



Neutral Citation Number: [2024] EWHC 3118 (Ch)

Case No: PT-2024-000208

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 09/12/2024

Before :

MASTER MCQUAIL

Between :

SAINT BENEDICT'S LAND TRUST LIMITED
- and -
BOROUGH COUNCIL OF KING'S LYNN AND
WEST NORFOLK

Claimant

Defendant

Neil Berragan (instructed by H&C Associates) for the **Claimant**
Alex Worthington (of Greenhalgh Kerr solicitors) for the **Defendant**

Hearing dates: 5 September 2024

Judgment Approved by the court

Procedural History

1. The claimant's Part 8 Claim dated 11 March 2024, seeks declaratory relief against the defendant rating authority in relation to:
 - (i) to the claimant's entitlement to charitable relief from National Non-Domestic Rates (**NNDR**) in respect of the hereditament known as Unit 5, Venus Court, Oldmeadow Road, Hardwick Industrial Estate, Kings Lynn, Norfolk, PE30 4HY (**the Hereditament**) for the period 3 January 2023 to 31 March 2024 (**the Relevant Period**); and
 - (ii) more widely as to the lawfulness of the conduct of rating authorities generally issuing summonses in relation to NNDR.
2. The defendant's application made by notice dated 10 May 2024 to strike out the claimant's Part 8 Claim was issued on 11 March 2024 and this is my judgment on that application. The Part 8 Claim is supported by the witness statement of William Eve dated 24 April 2024. The evidence in opposition to the Part 8 Claim and in support of the strike out application is contained in the witness statement of Joanne Stanton dated 8 May 2024. That statement exhibits another witness statement of Joanne Stanton and one of Aidan Thomas both dated 8 May 2024 filed in related proceedings in the Kings Lynn Magistrates' Court.

Background

3. In April and May 2023 the defendant as the billing authority issued demands for NNDR in respect of the Hereditament for the Relevant Period.
4. The demands were issued to the claimant as rateable occupier on the basis that the claimant had entered into a "meanwhile" lease with the landlord on 3 January 2023.
5. On 26 July 2023 the defendant issued a summons in the King's Lynn Magistrates' Court seeking a liability order against the claimant in respect of unpaid NNDR for the Hereditament for the Relevant Period.
6. On the same date the defendant confirmed by email that it did not consider the claimant to be eligible for charitable relief.
7. On 26 September 2023 the defendant lodged a formal application with the defendant seeking charitable relief.
8. On 3 November 2023 the defendant sent a detailed letter to the claimant setting out the reasons for refusing charitable relief.
9. On 4 December 2023 the claimant sent its own detailed letter in answer to the defendant.
10. Hearings of the summons before the Magistrates were listed on 6 December 2023, 13 March and on 28 May 2024 and there was a listing for trial on 23 July 2024, but that was adjourned. The next directions hearing was listed to take place on 18 September, although it has since been adjourned and the trial is listed to be heard in summer 2025.

The Law concerning NNDR

11. Liability for NNDR pursuant to the Local Government Finance Act 1988 (**the 1988 Act**) arises either:
 - (i) pursuant to section 43 of the 1988 Act, as defined by section 65(2) of the 1988 Act, by virtue of being in rateable occupation; or
 - (ii) pursuant to section 45 of the 1988 Act, as defined by section 65(1), by virtue of being the owner of a hereditament.
12. Section 43(6) of the 1988 Act, as in force during the Relevant Period, provided:

“(6) This subsection applies where on the day concerned
(a) the ratepayer is a charity or trustees for a charity and the hereditament is wholly or mainly used for charitable purposes (whether of that charity or of that and other charities).”

13. There is no dispute that where a ratepayer fell within section 43(6)(a) of the 1988 Act, their liability for NNDR would be 20% of the total otherwise due.

14. Section 45A(2) provides for the chargeable amount to be zero, where the premises are unoccupied and:

“(a) the ratepayer is a charity or trustees for a charity, and
(b) it appears that when next in use the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities).”

15. The judgment of the Supreme Court in *Merton LBC v Nuffield Health* [2023] 3 W.L.R. 13 at [26] makes clear that save in the case of registered charities which have the benefit of section 37(1) of the Charities Act 2011:

“whether [the ratepayer] is a charity will have to be determined by a reference to its constitution and/or (if there is no constitution or the constitution is inconclusive) by a review of its activities and the purposes they serve, looked at overall, including an assessment whether the public benefit requirement is satisfied.”

16. Once satisfied that the ratepayer is a charity then, following *Nuffield Health*, the Court must determine as a matter of fact to what “main use” the hereditament was put or to be put and then determine whether that “main use” is in furtherance of (or, per *Oxfam v Birmingham City DC* [1976] A.C. 126 and *Glasgow Corpn v Johnstone* [1965] A.C. 609, is sufficiently closely connected with) the purposes of the charity ratepayer or of the ratepayer and other charities.

Procedure

17. CPR 3.4(2) provides:

“The court may strike out a statement of case if it appears to the court—

...

(b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; or
(c) that there has been a failure to comply with a rule, practice direction or court order.”

