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VALUATION TRIBUNAL FOR ENGLAND

Council Tax Liability appeal: Section 6 (2) (f) of the Local Government Finance Act 1992; whether owner liable; Land Registration Act 1925, Law of Property Act 1925; Rockferry Waterfront Trust v Pennistone Holdings Limited [2020] EWHC 3007 (Ch), Branwell v Valuation Office Agency [2015] EWHC 824; ZT v Lewisham LBC [2019] RVR 295; NR v Maldon DC [2019] RVR 323; Snell's Equity, [21-027]; appeal allowed.

APPEAL NUMBER: VT00022216

RE: Lode Hill, Altrincham Road, Styal, Wilmslow, Cheshire SK9 4LH
(the "subject property")

BETWEEN:	L B	Appellant
	and	
	Cheshire East Council (Billing Authority)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Tuesday 10 September 2024

BEFORE: Ms T Blades, Presiding Senior Member
Dr S Penni, Senior Member

CLERK: Mrs S D Morgan

APPEARANCES: Mr D Metcalfe – Appellant's counsel (St Johns Buildings Chambers,
Manchester).
The Appellant

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.
2. The panel determined that the Appellant was not liable for the council tax during the period of dispute, 1 January 2018 to 19 March 2023, as he was no longer the owner.

Introduction

Lode Hill Altrincham Road Styal CTL

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3. This appeal had been brought by the Appellant, against a decision made by Cheshire East Council (billing authority), dated 26 January 2024, that the appellant was liable as the owner under section 6 (2) (f) of the Local Government Finance Act 1992. The billing authority's case was reliant on the fact that the Appellant's name was shown in the Land Registry as the owner. Therefore, it had determined that he was liable for the council tax for Lode Hill, Altrincham Road, Styal SK9 4LH (the 'subject property'). The period in dispute was 1 January 2018 to 19 March 2023.
4. The amount of his alleged liability was £30,170.94. Despite the size of the outstanding debt, the billing authority was not represented and took no part in the proceedings which was disappointing and disrespectful to the tribunal, especially given the fact that the proceedings were conducted remotely. Given the size of the outstanding debt, it was also surprising that the billing authority chose not to engage properly.
5. The appeal to the Tribunal was made under section 16(1) of the Local Government Finance Act 1992 (LGFA 1992). Briefly, that section allowed appeals to be made concerning council tax liability, the determination of the liable person and disputes over whether dwellings were chargeable.
6. This statement of reasons is not and does not purport to be a verbatim record of proceedings.

Background

7. The panel was provided with a bundle of evidence that contained the submissions of both parties. This included the reasons for the billing authority's decision, the Appellant's appeal, extracts from legislation, copies of correspondence exchanged between the parties, extracts from the Land Registry including TR1 documents and a High Court Order.
8. The billing authority believed that it was correct to hold the Appellant liable for payment of council tax for the period from 1 January 2018 up to 20 March 2023, as the owner of the property in accordance with the information recorded in the Land Registry.
9. A Land Registry search led the billing authority to conclude that the Appellant remained the owner of the freehold interest during the period in dispute. The billing authority therefore maintained that the Appellant was liable for the council tax as the owner under section 6 (2) (f) of the Local Government Finance Act 1992. It therefore sought a dismissal of the appeal.
10. The Appellant believed that he is not liable for council tax in respect of the subject property which was sold to a third party in 2017.

Relevant Law

11. Section 6 of the Local Government Finance Act 1992 outlined the hierarchy of liability for the council tax and the person liable for the council tax was the person who appeared highest in the hierarchy. Section 6 was as follows.

6 Persons liable to pay council tax

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(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 and any day if, on that day—

(a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;

(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;

(c) he is both such a resident and a statutory, secure or introductory tenant of the whole or any part of the dwelling;

(d) he is such a resident and has a contractual licence to occupy the whole or any part of the dwelling;

(e) he is such a resident; or

(f) he is the owner of the dwelling.

(3) Where, in relation to any chargeable dwelling and any day, two or more persons fall within the first paragraph of subsection (2) above to apply, they shall each be jointly and severally liable to pay the council tax in respect of the dwelling and that day.....

