THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal – premises occupied by two separate companies – should there be more than one hereditament due to its different occupiers - Cardtronics UK Ltd and others (Respondents) v *Sykes and others (Valuation Officers) (Appellants) UKSC21 - John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area [1949] 1 KB 344, 350 – Rateable Occupation – Paramount Occupation – appeal dismissed*

Re: 315-317 Lord Street, Wayfarers Arcade, Southport, PR8 1NH

APPEAL NUMBER: CHG100109812

BETWEEN:	The Company of Master Barbers Ltd	Appellant
	and	
	The Valuation Officer	Respondent

PANEL;	Miss L Sharkey (Senior Member)
	Mrs E Moir
CLERK:	Mr A Jolly
REMOTE HEARING:	Wednesday 13 January 2021
APPEARANCES:	Mr R Rix of The Company of Master Barbers Ltd (appellant)
	Mrs S Jolley representing the Valuation Officer (respondent)

Summary of decision

1. Appeal Dismissed.

Introduction

2. This appeal has been brought in respect of the following: A Notice of Appeal was received by the tribunal on 12 October 2020 against the Valuation Officer's Challenge Case Decision Notice of the 23 June 2020. The appellant sought a split of the assessment as two separate companies occupied the premises with effect from 1 January 2019 (the Material Day).

3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

5. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issues

6. The issue before the panel concerned whether or not the premises should be split due to two separate companies being in occupation with one company occupying the ground floor and a self-contained office on the second floor with the second company occupying the first floor and the remainder of the second floor.

Evidence and submissions

7. Mr Rix explained that on 1 January 2019 the occupation of the premises changed when a second company occupied the first floor and part of the second floor. He stated that there were designated walkways through the building for ease of access of the separate occupiers and their respective clients, and confirmed that each were a key holder and both occupiers were able to access the property independently of each other.

8. He informed the panel that each company was a separate entity, independent of each other and traded in separate fields. Each company was operated as separate company with different directors and shareholders with different registered offices and that the Valuation Officer considering the two company were one of the same was against Company Law. He stated that when the Valuation Officer had inspected the premises the documentation to show this was available for inspection but the Valuation Officer had chosen not to view the information and did not raise any questions regarding the occupation. He stated that the Valuation Officer simply re-measured the property. He considered that the Valuation Officer had not acted in a timely fashion in his response following the inspection.

9. In support of his contention that the premises required to be split to recognise the separate occupation he provided an extract from the Valuation Officer's Rating Manual which stated:

> "Companies D and E occupy alternate floors of a four- floor office building. Company D occupies the ground and 2nd floors, and Company E occupy the 1st and 3rd floors. The floors are accessed by communal areas, such as lifts, stairwells and hallways.

Companies D and E will have separate assessments for each floor they occupy since their occupations do not pass the contiguity test.

10. During the Valuation Officer's presentation she cited the Supreme Court decision of *Cardtronics UK Ltd and others (Respondents)* v *Sykes and others (Valuation Officers) (Appellants)* UKSC21*.* The appellant had not previously been informed that the decision was to be cited. The clerk emailed a copy of the decision to the appellant, copied in to the Valuation Officer and the panel adjourned the hearing for a period of two hours to allow the appellant to read the decision.

11. The hearing reconvened at 13:00 where Mr Rix confirmed that he had read the decision but commented that he had not taken legal advice. The clerk enquired of Mr Rix if he required legal advice following the inclusion of the decision as the panel would be prepared to adjourn the appeal to enable Mr Rix to seek such advice before proceeding with the hearing. Mr Rix confirmed that he wished to proceed with the hearing today as he did not consider the decision to be relevant as the decision related to Automated Teller Machines (ATM) and not a shop and premises and reiterated the Valuation Officer's Guidance Manual.

12. Mrs Jolley stated that the issue before the panel concerned a legal issue as it was not accepted by the Valuation Officer that the premises where occupied by two separate businesses. She also confirmed that she had not personally inspected the property but the property had been inspected by a colleague in March 2020.

13. She informed the panel that the premises was held on a 10 year lease from 1 January 2016 at £18,996 per annum with three yearly reviews. It was occupied on the ground floor as a barbers with retail space and an office on the second floor and a training establishment on the first floor and remainder of the second floor. The only access to the whole premises was via the ground floor door.

