UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2018] UKUT 0040 (LC)
Case No: RA/53/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – Procedure – invalid proposal by appellant with no interest in hereditament – VTE invited to make findings of fact by appellant – application to correct errors in findings of fact – Rule 39, Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 – appeal dismissed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE VALUATION TRIBUNAL FOR ENGLAND

BY:

SAINT BENDICT'S LAND TRUST LIMITED **Appellant**

Re: London House,
Primrose Hill, Preston
PR1 4BX

Before: Martin Rodger QC, Deputy Chamber President

Sitting at the Royal Courts of Justice
on
2 February 2018

The appellant was represented by one of its officers, Mr Edwin Gregory

The following cases are referred to in this decision:

Wonder Investments Limited v Jackson [2015] UKUT 649 (LC)

Introduction

1. In the year 597, at the request of Queen Bertha of Kent, Saint Augustine of Canterbury (as he later became) was sent by Pope Gregory the Great to convert Æthelberht, King of Kent, to Christianity. Augustine was a monk of the Benedictine order which had been established in Italy by Saint Benedict of Nursia in 529. More than 1500 years after their deaths the names of Saint Augustine and Saint Benedict have been assumed by the protagonists in this misconceived appeal.

2. The appeal is against a refusal by the Valuation Tribunal for England ("the VTE") to correct what are said to have been clerical errors or accidental slips in a decision it gave on 27 February 2017 dismissing an appeal by Saint Benedict's Land Trust Limited ("the Trust") against a valuation officer's refusal to entertain a proposal to alter the rating list in respect of a property in Preston. The Trust had invited the VTE to correct its decision so that, instead of describing the Trust's involvement with that property, the decision would identify an associate or subsidiary of the Trust, Augustine Housing Trust ("Augustine"), as having been the party concerned with it.

3. The VTE is given power by rule 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 to correct any clerical mistake or other accidental slip or omission in a decision, direction, order or any document produced by it.

4. At the hearing of the appeal the Trust was represented by one of its officers, Mr Edwin Gregory. The valuation officer elected to play no part in the appeal.

5. Mr Gregory explained that the sole purpose of the Trust's proposal to alter the rating list, and its subsequent appeal to the VTE, has been to obtain a formal determination of facts which it is hoped will assist Augustine in an application to the Magistrates Court to set aside a liability order made against it on 24 April 2014. Augustine's inability to comply with that liability order eventually led to the making of an order by the High Court that it be wound up, against which Augustine has also appealed to the Court of Appeal. Because Augustine is in the course of being wound up it was decided by the Trust that the proposal, and the subsequent appeal to the VTE, should be pursued by it rather than by Augustine. It was openly acknowledged from the outset that the Trust had no standing to make the proposal, but it was nevertheless hoped that the VTE could be persuaded to make findings of fact which would assist in applications to set aside the liability order and eventually the winding up order.

The background

6. I was informed that both the Trust and Augustine are registered charities.

7. The background to the difficulties in which the Trust and Augustine have found themselves begins with two features of the business rating system. The first is the requirement that non-domestic rates are payable in full on empty commercial property which remains unoccupied for more than three months. The second is that charities occupying commercial property qualify for a mandatory 80% discount on business rates, provided the property is used wholly or mainly for

charitable purposes. Local authorities also have the discretion to forego collection of the remaining 20% by means of a discretionary discount.

8. In guidance to the charitable sector published in December 2011 the Charity Commission warned that it was aware that charities were being approached by landlords of hard to let property with requests to enter into tenancy agreements which would relieve the landlords of the requirement to pay full business rates. The Commission warned of potential risks for charities involved in such schemes.