(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—

“introductory tenant” means a tenant under an introductory tenancy within the meaning of Chapter I of Part V of the Housing Act 1996;

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

“secure tenant” means a tenant under a secure tenancy within the meaning of Part IV of the Housing Act 1985;

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“statutory tenant” means a statutory tenant within the meaning of the Rent Act 1977 or the Rent (Agriculture) Act 1976.

Facts

12. The panel found the following facts admitted or proved.

- a) On 17 March 2017, Hamilton Investments Ltd was incorporated in the Seychelles. It was established as a special purposes’ vehicle solely for the purpose of purchasing the appeal property.
- b) On 28 March 2017, contracts for the sale of the appeal property were exchanged.
- c) On 30 March 2017, Hamilton Investments Ltd entered into a Deed of Trust with Drake Estates Property Ltd, so that the property was held in trust for the latter absolutely.
- d) The Appellant sold his freehold interest in the appeal property to Hamilton Investments Ltd on 19 July 2017. The completion of the sale was confirmed by JWL Solicitors Llp who acted for him. The Appellant received £3 million for the appeal property from its sale.
- e) Following the completion of the sale, Hamilton Investments Ltd took exclusive possession of the appeal property. The Appellant no longer had any access to it.
- f) A TR1 form was completed by the Appellant, which formally notified H M Land Registry that the Appellant had sold the appeal property to Hamilton Investments Ltd on 19 July 2017.
- g) The Lands Registry was unable to amend the Lands Register to reflect the change into the ownership to Hamilton Investments Ltd for a number of reasons. In his witness statement, Mr Miller said there was an issue with a prior application to amend the same register entry that was never resolved. Mr Metcalfe for the appellant also stated that there were issues with the payment of stamp duty, the fact that the purchaser was a foreign company, a restriction that had been registered to protect an option agreement which had subsequently expired, and delays caused by inefficiencies on the part of the purchaser or its legal representatives.
- h) The appellant previously informed the billing authority that he had vacated the property on 31 May 2017.
- i) The billing authority originally billed Mr Christopher Miller for the council tax, as it was advised that he had bought the property from the Appellant.
- j) Mr Miller subsequently informed the billing authority on 20 August 2017 that his company, Drake Estates Property Company Ltd, for which he was a director, was the new owner and that it was responsible for the Council Tax and Non-Domestic Rates with effect from 1 June 2017.
- k) The appeal property’s site was used for car parking for Manchester Airport.

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- l) On 9 July 2020, Drake Estates Property Ltd went into compulsory liquidation.
- m) On 31 January 2022, Hamilton Estates Ltd was struck off from the Register of Companies in the Republic of Seychelles and dissolved.
- n) On 17 October 2022, the joint liquidators issued a claim against Hamilton Investments Ltd which sought a transfer of the appeal property to Drake Estates Property Ltd. The Appellant became a party to these proceedings, as a second defendant, and was content for the High Court to order the transfer of registration into either company's name as he no longer had an interest.
- o) The joint liquidators for Drakes Estates Property Ltd informed the billing authority on 31 January 2023 that the company did not own the site and that they did not have any standing, in respect of the outstanding council tax.
- p) Until 20 March 2023, the Land Registry continued to show the Appellant, as the registered proprietor for the appeal property.
- q) On 20 March 2023, Master Brightwell issued a High Court Order which ordered, pursuant to section 44 of the Trustee Act 1925, the transfer of the legal title for the appeal property from Hamilton Investments Ltd to Drake Estates Property Ltd (the claimant). The Claimant in the High Court proceedings was ordered to register the fact that it was the proprietor of the appeal with the Lands Registry, pursuant to section 65 and paragraph 2 (1) (b) of Schedule 4 to the Land Registration Act 2002 and rules 126 and 127 of the Land Registration Rules 2003.
- r) Within the High Court Order, it was declared that the Appellant retained title to the appeal property on bare trust for Hamilton Investments Ltd, which held its interest on sub trust for Drake Estates Property Company Ltd absolutely. The latter being the ultimate beneficial owner.

