



VALUATION TRIBUNAL FOR ENGLAND

Council tax penalty appeal: Local Government Finance Act 1992; hierarchy of liability; material interest; appeal dismissed.

APPEAL NUMBER: VT00000806

RE: 125a, Milton Road, Swanscombe, DA10 0LS
(the "subject dwelling")

BETWEEN:	Malvin Brown	Appellant
	and	
	Dartford Borough Council (Billing Authority)	Respondent

SITTING: *remotely via Microsoft Teams conference call*

ON: Tuesday 27 July 2021 at 14:15 hours

BEFORE: Miss MF Dowrick (Presiding Senior Member)
Ms N Akhter

CLERK: Mr W Hamilton IRRV(Dip) A.Inst.Pa

APPEARANCES: Mr Malvin Brown, the Appellant
Mr Tim Dennington, the Respondent's representative

DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeal is dismissed.
2. The Tribunal Panel is satisfied, on balance, that –
 - (1) the lease of the subject dwelling (and connected commercial premises) was terminated on 7 December 2009 by the Appellant, acting as landlord;

(2) there is no evidence that the subject dwelling was used by the tenant as his sole or main residence for any day following the termination of the lease; and accordingly,

(3) the Appellant is liable for the payment of council tax as owner from 7 December 2009 to 6 August 2017 (the “disputed period”).

Introduction

3. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings. The Tribunal Panel gave proper judicial consideration to all the evidence and arguments put forward in the course of the proceedings whether or not it is fully set out in this statement of reasons.

Background

4. On 26 February 2006, the Appellant purchase the freehold of 125 Milton Road, Swanscombe, DA10 0LS (the “property”). Within the property, there is a domestic space above the commercial unit, which is shown in the council tax valuation list as a dwelling; 125A Milton Road (the “subject dwelling”).
5. On 8 May 2007, the Appellant entered into a lease with a tenant for the property, including the subject dwelling. The term of the lease was for 20-years. It was registered with HM Land Registry under title K922179.
6. On 8 December 2009, the Appellant instructed First Enforcement Ltd to effect peaceable re-entry of the property and secure forfeiture of the lease. That same day, First Enforcement Ltd attended that property and effected peaceable re-entry, changed the locks and affixed the appropriate notice to the entrance of the property.
7. On 7 August 2017 the Appellant sold the freehold of the property, including the subject dwelling.
8. On 30 April 2019, in a letter to the Official Receiver’s Office (who were dealing with the bankruptcy of the Appellant’s tenant under the lease of 8 May 2007), the Appellant confirmed that the tenant had “*accumulated rent debts and other costs of £16,345.00 before [he] repossessed the property from the tenant on 7 December 2009.*” The Appellant also stated that he “*never saw or heard from [the tenant] again*”.
9. Subsequently, the Respondent, having received this information about the forfeiture of the lease of 8 May 2007, decided that the Appellant was liable for the payment of council tax in respect of the subject dwelling for the disputed period, being the date he repossessed the property from the tenant to the day before he sold the freehold of the property.

10. On 21 September 2019, the Appellant emailed the Respondent challenging being held liable for council tax in respect of the subject dwelling for the disputed period.
11. On 16 October 2019, the Respondent replied to the Appellant's grievance holding that it was not well-founded. The Respondent referred the Appellant to his right to appeal that decision to this Tribunal.
12. On 1 December 2019, the Appellant served a notice of appeal upon this Tribunal electronically. The grounds of the appeal were –

"I was Freeholder of shop & flat 2006. In 2007 let on 20 year lease to [the tenant ("Y")]. In 2009 a neighbour said that rear of shop was broken into. Unable to contact Y. Phoned & emailed Y but no response. Visited shop. Access gained from rear. Somethings obviously stolen. Reported to Police. In order to secure from the inside arranged for locksmith to change front locks. Completed forms stating I had right to do access. Once done had rear door tack welded from inside. Left keys with neighbour and left messages for Y stating where he could collect keys. I did not tell him that theoretically I had repossessed premises. 2017 received keys through the post with a note 'Back to Turkey'. Had no way of locating him. Later in 2017 gave the shop to my children. In 2019 heard from The Insolvency Service who said Y was Bankrupt but claimed he owned a lease on 125. I sent them docs from 2009 and claimed for the money Y owed me should he come in to funds. It transpired that The I S sent that information without my consent to Dartford Council who interpreted it simplistically without considering Y's occupation. I have complained to the Information Commissioner. Received acknowledgment."