14. Mrs Jolley explained that she did not believe that the two companies were separate companies as in correspondence with the Landlord, copies of which the appellant had included in the original submission, stated that the Company of Master Barbers is the primary leaseholder and that only group companies may occupy the property. She was of the opinion that the inspection in March 2020 also supported that the appellant was in occupation of the entirety of the property.

15. She considered that the appellant had paramount control of the premises and therefore considered that he was in rateable occupation of the whole premises. In support of her contention she cited the Supreme Court decision of *Cardtronics UK Ltd and others (Respondents)* v *Sykes and others (Valuation Officers) (Appellants) UKSC21* which concerned whether the spaces in which the ATMs situated was capable of being identified as hereditaments and if so, who was in paramount control. The Supreme Court found that all the spaces were capable of being identified as hereditaments but in each case the retailer remained in paramount occupation of the space and therefore there was to be no separate hereditament or entry in the Rating List.

16. Mrs Jolley stated that following the inspection it was discovered that the appeal property was serviced by more air conditioning than was recorded. She explained that due to this fact she had increased the RV from £33,000 to RV £33,250 with effect from 24 June 2020. She requested the panel determine RV £33,250.

Decision and reasons

17. The panel noted the appellant's comments concerning the Supreme Court decision relating to ATMs and therefore in his opinion irrelevant. However, it was the principle (or ratio) of the decision, which concerned paramount control that the panel must consider and not the type of property that was being considered.

18. Whilst the panel accepted that there may have been two separate companies occupying the premise under Company Law this did not necessary mean that there were two or more hereditaments within the premises.

19. The panel first had to consider whether more than one hereditament existed for the purposes of rating. In rating a hereditament is established when the four ingredients of rateable occupation exist. This was first established in *John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area [1949] 1 KB 344, 350* and cited in the Supreme Court decision of *Cardtronics*: These four ingredients are 1) actual occupation 2) exclusive occupation 3) beneficial occupation and 4) the possession must not be for too transient a period.

20. Whilst both occupiers were in actual occupation, that they both enjoyed beneficial occupation and that the existence and occupation of the hereditament was not for a too transient period, the panel had to consider if they both enjoyed exclusive occupation.

21. The Supreme Court decision, cited by the Valuation Officer, considered the underlying principle in the test of exclusive occupation where paramount occupation may arise remained as that stated by Lord Herschell in *Holywell Union v Halkyn District Mines DrainageCo* [HL1895].

    > *"where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive he does not cease to be liable to the rate, nor does the other become so…"*

22. Having regards to Lord Herschell comments as a starting point, the panel needed to consider the effect by the head lessee of, the transfer of part of the building to another company. The transfer did not in itself provide the answer merely the starting point.

23. Whilst each company had their separate areas within the shop with designated walkways within the premises and the right to access the premises at any time, there was only one entrance. Whilst a single entrance did not of itself provide the answer (ATM's were only accessible through the supermarkets) it is the arrangements in place that decided the case. The panel considered, after hearing from Mr Rix, that the areas of occupation were blurred as there were minimal structural divisions and that on any one day the split could alter. The panel also considered that full control of the divisions would appear to be the appellant's, as head lessee and that they could change at any time under the appellant's instruction without any recourse from the sub tenant

24. Whilst the panel noted that a sub-lease had been granted for part of the property it was clear to the panel that the situation described was similar to that of a landlord and a lodger and that the head lessee was in paramount occupation.

25. Although there were two occupiers within the premises the panel considered that the appellant had paramount occupation of the premises and therefore for the purposes of rating law only one hereditament existed. As there was only one hereditament then there was only one entry in the 2017 Rating List.

26. The panel noted that the Valuation Officer had, in her decision notice informed the appellant that following the inspection it was discovered that there was more air conditioning than they had had recorded which had an effect of the RV of the premises and served Notice increasing the RV from £33,000 to £33,250 with effect from 24 June 2020. The matter before the panel at the hearing was whether a split of the hereditament should take place at the Material Day and therefore the panel accordingly dismissed the appeal.

Date: Monday 8 February 2021

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