Discussion

- 13. The billing authority had relied on the fact that the transfer of property ownership in England and Wales required the completion of the relevant form, TR1. This document legally conveys the property title from the current owner to the new proprietor. The legal estate does not vest in the transferee until all the appropriate requirements for registration have been met. As such, the respondent's position was that the legal title in the land did not pass from the Appellant until the land registration process was completed in March 2023. The Land Registry confirmed that the Appellant remained the owner until 20 March 2023.
- 14. The billing authority believed that its decision to hold the Appellant liable for payment of council tax for the period from 1 January 2018 up to 20 March 2023, was correct and requested the appeal to be dismissed.
- 15. The respondent referred to section 27 of the Land Registration Act 2002 ("the LRA 2002"), which provides that "if a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met". The effect of section 27 of the 2002 Act is that a failure of the

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purchaser to register the transfer results in the legal estate remaining with the vendor, with the purchaser taking an equitable interest.

16. In *Rockferry Waterfront Trust v Pennistone Holdings Limited* [2020] EWHC 3007 (Ch) in the application of section 27 of the 2002 Act, His Honour Judge Hodge QC explained as follows (at [59]):

There is a straightforward, but ineffective, disposition of an existing legal estate. In my judgment, this gives rise to the straightforward creation of an equitable interest, equivalent to the estate which has been ineffectively transferred at law.

17. Having looked at various definitions of owner, material interest, legal owner, legal estate and beneficial owner, on behalf of the Appellant, Mr Metcalfe contended that the “owner”, was the person to whom the freehold interest or leasehold interest in the property has been conveyed. The Appellant conveyed the totality of his interest, which was a freehold interest, to Hamilton on 19 March 2017 by way of applying his signature to a deed of conveyance in a completed TR1 form, such document being compliant with the requirement at section 52 of the Law of Property Act 1925. For the purposes of section 6 of the 1992 Act, Hamilton became the “owner” of the property. It is recognised that the deed of trust as between Hamilton and Drake did not, however, constitute a conveyance of a freehold interest in the property such that Drake did not become the “owner”.
18. Mr Metcalfe stated that the purpose of section 6 of the 1992 Act is clearly to place liability for council tax on the person(s) with control over a property. The court has not shied away from a purposive interpretation of section 6. Hence, in *Branwell v Valuation Office Agency* [2015] EWHC 824 Her Honour Judge Laing QC (as she then was) explained as follows:

The scheme of section 6 of the LGFA is to link liability for council tax to actual occupation of, and to interests in, land, in a hierarchy which imposes liability on the person who is in actual occupation of the dwelling, or if no-one is occupying it, on the person who has the right to occupy it.

19. Further, to the extent that the Appellant retained a freehold interest in the property for the purposes of section 6 of the 1992 Act, Hamilton also had a freehold interest and thus fell within the definition of an “owner”. Hamilton’s freehold interest was inferior to the Appellant’s freehold interest, as it was not registered as the legal owner (even though it had a right to be). Hamilton was therefore the “owner” for the purposes of council tax.
20. In *ZT v Lewisham LBC* [2019] RVR 295 and *NR v Maldon DC* [2019] RVR 323 the tribunal held that will trusts did not give rise to a “material interest” within the meaning of section 6 of the LGFA 1992. In this case it was held that (at [14]):

Whilst in due course Mr Z T is most likely to have a material interest, that being the freehold of the dwelling, he simply did not for the period in dispute. At best he may have had a beneficial interest, but certainly no freehold interest in the dwelling.

21. With regard to trusts mentioned, a “bare trust” is explained in Snell’s Equity as follows.

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A bare trust is one where property is vested in one person on trust for another, but where the trustee owes no active duties arising from his status as trustee. His sole duty is to convey the trust property as the beneficiary directs him. An example is where property is transferred to T “on trust for B absolutely”. In such a case, T’s sole duty is to allow B to enjoy the property and to obey any direction he may give as to how the property should be disposed of.