13. On 20 December 2019, the Tribunal notified the parties that the appeal would be heard in Chatham on Thursday 26 March 2020. This included a copy of the Tribunal's standard directions.
14. On 12 March 2020, the Respondent served the hearing bundle upon the Tribunal and the Respondent in accordance with the standard directions.
15. On 20 March 2020, in response to the coronavirus pandemic, the Tribunal postponed this hearing of the appeal.
16. On 19 May 2020, the Tribunal notified the parties that the appeal would be heard remotely at today's hearing.

Remote hearing

17. On 29 July 2020, the President of the Tribunal issued the COVID-19 Variation of Practice Statement. In that statement, the President has determined, for the purposes of Regulation 6(3)(g) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations"), that the form of any hearings before the Tribunal would

include “remote hearings”. Specifically, the President states that this is to include the use of Microsoft Teams conferencing software. Further, the President directs that remote hearings would be the default until such time as it is safe for the Tribunal to return to normal practice.

18. In accordance with that Practice Statement, the Tribunal Panel conducted the hearing of the appeal remotely via Microsoft Teams conference call. The Tribunal Panel attended the hearing by way of video-link, as did the Clerk to the Tribunal, the Appellant and the Respondent’s representative.
19. At the commencement of the hearing there was a technical issue with the Member of the Tribunal Panel re-joining the virtual hearing room from the virtual retiring room, however, this was quickly resolved. There were no other technical issues during the course of the hearing. For the avoidance of any doubt, the Tribunal Panel is satisfied that the parties were able to fully participate in the proceedings.

Correction of the Respondent’s name

20. Prior to moving to the substantive matter, the Clerk to the Tribunal invited the Tribunal Panel to correct the name of the respondent to the appeal. The Clerk explained that the appeal had, on registration with the Tribunal, been incorrectly recorded as being against a decision of Severnoaks District Council, a neighbouring billing authority to the Dartford Borough Council, both of which operate a shared revenues service.
21. Neither party had any objection to the correction of the record. Given the operation of the shared revenues service between Dartford Borough Council and Severnoaks District Council, the Tribunal Panel was satisfied that there was no prejudice to the Respondent.
22. Accordingly, pursuant to Regulation 11(1)(a) of the Tribunal Procedure Regulations, the Tribunal Panel directed that the Respondent, Dartford Borough Council, was formally substituted as the respondent to the appeal.

Reversed hearing procedure

23. At the outset of the hearing, the Clerk to the Tribunal informed the Tribunal Panel of the Appellant’s request for a modification to the Tribunal’s model hearing procedure. The modification sought was that the Respondent’s representative would present his case and evidence first, followed by the Appellant. The Respondent’s representative agreed to such a modification.
24. Accordingly, the Tribunal Panel modified the model hearing procedure to the above extent.

Relevant Law

Council tax

25. Part I of the Local Government Finance Act 1992 (the “Act”) makes provision for billing authorities in England and Wales to levy a tax, known as council tax, in respect of domestic hereditaments (“dwellings”) within their area.
26. Section 6 of the Act makes provision for determining who is liable for the payment of council tax in respect of a dwelling. So far as is relevant, it provides –

6 Persons liable to pay council tax

(1) The person who is liable to pay council tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.

(2) A person falls within this subsection in relation to any chargeable dwelling on any day if, on that day–

...

(b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident;

...

(e) he is such a resident; or

(f) he is the owner of the dwelling.

...

(5) In this Part, unless the context otherwise requires –

“owner”, in relation to any dwelling, means the person as regards whom the following conditions are fulfilled–

(a) he has a material interest in the whole or any part of the dwelling, and

(b) at least part of the dwelling or, as the case may be, of the part concerned is not subject to a material interest inferior to his interest;

“resident”, in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling.

(6) In this section–

...

“material interest” means a freehold or a leasehold interest which was granted for a term of six months or more;

...

