UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – AGRICULTURAL HOLDINGS ACT 1986 – application to Agricultural Land Tribunal for succession on death of tenant – application naming wrong person as landlord – whether a valid application – whether error capable of being corrected by addition or substitution of correct party – s.39, Agricultural Holdings Act 1986 – rules 2, 10, 40, 47 Agricultural Land Tribunals (Rules) Order 2007 – appeal dismissed
LANDLORD AND TENANT – PROCEDURE – whether permission required for appeal to Upper Tribunal from the decision of an Agricultural Land Tribunal in Wales – s.6, Agriculture (Miscellaneous Provisions) Act 1954 – s.11, Tribunals, Courts and Enforcement Act 2007

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE AGRICULTURAL LAND TRIBUNAL (WALES)

BETWEEN:

DANIEL JAMES ADAMS

Appellant

-and-

THOMAS JAMES CECIL JONES

Respondent

Re: Cyffionos,
Cross Inn,
Llandysul,
Ceredigion SA44 6LR

Martin Rodger QC, Deputy Chamber President
8 December 2020
Hearing conducted by Skype

Ewan Paton, instructed by JCP Solicitors, for the appellant
Andrew Williams, instructed by Allington Hughes Solicitors, for the respondent

The following cases are referred to in this decision:

Elim Court RTM Company Ltd v Avon Freeholds Ltd [2017] EWCA Civ 89

Kellett v Alexander [1981] 1 EGLR 1

Natt v Osman [2014] EWCA Civ 1520

Parsons v George [2004] 1 WLR 3264

Introduction

1. On the death of the tenant of an agricultural holding, a close relative of the deceased who satisfies certain eligibility conditions may apply under Part IV of the Agricultural Holdings Act 1986 for a direction entitling them to a new tenancy of the holding. If the holding is in Wales the application must be made to the Agricultural Land Tribunal (the ALT); if it is in England it must be made to the First-tier Tribunal. In either case the application must be made within three months beginning with the day after the date of death of the tenant. There is no power to extend that time limit.

2. On 8 April 2019 the respondent, Mr Cecil Jones, applied to the ALT for succession to the tenancy of Cyffionos, an agricultural holding at Cross Inn, Llandysul, Ceredigion, following the death of his father, Mr John Lloyd Jones, who had been tenant of the holding since 1966. The application contained a mistake. The landlord of the holding was a company, Adams DSB Ltd (the Company), but on the application form Mr Jones' agent named the appellant, Mr Dan Adams, as landlord and as the respondent to the application for succession. Mr Adams has never been the landlord of the holding but he is the sole director of the Company. By the time Mr Jones appreciated that a mistake had been made it was too late for him to make a new application.

3. The ALT decided that the mistake was not fatal to Mr Jones' application. It took the view that anything Mr Adams knew was also known by the Company and that the Company had therefore been aware, within three months of the death of Mr Jones' father, that an application had been made to the ALT for a direction entitling Mr Jones to succeed to the tenancy. By a decision issued on 2 March 2020 the ALT substituted the Company as respondent to the application in place of Mr Adams.

4. The issue in this appeal is whether the ALT was entitled to take that course or whether, as Mr Adams and the Company argue, the application was not valid at all because it was not made against the landlord of the holding and cannot be cured by amendment or substitution after the expiry of the three-month time limit provided by section 39(1), 1986 Act.

5. The appeal also raises a short procedural point, namely whether permission is required to bring an appeal from the ALT to the Upper Tribunal. The notice of appeal was filed on the assumption that permission to appeal was not required, but the appellant also made an application for permission in case that assumption was mistaken. The question has never previously arisen and I directed that the Tribunal would consider whether permission was required at the hearing of the appeal but that if permission was necessary it would be given.

6. At the hearing of the appeal the appellant was represented by Mr Ewan Paton and the respondent by Mr Andrew Williams. Mr Paton confirmed at the start of the hearing that he also represented the Company. I am grateful to both counsel.

Permission to appeal

7. Before 1 July 2013 separate agricultural land tribunals were constituted for different areas of England and Wales under section 73, Agriculture Act 1947. A right of appeal against any decision of an ALT lay to the High Court under section 6, Agriculture (Miscellaneous Provisions) Act 1954.