18. CPR 8.1(2) provides:

“A claimant may, unless any enactment, rule or practice direction states otherwise, use the Part 8 procedure where they seek the court’s decision on a question which is unlikely to involve a substantial dispute of fact.”

Occupation and Use

19. The parties have proceeded on the basis that the claimant was the rateable occupier throughout the Relevant Period. It appears that it is agreed that the Hereditament was not actually occupied before 19 July 2023 and thereafter was occupied by one Emma Brock in connection with the purposes of the Fairstead Community Shop . The claimant claims entitlement to mandatory relief pursuant to the Local Government and Finance Act 1988

(LGFA) as to 100% and then 80% on the basis that the Hereditament was initially unoccupied and subsequently wholly or mainly used for charitable purposes.

20. The defendant refused the claimant relief in its email of 26 July 2023 and explained that refusal in its letter of 3 November 2023 as made on the basis that the only occupation was by Ms Brock solely for the storage of goods intended to be sold in Fairstead Community Shop, which is not a registered charity.

21. The witness statements and exhibited letters passing between the defendant and the claimant in November and December 2023 demonstrate that there are substantial disputes of fact as to the intended purpose of the occupation of the Hereditament after the lease was granted to the claimant while it was unoccupied and the actual use of the Hereditament after Emma Brock took up occupation in July 2023. Mr Eve's witness statement appears to dispute that the claimant was the rateable occupier at all, notwithstanding that the premise of the Claim Form, in its present form, is that rateable relief was wrongly not given to the ratepayer. Mr Berragan accepted that the Claim Form would require amendment if the claimant were to pursue the case that the claimant was not the occupier.

The Defendant's Submissions

22. The defendant makes the following submissions:

(i) *Carter Commercial Developments v Bedford BC* [2001] EWHC Admin 669 per Jackson J. at [30] to [34] is authority for the proposition that to commence Part 8 proceedings in respect of public law issues which should be dealt with by Judicial Review, particularly to circumvent the time limits for Judicial Review, amounts to an abuse of process. For the claimant to commence a Part 8 Claim months out of time to apply for Judicial Review of the defendant's decisions as to liability and refusal of relief is abusive in the same manner as the conduct in *Carter Commercial Developments v Bedford BC*;

(ii) in Judicial Review proceedings, the Court is entitled to and will usually invoke a discretionary bar where it finds a claimant had the benefit of an alternative remedy (Administrative Court – Judicial Review Guide 2023 [6.3.3]). Had Judicial Review proceedings been commenced in time, the Administrative Court would be likely to have refused permission in exercise of its discretion because of the availability of the alternative remedy of contesting the summons in the Magistrates' Court;

(iii) Kerr J. in Annex B to his judgment in *R (Public Health England) v Harlow District Council* [2021] 4 W.L.R. 65 set out a protocol for the resolution of disputes about the occupation of premises in the rating context. That protocol makes clear the proceedings in the Magistrates' Court should be pursued first;

(iv) the claimant cannot seriously assert that the subject matter of the first declaration in the Part 8 Claim and the summons before the Magistrates' Court are not substantially the same, namely liability for NNDR in respect of the Hereditament;

(v) bringing the Part 8 Claim more than seven months after the commencement of proceedings before the Magistrates' Court amounts to a vexatious attempt to have the defendant contest multiple sets of parallel proceedings;

(vi) it is wrong to bring a Part 8 Claim where substantial disputes of fact arise, in this case those disputes include, the purpose of the occupation of the Hereditament by Emma Brock;

(vii) it is just to strike out the claim rather than stay it or transfer it to the Administrative Court and allow the Magistrates' Court proceedings to take their course including by way of any appeal by Case Stated and/or Judicial Review.

The Claimant's Submissions

23. The claimant makes the following submissions:

- (i) the purpose of the first element of the relief sought is to obtain a binding declaration of the claimant's statutory entitlement to mandatory rate relief under s.43(6)(a) of the 1988 Act in the Relevant Period;
- (ii) it is conceded that the purpose of the further declarations may not be necessary in practical terms and this part of the claim might appropriately be stayed to consider, if pursued, whether they are properly issues of judicial review requiring transfer to the Administrative Court;
- (iii) in *Rolls Royce Plc v Unite the Union* [2009] EWCA Civ 387 [2010] 1 WLR 318 the Court of Appeal held that the Court had power, on an appeal from a single Judge of the Queen's Bench Division, to make appropriate declarations on a matter of public importance;
- (iv) the Part 8 Claim is not an abuse of process under CPR 3.4(2)(b) as it is not vexatious, scurrilous or obviously ill-founded and therefore should not be struck out;
- (v) if the court were to consider striking out it must undertake a balancing exercise, taking account of proportionality and an analysis of all the facts, and the private and public interests involved to determine whether in all the circumstances a party is abusing or misusing the court's process;
- (vi) the *Nuffield Health* case confirms that the Chancery Division has jurisdiction to make the first declaration sought;
- (vii) in *Imperial Tobacco Limited v Attorney General* [1981] AC 718, the House of Lords decided that the High Court had jurisdiction to stay one set of proceedings, where there were concurrent civil and criminal proceedings. Lord Lane's judgment went on to conclude that it would not be proper to grant a declaration in the civil proceedings that the facts alleged by the prosecution did not prove the offence charged;
- (viii) in *Financial Services Authority v Rourke* [2002] CP Rep 14 Neuberger J explained that the court must consider all the circumstances in deciding whether it is appropriate to grant a declaration or not and the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there were any other special reasons why the court should or should not grant the declaration;
- (ix) there seem to be judicial resource issues for the King's Lynn Magistrates' Court in hearing the proceedings there and there is no certainty when a final hearing will occur;
- (x) the issue between the parties is one of law, not of fact;
- (xi) following *Imperial Tobacco*, it is just and convenient for the issue of entitlement to relief to be determined in the High Court with a result that would be binding on the parties and the Magistrates' Court;
- (xii) even if the Magistrates' Court would be the more suitable forum, it is not an abuse of process for the Claimant to bring this claim. The Court should hear full argument after reviewing all the material facts in detail in order to decide whether it is appropriate to make the declaration. Even if the Court were to determine in the future that it was not appropriate to make a declaration, one way or the other,