The Trust's case

9. I was told by Mr Gregory that Augustine is a company limited by guarantee whose objects are the relief of homelessness. In 2014 it had entered into negotiations through an agent with a view to taking a lease of a building known as London House in Preston. The building had been vacant for many years and the person liable to pay business rates was Augustine's counter-party in the negotiation to take the lease. Mr Gregory said that Augustine's agent had been dishonest and had executed documents appearing to show that Augustine had had a right of occupation of London House under a licence granted to it on 1 June 2012. It was Mr Gregory's belief that the landlord had used the sham licence to procure that Augustine's name be entered on the local rating list as the occupier of the building, thereby relieving the landlord of its liability to pay rates.

10. Despite the change in the rating list, the negotiations for Augustine to take the proposed lease are said to have broken down and its agent to have disappeared. Demands were then made by Preston City Council for payment of the rates for London House, backdated to 2012, but as these demands were sent to the building itself, which Augustine did not occupy, they are said not to have come to its attention.

11. At a hearing at Preston Magistrates Court on 24 April 2014 a liability order was made against Augustine. Mr Gregory told me that the summons to attend the hearing had been sent to London House and Augustine had been unaware of the hearing until very shortly before it began.

12. The liability order was challenged by Augustine and later by the Trust (after the making of the winding up order). The Trust took the view that it would improve its prospects of setting aside the liability order and the winding up order based on it if it could secure determination from the VTE which explained that the liability order ought never to have been made.

13. On 1 February 2016 the Trust made a proposal to alter the rating list to delete the reference to Augustine as being the occupier of London House. The capacity in which the Trust claimed to be entitled to make the proposal was as an "interested party". The valuation officer considered that the proposal was invalid because the Trust had no standing or entitlement to make it. It therefore referred the proposal to the VTE as an appeal.

14. The appeal came before the VTE on 2 February 2017. The Trust's representatives gave the same explanation of the position to the panel as Mr Gregory gave to me. They acknowledged that the valuation officer had been correct to treat the proposal as invalid, and that the appeal should be dismissed, but they nevertheless invited the VTE to make a statement reciting the facts and explaining the reasons for the dismissal. In a statement made on behalf of the Trust by one of its advisers the VTE was told: "The giving of reasons for dismissal would assist the appellant considerably in resistance to the winding up, as the petition is based solely on a claim for unclaimed rates…"

15. The written material placed before the VTE failed to make any clear distinction between the Trust, which had made the proposal and was therefore the appellant, and Augustine, which was said to be the victim of the alleged fraud perpetrated by its own agent and the landlord or its representative. At that time the Trust's full name was Augustine *Land* Trust Limited, and it only later changed its name to draw a clearer distinction between it and Augustine (whose full name is Augustine *Housing* Trust). A risk of confusion existed, and that risk was one to which the Trust's own advisers appear to have succumbed. In a "statement on behalf of the appellant" lodged with the VTE in support of the appeal the title of the proceedings gave the name of the appellant as "Augustine Housing Trust." In case anyone should be in doubt of the position the statement asserted in its opening sentence that "Augustine Housing Trust is the appellant in this case" which, of course, was not correct. The Trust, and not Augustine, was the appellant.

The VTE's decision

16. In its decision issued on 27 February 2017 the VTE did a little better than the Trust's advisers. It correctly identified the appellant in the proceedings as Augustine Land Trust Ltd (as the Trust was then known) but referred thereafter either to "the appellant Trust" or simply to "the Trust". It did not refer to Augustine at all and recorded what it had been told of the facts as if the only party involved was the Trust itself. Thus, for example, in paragraph 6 it recorded that "the appellant Trust had intended to lease" the building, and in paragraph 7 that the local billing authority had served its demands "on the Trust at the subject property."

17. The VTE gave its reasons for its decision to dismiss the appeal in paragraph 15, as follows:

> "The panel is satisfied, from the evidence presented, that the appellant Trust was not a competent party able to validly propose an alteration to the rating list entry for London House. The evidence presented to the panel makes it clear that the Trust was neither a tenant nor a licensee with a right to occupy, that the Trust was never in occupation of the appeal property. No weight can be attached to the purported licence agreement signed by [the agent] given that he was not authorised to act for the Trust."