8. An appeal to the High Court under section 6 was by means of a reference to the Court of a question of law. A party who wished to appeal was required to ask the ALT to make the necessary reference (rule 33, Agricultural Land Tribunals (Rules) Order 1978). If the ALT refused to make a reference the appellant had the right to apply to the High Court for an order directing it to do so (section 6(2), 1954 Act). There was therefore a requirement to obtain the consent or permission either of the ALT or of the High Court before an appeal could be brought.

9. On the creation of the Property Chamber of the First-tier Tribunal (FTT) on 1 July 2013 the jurisdiction formerly exercised by ALTs for areas in England was transferred to the FTT by article 3 of the Transfer of Tribunal Functions Order 2013 (the 2013 Order). Under section 11, Tribunals, Courts and Enforcement Act 2007, a right of appeal from a decision of the FTT lies to the Upper Tribunal on a point of law and permission to appeal is required.

10. Article 3 of the 2013 Order did not apply to the ALT in Wales. Instead, paragraph 196 of Schedule 1 to the 2013 Order amended section 6 of the 1954 Act. An appeal on any point of law from a decision of the ALT must now be made to the Upper Tribunal, and the former route of appeal to the High Court has been abolished. In its amended form section 6 makes no mention of a requirement to obtain permission for an appeal; section 6(2) and the procedure for an application to the High Court for an order requiring the ALT to make a reference if it refused to do so on request have been repealed.

11. The position is therefore clear. Appeals from the ALT on points of law are not governed by section 11, 2007 Act, which is concerned only with appeals from the FTT. The right of appeal from the ALT is under section 6, 1954 Act, and there is no requirement to obtain the permission of the ALT or of this Tribunal. The ALT is now established only in Wales, and in this respect the law in Wales is different from the law in England.

The facts

12. The material facts are stated in paragraph 2 above and are not in dispute. There was a suggestion in submissions made to the ALT that neither the respondent nor his late father had been aware that the Company was the landlord of the holding, but the ALT was satisfied that that was not the case.

13. On 2 April 2015 the Company became the registered proprietor of the freehold interest in the holding following a transfer from members of the Adams family (not including the appellant). Correspondence followed between the Company and Mr John Lloyd Jones and his advisers, including over the service of a notice to quit in 2016 which was not proceeded with, and over the payment of rent to the Company, as a result of which the respondent and

his father had become aware that the Company had acquired the freehold reversion to the tenancy.

14. Mr John Lloyd Jones died on 13 February 2019. The three-month period within which the respondent was entitled to apply to the ALT under section 39 of the 1986 Act for a direction entitling him to a new tenancy ran until 14 May 2019.

15. The respondent made his application for succession using a form published by the ALT and adapted from a previous prescribed form. Section 2 of the form was headed "Information about the Respondent Landlord" and asked for the full name, address and telephone number of the landlord of the holding. The respondent's agent, who completed the form on his behalf, inserted the name and address of the appellant, Mr Adams. The address given was not that of the Company's registered office.

16. The application form also required the applicant to state whether he had notified the landlord of the application. The person completing the form answered affirmatively to that question, but notice was in fact sent to the appellant, Mr Adams, and not to the Company.

17. The application was received by the ALT on 8 April 2019. The ALT Secretary sent notification that the application had been made to the appellant, but not to the Company. There is some uncertainty about when that notification was received, and a second copy had to be sent, but on 9 May 2019 the Company's solicitors informed the ALT that their client was the landlord. On 15 May the same solicitors filed a reply to the application on behalf of the Company as landlord, but stated that this was without prejudice to their contention that the application itself was defective because the respondent named in it was not the landlord. The Company also applied for consent to the operation of a notice to quit given under Case G of Schedule 3 to the 1986 Act.

The statutory scheme

18. Part IV of the 1986 Act has effect with respect to any tenancy of an agricultural holding granted before 12 July 1984. Sections 36 to 48 apply where an agricultural holding is held under such a tenancy and the sole (or sole surviving) tenant dies and is survived by a close relative. Section 36(1) confers the right for any eligible person to apply to "the Tribunal" under section 39 for a direction entitling them to a tenancy of the holding. Where the holding is in Wales the Tribunal is the ALT (section 96(1)).

19. To be eligible to make an application, a person must satisfy two statutory conditions, in addition to being a close relative of the deceased tenant. The first condition concerns the source of the applicant's livelihood, and the second concerns their occupation of other agricultural land. Both conditions are technical and can sometimes be factually complex; the Tribunal is often required to resolve disputes between landlords and applicants over the eligibility of the applicant.