22. The Appellant was described in the Vesting Order as holding the property on a “bare trust”. The Appellant had no active duties or rights in relation to the property. He had already conveyed the property to Hamilton and no doubt but for the liquidation of Drake the conveyance would have been registered. Mr Metcalfe contended that the trust on which the Appellant held the property was so bare that there was no need even for a conveyance of the property, as that step had already been taken.
23. Mr Metcalfe also stated that it was unusual for a property to be subject to a Vesting Order in favour of a third party in advance of registration of a conveyance, but the wording of section 6 of the 1992 Act is plainly capable of satisfying common sense by applying the council tax liability to the person in the meantime taking a “material interest” by conveyance rather than registration.
24. In June 2020, a winding up petition was presented against Drake. On 3 July 2020 Drake entered liquidation by order of the court. A dispute then arises between the Liquidators and Hamilton regarding ownership of the property, considering that the Transfer had not been registered. On 17 October 2022 the Liquidators issued a claim against Hamilton and the Appellant under claim number PT-2022-000864. The Appellant was content for the property to be registered in the name of Hamilton or Drake at the court’s direction, because the Appellant no longer had any interest in it.
25. In the High Court Order, Master Brightwell declared that “the property was, immediately before the making of the Order, held on trust for the Claimant as its ultimate beneficial owner and, more particularly, that title to the property was held by the Second Defendant on bare trust for the First Defendant and the First Defendant held its interest in the property on sub-trust for the Claimant absolutely” and ordered that legal title to the property be vested in Drake (“the Vesting Order”).
26. Having considered the evidence presented by the parties, the panel found it significant that the Appellant received the full purchase price for the appeal property. In any normal sales transaction, once the seller receives payment, the buyer becomes the owner and takes possession of the seller’s property.
27. The panel’s understanding was that on completion of form TR1, it was the buyer’s conveyancer who would normally be responsible for submitting an application to the Land Registry to register the property in the buyer’s name. Various reasons were given to the panel by the Appellant’s Counsel and by Mr Miller, in his witness statement, to explain why the transfer of registration was unduly delayed. In particular, it was understood that at about the same time Hamilton and Drake entered into a deed of trust in relation to the property. Hamilton then failed to register the transfer of the property, apparently for the following reasons: (a) issues with the payment of Stamp Duty by the purchaser; (b) delays caused by

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the fact that the purchaser was a foreign company; (c) delays caused by a restriction which had previously been registered to protect an option agreement which subsequently expired; and (d) delays and/or inefficiencies of the purchaser and/or its legal representatives. However, as far as the Appellant was concerned, he had completed everything he should have done to transfer ownership. The panel noted that the period of delay was not the fault of the Appellant.

28. Although the Appellant was deemed by the High Court Order to have retained title on bare trust for Hamilton Investments Ltd, which held its interest on sub trust for Drake Estates Property Company Ltd absolutely, in reality he was nothing more than a nominee. The Appellant had no control over how the property was used during the period in dispute and had no access to it. Moreover, from the information presented to it in evidence, the panel noted that the appeal property was being used by Drake Estates Property Ltd for car parking in connection with Manchester Airport. Even though the billing authority was notified of the appeal property's change of use, there was no evidence to show that it had made contact with the Valuation Office Agency or Listing Officer to see if the appeal hereditament needed to be reassessed to reflect the different mode or category of use, following an apparent change in its rateable occupation. Instead, the billing authority appeared to have effectively sat on its hands and done nothing other than being reliant on what was shown in the Lands Registry. It was therefore guilty of ignoring information provided to it which clearly showed that the reality of the situation was that the Appellant was no longer the owner. Whilst there is presumption of regularity in law that official records are accurate, this presumption can be rebutted, as in this case, if evidence is produced to show that the official records are wrong. The factual evidence, in this case, clearly showed that the ownership of the appeal property had changed hands, despite the Lands Registry showing otherwise.
29. In any event, the actual wording of the High Court Order, has relied on by the billing authority could not be held to be decisive. The Judge was not called upon to determine who was the liable person for council tax purposes. Instead, the issue he was tasked with to decide related to a claim made by the liquidators for the ownership of the property to be transferred from Hamilton Investments Ltd to Drake Estates Property Company Ltd.
30. The appeal was therefore allowed.

Disposal

31. In view of the above findings and conclusions, the panel is satisfied that the Appellant was not liable for the council tax for the period in dispute.
32. The panel orders the billing authority to reverse its decision and treat the Appellant has not being liable for the council tax at the subject dwelling for the period in dispute 1 January 2018 to 19 March 2023. The billing authority must comply with this Order within two weeks of the decision being issued.

Date issued to parties: 28 October 2024

Right of further appeal

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Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.
