed with the respondents on the statutory interpretation ground, but not on the ‘piercing the corporate veil’ ground. On appeal, the Court of Appeal agreed with the SPVs on both grounds and struck out the local authorities’ claims.

JUDGMENT

The Supreme Court unanimously allows the local authorities' appeal. Lord Briggs and Lord Leggatt give a joint judgment with which the other members of the Court agree.

REASONS FOR THE JUDGMENT

The rates avoidance schemes

In both the dissolution and the liquidation schemes, it was common ground that the leases granted to the SPVs were not shams so that the SPVs were entitled to possession under property law. However, neither the dissolution nor the liquidation scheme had any business or other 'real world' purpose - their sole purpose was to avoid liability to pay business rates. The SPVs had no assets or business, and it was never intended that the empty rate would ever be paid by the SPVs [46]. The lease included a rent clause, but the rent was not intended to be demanded or paid [34].

The dissolution scheme involved letting the SPV incur a liability for business rates (but not paying it) before it was dissolved under the Companies Act 2006. Upon dissolution, the SPV's property passed to the Crown as *bona vacantia* (unowned property) and the Crown became liable for the rates as owner (section 65A(2)(b) of the 1988 Act). The scheme relied on the local authorities not finding out about the dissolution until long after it had occurred. The dissolution scheme was an abuse of legal process and, depending on the facts, may also have involved unlawful conduct by the directors running the SPVs [37-42]. The liquidation scheme involved placing the SPVs in voluntary liquidation shortly after granting the lease to trigger regulation 4(k). The liquidation was then artificially prolonged to maintain the existence of the SPVs and therefore the exemption from rates. This was declared an abuse of the insolvency legislation in *In re PAG Management Services Ltd* [2015] EWHC 2404 [43-45]. Both schemes relied on administrative inertia [3].

The statutory interpretation ground

The *Ramsay* principle is often viewed as tax-specific but it is based on the wider modern approach to the interpretation of legislation: to read the statute as a whole in its historical context and interpret the statute to give effect to Parliament's purpose (so far as possible). First, the court must ascertain the class of facts intended to be caught by the charge or exemption by interpreting the relevant part of the statute in the context of the whole statutory scheme and its purpose. Second, the court must decide whether the relevant facts, looked at realistically and in the round, fall within the class. The court must avoid tunnel vision [13-17].

The legislative history of charging rates for unoccupied property shows that the purpose was to deter owners from leaving property unoccupied for their own financial advantage and encouraging owners to bring empty property back into use for the benefit of the community [20-24]. This is also clear from the various exemptions in regulation 4 of the 2008 Regulations and the zero-rating scheme in section 45A of the 1988 Act [25-27]. By imposing the rates charge on the "*person entitled to possession*" in the 1988 Act, Parliament intended to encourage the person who has the ability, in the real world, to bring the unoccupied property back into use to do so [30].

In a normal case, the definition of 'owner' as "*the person entitled to possession*" would be the person who has the immediate legal right to actual physical possession of the relevant property as a matter of property law [47]. However, in the unusual circumstances of this appeal, that would defeat the purpose of the legislation: Parliament cannot have intended that person to be the SPV under a scheme in which the SPV is designed to have no real or practical ability to exercise its legal right to possession and where that legal right has been conferred for no purpose other than the avoidance of rates liability. In this case, the SPVs did not become "*entitled to possession*" for the purposes of the 1988 Act. The entitlement to possession instead remained with the respondent companies as they had the practical ability to decide

whether to leave the property unoccupied and had not passed that real entitlement to the SPVs by the leases. Properly construed, section 65(1) of the 1988 Act is concerned with a real and practical entitlement which includes the ability either to occupy the property or to put someone else into occupation. This achieves coherence between the language of the statute and its purpose in identifying the “owner” for rates purposes [48-51, 59-61].

As a result, there is a triable issue whether the respondents remained liable for business rates throughout the duration of the leases and the local authorities’ claims should not be struck out [62].

The ‘piercing the corporate veil’ ground

In the alternative, the local authorities argued that the respondent companies interposed SPVs solely to avoid rates liability which would have otherwise been the companies’ liability and that this was an abuse of the separate legal personality of the SPV which justified ‘piercing the corporate veil’ [66]. In light of the Court’s decision on the statutory interpretation ground, this alternative ground falls away as it depends on the SPVs being ‘owner’ [63]. Nonetheless, the Court addresses this ground of appeal and rejects it.

‘Piercing the corporate veil’ is a metaphor that is liable to obscure more than it illuminates [64]. In *Prest*, the concept was split into two distinct principles. Relevant here is the ‘evasion principle’ which it was said may apply when a person is under an existing legal obligation which they deliberately evade by interposing a company under their control [65]. Even assuming this ‘evasion principle’ is coherent (which is debatable) [71], the difficulty in this case is that the interposition of the SPV (and the grant of the lease) did not evade enforcement of an existing legal obligation. This is because rates liability accrues day by day. Thus before the lease was granted, the respondent companies were liable for any accrued rates [75] and once the lease was granted, only the SPV was liable (assuming that the SPV was “owner”) [72-73]. Therefore, the interposition of the SPV itself was not an abuse of corporate personality. Rather, the abuse was the way in which the SPV’s liability for rates was handled, as the Court discusses under the statutory interpretation ground [74-75].

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>