20. An application for a direction is initiated by an eligible person applying to the Tribunal under section 39(1) within three months beginning with the day after the date of death of the deceased tenant. No request for a tenancy or any other form of preliminary notice is

required to be given to the landlord before the application is made; no dispute over the applicant's entitlement or suitability need have crystallised. Section 40(5) lays down that provision is to be made by order under section 73(3), Agriculture Act 1947 requiring any person making an application to the Tribunal under section 39 to give notice of the application to the landlord of the holding to which the application relates and to take steps to bring the application to the attention of other persons interested in the outcome. That has been interpreted as requiring notice to be given after an application has been made.

21. Part IV itself does not include any express requirement concerning the content of an application for succession. It does not, for example, require that the applicant must identify the landlord of the holding as a respondent. Instead, the content of applications is the subject of procedural rules made under section 73(3) of the Agriculture Act 1947. I will refer to the relevant procedural rules shortly.

22. Although Part IV does not, in terms, require that the landlord or anyone else be named as a respondent to an application, it is made clear in a number of places that the landlord has a specific and important role to play.

23. Where only one application is made, if the Tribunal is satisfied that the applicant was an eligible person at the date of death and has not ceased to be so, they are directed by section 39(2) to determine whether in their opinion the applicant is a suitable person to become the tenant of the holding. Amongst the matters to which the Tribunal is directed to have regard in making its determination are "the views (if any) stated by the landlord on the suitability of the applicant" (section 39(8)(c)).

24. The statutory scheme allows for more than one close relative of the deceased tenant to make an application for a direction. Where more than one such person is eligible to apply and is determined by the Tribunal to be suitable to become the tenant of the holding, the Tribunal is required by section 39(6) to determine which of the applicants is the most suitable. Before making that determination, the Tribunal is required by section 39(7) to afford the landlord an opportunity of stating their views on the suitability of the applicant. The Tribunal may also give a direction specifying more than one applicant as entitled to a joint tenancy of the holding, but may only do so with the consent of the landlord (section 39(9)).

25. The death of the tenant does not bring the tenancy of an agricultural holding to an end, but it does give the landlord the opportunity to serve a notice to quit under Case G of Schedule 3 to the 1986 Act. By section 43(1), such a notice to quit will not take effect unless no application is made under section 39 or, having been made, an application fails, or the Tribunal consents to the operation of the notice. Before giving a direction under section 39(5) entitling an applicant to a tenancy of the holding, the Tribunal is therefore required by section 44(1) to afford the landlord an opportunity to apply for consent to the operation of any notice to quit given under Case G.

26. Finally, where the Tribunal gives a direction entitling an applicant to a new tenancy, provision is made by section 48 for arbitration on the terms of the new tenancy. The arbitration is initiated by the landlord or the tenant serving notice on the other demanding a

reference to arbitration (section 48(3)). "The landlord" for the purpose of this provision is defined in section 48(2) as "the landlord of the holding". A separate definition of "the landlord", applicable throughout the 1986 Act unless the context otherwise requires, is provided by section 96(1), where the expression is stated to mean "any person for the time being entitled to receive the rents and profits of any land".

27. The effect of a direction under section 39 is not to require the respondent to the application to grant a tenancy to the applicant. Section 45(1) provides that a direction entitles the applicant to a tenancy of the holding as from a date in the future (referred to as "the relevant time") on the terms provided for by sections 47 and 48; the tenancy comes into existence by statutory deeming: "and accordingly such a tenancy or joint tenancy shall be deemed to be at that time granted by the landlord to, and accepted by, the person or persons so entitled."

The Agricultural Land Tribunal Rules

28. The procedural rules governing proceedings in the ALT when the 1986 Act came into force were contained in the Agricultural Land Tribunals (Rules) Order 1978 and the Agricultural Land Tribunals (Succession to Agricultural Tenancies) Order 1984, both made under the power in section 73, Agriculture Act 1947. The 1984 rules and certain parts of the 1978 rules were also applicable to applications for succession under the predecessor of Part IV of the 1986 Act, provisions found in Part II, Agriculture (Miscellaneous Provisions) Act 1976 and Schedule 2 to the Agricultural Holdings Act 1984. The procedural rules were not updated to take account of the 1986 Act until the Agricultural Land Tribunals (Rules) Order 2007 (the 2007 Rules) introduced new rules and revoked both the previous Orders. The 1984 Order and the procedures which it described were part of the legislative background to the 1986 Act and it is relevant to consider them briefly for that reason (always remembering that their application after the commencement of the 1986 Act was problematic because they were not updated until 2007).