that would not show that the proceedings were an abuse of process, under the principles set out in the *Cable v Liverpool Victoria Insurance Co Ltd* [2020] 4 WLR 110 and *Michael Wilson v Sinclair* [2017] 1 WLR 2646 cases;

(xiii) if the Court disagrees that the Part 8 procedure was correctly used, it should direct that the matter should proceed under part 7 and striking out should be a last resort: *Walsham Chalet Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607, noted at para 3.4.3 of the White Book

(xiv) in relation the second element of the relief sought that raises entirely separate issues and considerations and the claimant proposes a stay of further proceedings in that respect until the first element is determined.

Discussion and Conclusions

24. The subject matter of the first declaration in the Part 8 Claim is undoubtedly coincident with the scope of the existing proceedings in the King's Lynn Magistrates' Court. The protocol in Annex B to the *Harlow* decision strongly indicates that those proceedings should be dealt with first.

25. The defendant is a public body and the first declaration sought amounts in effect to a complaint about its act or decision in refusing the defendant charitable relief in respect of the Hereditament. Such an issue might be brought before the administrative court by way of proceedings for judicial review, subject to any procedural questions including timing.

26. For the claimant to bring a Part 8 Claim for a declaration as to its entitlement to charitable relief in relation to its rateable occupation of the Hereditament is not however of itself abusive, in my judgment. Entitlement to the relief is a private law matter. The course taken by the claimant is that which Nuffield took in the proceedings to the reports of which I have been referred. The judge granted the declaration sought and was upheld in the Supreme Court. A difference in that case was that Nuffield had paid the rates in question and there was therefore no question of any liability proceedings being brought in the Magistrates' Court by the rating authority. That difference cannot be such as to render the present proceedings an abuse, at least not before a decision is made in those other proceedings and any avenue of appeal exhausted.

27. In considering how to case manage the claim for the first declaration sought for discretionary declaratory relief I should take account as a relevant factor the delay beyond the usual time limit for seeking judicial review, see *Carter Commercial Developments v Bedford BC* [2001] EWHC Admin 669. I should also take account that there is an alternative route to achieving the same result by succeeding in the defence to the summons in the Magistrates' Court.

28. I do not accept that the only dispute is one of law. The existence of factual disputes including one that, if pursued, would require an amendment to the Claim Form if pursued, gives rise to the possibility that the Part 8 Claim should, if not otherwise disposed of, be ordered to continue as if commenced by Part 7 with directions for pleadings.. This does not in my judgment amount to a failure to comply with CPR 8.1(2) which would warrant the proceedings being struck out, that would not be a proportionate remedy for a procedural failure which may be remedied.

29. The claimant has offered no cogent explanation in its evidence for deciding to commence the present proceedings in parallel to the proceedings in the Magistrates' Court seven months after the commencement of those proceedings or for allowing costs to be incurred and procedural steps taken in those proceedings before bringing these proceedings.

30. The further elements of declaratory relief are not rooted in the facts of the present dispute and may go beyond matters on which any court would be prepared to adjudicate and grant declaratory relief. However, it is conceded that the claim to that relief ought to be stayed pending the outcome of the first issue in respect of which declaratory relief is sought and that those elements might, if pursued, then be transferred to the Administrative Court.

31. While I recognise that there may be resource issues for the Magistrates' Court, it does appear that those proceedings which were first in time are closer to determination than these as a trial is now listed. That is particularly likely to be so if the Claim Form in these proceedings is to be amended or pleadings are to be directed.

32. In my judgment the proper case management course is to direct that the proceedings in the Business and Property Courts be stayed pending the determination of the Magistrates' Court proceedings and the resolution of any appeal from that determination. It will then be for the claimant to consider whether it wishes to pursue the balance of the declaratory relief it seeks and, if so, to have the remaining issues in these proceedings transferred to the Administrative Court.