The application to correct the decision

18. When the Trust received the VTE's decision it took the view that confusion might be caused by the omission of any reference in it to Augustine. At the very least the decision was not as helpful to the Trust as it had hoped it would be. It therefore wrote to the VTE on 3 March 2017

asking it to exercise its power under rule 39 to correct the decision by making it clear where references to "the Trust" ought to be references to Augustine. The proposed corrections were not as simple as substituting "Augustine" for "the Trust" throughout the decision, but included a description of the relationship between the two which had not been contained in the written material provided to the VTE.

19. On 20 July 2017 the VTE responded to the Trust's request as following:

> "In this case, the Tribunal is of the opinion that no amendment to the decision record are required as the decision document fully reflects the panel's reasons for dismissing the appeal. The appeal before the panel arose from a proposal that was accepted to be invalid. It was accepted that the proposal was not an interested party. The case therefore begins and ends there."

20. The Trust was not put off by this reverse, but has pursued an appeal to this Tribunal on the grounds that the VTE had been wrong not to correct its decision under rule 39. The Trust was able to bring the appeal without the need to obtain permission from either the VTE or this Tribunal, as no such requirement is imposed by the 2009 Regulations.

The appeal

21. On behalf of the Trust Mr Gregory submitted that as the application to correct the decision had not been opposed, the refusal of the VTE to comply with the request was so unreasonable as to amount to an error of law. As I explained at the hearing of the appeal, I am not prepared to make any order on the appeal.

22. It is not suggested that the VTE was wrong to find that the Trust had no standing to make the original proposal. The decision that the appeal had not been validly made, and the explanation for it given in paragraph 15, were therefore correct. There is no need to correct the decision or the reasons.

23. The difficulty for the Trust is said to arise from the suggested inaccuracy in the limited account given by the VTE of the facts, and by its omission to distinguish between the Trust and Augustine. But in my judgment it was neither necessary nor appropriate for the VTE to make findings of fact about the dealings of the Trust or Augustine in connection with London House. All the VTE need have done was to find that the Trust lacked capacity to make the proposal. It recognised this when it refused the request to correct its decision, when it said that the case "begins and ends" with the Trust's lack of capacity to bring the appeal.

24. The allegations made by Mr Gregory and the Trust's other advisers about the behaviour of the agent who purported to act for Augustine, and the concoction of the "sham" licence agreement, were not the subject of proper evidence before the VTE. Nor was there any party present with an interest in challenging the version of events presented to it. No matter how plausible the Trust's representatives may have appeared to the VTE, it had no business to make

any finding about the relationship between the two bodies, or about Augustine's involvement with London House, let alone any finding about the authority of the agent to act for Augustine. It quite rightly avoided making any such findings, and subsequently declined to alter its decision to incorporate them because they were simply not issues which arose in the appeal.

25. Any proper consideration of the wider factual background to the appeal would necessarily have touched on the allegation of fraud made by the Trust against Augustine's former agent. It would have been wrong for the VTE to have considered that allegation and entirely wrong for it to have changed its decision to make the findings of fact which the Trust belatedly invited it to make.

26. In any event, there would be no reason for the magistrates to place any weight on the version of events recorded by the VTE in its decision when considering the application to set aside the liability order. The Trust's apparent assumption that favourable observations by the VTE might influence the magistrates in considering that application is simply misconceived.

27. A decision to correct an accidental slip or error of expression in the decision of a tribunal is in the nature of a case management decision. The circumstances in which this Tribunal will interfere with a case management decision of the VTE are very restrictive (see *Wonder Investments Limited v Jackson* [2015] UKUT 649 (LC) at paras [6] to [17] and *Simpsons Malt Limited v Jones* [2017] UKUT 460 (LC) at paras [63] to [74]. In my judgment there are no grounds in this case for interfering with the VTE's refusal to correct its decision of 27 February 2017.

28. I therefore dismiss the appeal.

Martin Rodger QC
Deputy Chamber President
21 February 2018