29. The Schedule to the 1984 Order set out most of the rules which were to apply to succession applications. Rule 3(1) provided that an application under the predecessor of section 39 (section 20, 1976 Act) was to be made in Form 1 in the appendix to the rules, or in a form substantially to the like effect. Paragraph 7 of Form 1 required the applicant to state the name and address of the landlord of the holding. Rule 5(1) required the applicant to serve notice of the application on the landlord at the time of making the application, and rule 6 provided for a landlord who intended to oppose an application to reply using Form 1R, which was appended to Form 1. If no such reply was received by the ALT within the one month permitted by rule 6 then the landlord was prohibited by rule 15(1) from disputing any matter alleged in the application.

30. The use of prescribed forms was abandoned by the 2007 Rules. In their place Part 2 of the Rules contains provisions about applications and replies. Rule 2(2) specifies the content of an application, including that "the application must state - … (b) the name and address of every respondent … [and] (f) the name and address of every person who appears to the applicant to be an interested party, with reasons for that person's interest". "Interested

party" is defined in rule 1 and includes any other applicant, the personal representatives of the deceased tenant, and any person eligible to make an application under section 39, but it is expressly stated not to include a respondent. The definition of "interested party" is not exhaustive but in practice the "interested parties" are usually either rival applicants for succession or other close relatives of the deceased tenants.

31. Upon receiving an application, rule 3(1)(c) requires the ALT's Secretary to deliver copies to the named respondents and rule 3(2) requires that at the same time some basic information about the proceedings be provided to the parties and to any interested parties. Provision is made by rule 4 for the respondent to deliver a reply. Rule 8(1) permits a party to amend an application or reply at any time before being notified of the date of the hearing; after that date the permission of the ALT Chairman is required for any amendment (rule 8(2)).

32. By rule 9 an "interested party" may give notice to the ALT Secretary that they wish to take part in the proceedings as a respondent.

33. Rule 10 provides for the addition of new parties to the proceedings. If, on the application of a party or otherwise, the Chairman of the ALT considers that it is desirable that a person having an interest in the proceedings be made a party, they may order that person to be joined as a respondent (or as an applicant if the applicant consents).

34. Part 5 of the Rules is headed "additional powers and provisions". It contains Rule 33 which, so far as material, provides that "the Tribunal may regulate its own procedure", subject to the provisions of the 1986 Act and of the Rules. It also contains a power to strike out an application which discloses no reasonable grounds for its having been made or is otherwise an abuse of process (rule 34).

35. Rule 40 applies specifically to applications under section 39. It requires an applicant, before making an application, to deliver a notice in writing of their intention to do so to "all interested parties" (rule 40(2)). This may have been intended to satisfy the requirement of section 40(5), 1986 Act, that procedural rules should require an applicant to give notice of the application to the landlord. But the expression "interested party" is defined by rule 1 to exclude the respondent (and hence, ordinarily at least, the landlord) so a wider meaning would have to be given to the expression where it appears in rule 40(2) for the rule to achieve that purpose; the definitions in rule 1 are stated to apply unless the context otherwise requires, but rule 40 is concerned only with succession on death or retirement and the expression "interested party" is used only in connection with such applications, so at best the rule is poorly designed for its apparent purpose. Rule 40(6) provides also that a landlord who fails to reply to the application within the one month allowed is not to be entitled to dispute any matter alleged in the application, but is entitled to give their views on the suitability of the applicant or to apply for consent to the operation of a Case G notice to quit.

36. Finally, rule 47 anticipates inevitable irregularities in following the relevant procedures. By rule 47(1), any "irregularity" resulting from a failure to comply with any provisions of the

Rules or any direction of the ALT "does not of itself render the proceedings invalid". By rule 47(2) the ALT may give any direction it thinks just to cure or waive the irregularity.

The ALT's decision

37. In the heading to its decision the ALT identified Mr Adams as the respondent to the application. It did so, presumably, because Mr Adams had been named as the "Respondent Landlord" in Mr Jones' application. But the reply to the application delivered to the ALT on 15 May in compliance with rule 4(2) was a reply by the Company supported by a statement of truth by its solicitor. A covering letter forcefully made the point that Mr Adams was not the landlord and that the Company was, and asserted that the application was therefore defective. Mr Adams was recorded in the decision as being represented in the proceedings by the same solicitors, but I am not aware of any reply to the application having been made on his behalf.