Appeal to this Tribunal

27. Section 16 of the Act establishes a right of appeal to this Tribunal. So far as is relevant to this case, it provides –

16 Appeals: general

(1) A person may appeal to [the Valuation Tribunal for England] if he is aggrieved by–

- (a) any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; ...*

Discussion

28. The Respondent's representative shortly put the case for the Respondent.
29. He contended that there was no resident – a person whose sole or main residence was at the subject dwelling – for any day in the disputed period, therefore liability falls to the “owner” under section 6(2)(f) of the Act. He set out that, following receipt of the information showing the forfeiture of the lease between the Appellant and tenant, it was the Respondent's opinion that the Appellant's freehold interest in the subject dwelling was not subject to any inferior leasehold interest. Accordingly, for each day in the disputed period, the Appellant is the owner and liable for the payment of council tax in respect of the subject dwelling.
30. The Appellant contended that the billing authority were taking an overly simplistic view of the operation of leaseholds. He stated that the lease between him and the tenant was effective throughout the disputed period. He explained that the documentation relating to the forfeiture and re-entry of 8 December 2009 was just an administrative necessity to get a locksmith to change the locks on the property following it being found insecure. He stated that following the completion of the change of locks, he removed the notice of peaceable re-entry (which had been affixed to the door of the premises) and left the keys to the property with a neighbour and informed the tenant of their location. The Appellant also HM Land Registry were never informed of the “repossession” as that wasn't the intention to bring the lease to an end. The Appellant explained that the tenant was then permitted to continue occupying the property and subject dwelling. The tenant continued to pay rent (albeit intermittently and in arrears). This continued until 2017 when, out of the blue, the Appellant received the keys in the post from the tenant with a note stating, “*Gone back to Turkey*”.
31. The Appellant also referred the Tribunal Panel to an email from a Deputy Official Receiver at the Insolvency Service, dated 23 October 2020. In this email the Deputy Official Receiver confirmed that in a telephone interview with the Official Receiver's Office the tenant had stated he had continued to trade at the property until 2017.

32. On questioning by the Tribunal Panel, the Appellant was asked to explain why, in his letter to the Official Receiver's Office of 30 April 2019, he had stated that he had repossessed the property and hadn't seen or hear from the tenant again. The Tribunal Panel stressed that this letter, written some 10 years after the alleged repossession, directly contradicted what the Appellant had stated in oral evidence. The Appellant initially stated he had not repossessed the property and that he shouldn't really have said he had never seen or heard from the tenant since 2009. But he later agreed the property was probably a technically repossession, but that the tenant remained in occupation and that his intention was for the lease to continue to term.
33. The Appellant's also aired his grievance that, in his view, the Respondent had been unsuccessful in recovering the council tax due from the tenant and therefore was unfairly switching tack to get him to pay.

Decision

34. Firstly, dealing with the Appellant's final point, the question of who is liable to pay council tax in respect of any dwelling is determined by law. Whether the Appellant is the person liable to pay council tax in respect of the subject dwelling is determined by section 6 of the Act. It is irrelevant whether the Respondent had been successful in collecting the payment of council tax from the tenant if he is not the person liable. If the tenant had fully satisfied the council tax liability, the Respondent would have been obligated to refund those payments if it became satisfied that he was not in fact the correct person to be held liable.
35. Turning to the matter at hand, the Tribunal is satisfied that the lease between the Appellant and the tenant was terminated on 7 December 2009. That was the clear intention of the documentation produced that date. In particular, the Tribunal Panel notes that the notice of peaceable re-entry states unequivocally that the lease is terminated. The Tribunal Panel is also satisfied that the letter of 30 April 2019 confirms the position, some 10-years after the event. It again unequivocally stated that the property was repossessed. The Appellant cannot now retreat from that position because of the unexpected consequences of the forfeiture.
36. In view of that finding, the Tribunal Panel is satisfied that the Appellant is the owner of the subject dwelling for the purposes of section 6(5) and (6) of the Act.
37. Having made that finding, the question is whether or not the owner is the correct target under section 6(2) of the Act. The Tribunal Panel note that the only evidence available as to whether or not any person was resident at the property was the email from the Deputy Official Receiver, dated 23 October 2020. However, this was clear that the tenant had only stated he was trading from the property, not that he was resident at the subject dwelling. In the absence of any person residing at the subject dwelling, the Tribunal Panel agreed with the Respondent's contention that liability for the payment of council tax for the disputed period falls to the owner.
38. The appeal is therefore unsuccessful and is dismissed.

Appeal Number: VT00000806

Issued: 25 August 2021