38. The ALT identified the issue which it had to determine as whether by naming Mr Adams and not the Company as respondent the application was "defective to the point of invalidity". It found that Mr Adams was not the landlord, and that the Company was; the applicant and his representatives were wrong when they suggested they had not had knowledge of those facts. But the ALT also considered that the relationship between Mr Adams and the Company was important. He was its sole director and officer so anything brought to his attention relating to a Company asset was inevitably brought to the attention of the Company, whether or not the communication was addressed to the Company. No prejudice or confusion had been caused by the error in naming Mr Adams as respondent.

39. The ALT described the naming of Mr Adams as an irregularity and as a breach of rule 2(2)(f) (by which it must have meant rule 2(2)(b), which requires the applicant to state the name and address of the respondent). It noted that rule 47 gave the ALT the power to cure or waive any irregularity, and it considered that it was just to do so in this case. It did not accept that the error was comparable to naming the Prime Minister as the respondent, as had been argued on behalf of Mr Adams. The important point was that, through its sole officer, Mr Adams, the Company had known that the application had been made, notwithstanding the absence of a reference to the Company itself. The appropriate direction to cure the irregularity was for the Company to be substituted in Mr Adams' place as respondent, which would enable it to participate fully in the application.

The appeal

40. On behalf of the appellant, Mr Paton argued that the landlord is integral to, and expressly involved by statute in, an application under section 39. Both the statute and the relevant Rules are premised on that assumption. An application identifying the correct landlord was a 'straight and narrow gateway' for the attempted exercise of the section 39 right, and it must be pursued within 3 months of the date of the previous tenant's death, with no extension possible. An applicant who names the wrong person as landlord may still withdraw and resubmit, or amend the application within the permitted 3 months. If they do not, that is too bad, and it is too late to do so after the expiry of the time limit.

41. Mr Paton's analysis was simple: no valid application had been made in time and it had become too late to make one after 13 May 2019. He referred to guidance on the appropriate test to apply provided by the decisions of the Court of Appeal in *Natt v Osman* [2014] EWCA Civ 1520, and *Elim Court RTM Company Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89. Stating the name of the landlord was integral to the statutory procedure and a failure to do so was fatal.

42. The ALT could not, Mr Paton submitted, re-constitute and re-make the application under the guise of curing a mere "irregularity" or directing a routine substitution of a party. To substitute the actual landlord as the respondent to the application with retrospective effect would bypass the strict time limit under section 39. An express rule would be required to achieve such an effect. In civil court proceedings such a rule was provided by CPR 19.5, but no comparable rule was available to the ALT.

43. Mr Paton relied on the decision of Woolf J in *Kellett v Alexander* [1981] 1 EGLR 1 in which an applicant for succession under the 1976 Act had failed to give the notice now contemplated by section 40(5), 1986 Act, which was then provided for by rule 4(1) of the procedural rules. The question was whether that omission was an irregularity which could be cured or overlooked, or whether it was more fundamental. Woolf J considered that the failure to give such a notice was not fatal. He contrasted it with a failure to comply with the requirement to make an application within the relevant period of three months from the date of death. That was "an imperative provision of the Act" which could not be waived by the Tribunal. In such a case the Tribunal's usual power to extend time or to cure irregularities had no application:

> "I do not think that on their normal reading those rules are appropriate to deal with an application which fails *in limine.* Such an application, which is made out of time, appears to be outside the express words of rule 37 and rule 38 because until a proper application is made there are no proceedings to which those rules can apply."

44. Mr Paton argued that naming the correct landlord was a fundamental requirement, implicit in the statute though not express except in the Rules. A failure to fulfil that requirement within the time limit for making an application could not be cured by any exercise of discretion by the Tribunal because there were no valid proceedings within which the Tribunal's dispensing power could operate.

45. Mr Paton also submitted that, in the absence of a procedural rule equivalent to CPR 19.5 (which gives the Court power to substitute the correct defendant after the expiry of a limitation period) the ALT should have followed what Dyson LJ described as "the long established practice at common law that a claimant would not be permitted to join a person as defendant to an existing action at a time when the defendant could have relied on a statute of limitation as barring the claimant from bringing a fresh claim against him" (*Parsons v George* [2004] 1 WLR 3264, [8]).

46. For the respondent, Mr Williams supported the approach taken by the ALT and argued that the appeal should be dismissed.

Discussion

47. As Etherton C explained in *Natt v Osman* [2014], where there has been a failure to comply with a statutory procedure for a private person to acquire a property right, the modern approach is not to ask whether the requirement was mandatory, or whether it has been substantially complied with; instead:

> "The court has interpreted the notice to see whether it actually complies with the strict requirements of the statute; if it does not, then the court has, as a matter of statutory interpretation, held the notice to be wholly valid or wholly invalid."

48. In *Elim Court RTM Company Ltd v Avon Freeholds Ltd*, at [52], Lewison LJ (commenting on the Chancellor's judgment in *Natt v Osman*) identified some of the factors which will be relevant to an assessment of the consequences of non-compliance with a requirement to give notice in a particular form, or to a particular person:

> "The outcome in such cases does not depend on the particular circumstances of the actual parties, such as the state of mind or knowledge of the recipient or the actual prejudice caused by non-compliance on the particular facts of the case: see [32]. The intention of the legislature as to the consequences of non-compliance with the statutory procedures (where not expressly stated in the statute) is to be ascertained in the light of the statutory scheme as a whole: see [33]. Where the notice or the information which is missing from it is of critical importance in the context of the scheme the non-compliance with the statute will generally result in the invalidity of the notice. Where, on the other hand the information missing from the statutory notice is of secondary importance or merely ancillary, the notice may be held to have been valid: see [34]. One useful pointer is whether the information required is particularised in the statute as opposed to being required by general provisions of the statute. In the latter case the information is also likely to be viewed as of secondary importance. Another is whether the information is required by the statute itself or by subordinate legislation. In the latter case the information is likely to be viewed as of secondary importance. In this connection it must not be forgotten that while the substantive provisions of a bill may be debated clause by clause, a draft statutory instrument is not subject to any detailed Parliamentary scrutiny. It is either accepted or rejected as a whole. A third is whether the server of the notice may immediately serve another one if the impugned notice is invalid. If he can, that is a pointer towards invalidity."

49. Both *Natt v Osman* and *Elim Court* were cases about the consequences of errors in statutory notices required to be given before a claim could be made for the acquisition of property or a right over property. The error in this case is of a different kind, in that it relates to the validity of the steps taken to commence the proceedings themselves, rather than to the satisfaction of a prior procedural condition. The 1986 Act lays down no procedure for a preliminary notice seeking the agreement of the landlord to the grant of a new tenancy, or notifying the landlord of an intention to make an application. The only

step required by section 39 is to make the application itself within the time allowed, and the requirement to give notice of the application to the landlord is left by section 40(5) to be dealt with by Tribunal Procedure Rules.

50. The 2007 Rules do not provide a specific power to substitute one person in place of another as a party to proceedings; rule 10 is concerned with the addition of new parties, and does not mention substitution (by which I mean one party taking the place of another, who then ceases to be a party). The FTT nevertheless made an order for substitution, relying on rule 47, considering that to be a just response to the irregularity resulting from the applicant's failure to name the Company as respondent to the application.

51. The period of three months for the making of an application had already expired when the FTT made its order. That seems to me to give rise to two questions.

52. The first question is whether, as a matter of statutory interpretation, correctly identifying the name of the landlord is an indispensable requirement of a valid application under section 39. The factors identified by Lewison LJ in *Elim Court* will be relevant in answering that question.

53. The second question is whether the power to correct an irregularity conferred on the ALT by rule 47 of the 2007 Rules can be exercised to substitute the correct respondent after the expiry of the three-month period within which a valid application must be commenced.

54. It might be though that the answer to the first question is obvious and that, to be valid, any application under section 39 must correctly identify the landlord of the holding as respondent. As I have already noted, the landlord has rights under the Act to which the ALT is required to give effect (by taking into account any views expressed on the suitability of the applicant, or by considering an application for consent to the operation of a Case G notice to quit before making a direction). How else are those rights to be exercised than by the landlord being correctly identified as the respondent to the application? But close examination of the statutory scheme suggests that the answer is not so straightforward.

55. Part IV of the 1986 Act provides for an application to be made to the Tribunal for a direction for a new tenancy without the need for any previous contact between the applicant and the landlord. The giving of notice to the landlord is relegated to the rules by section 40(5) which does not say whether the landlord is to be informed before, after, or at the same time as the application. The 1976 Order required notice to be given "at the time of making [the] application" which Woolf J interpreted in *Kellett v Alexander* as requiring notice to be given "with reasonable promptitude" after lodging an application. Rule 40(2) of the 2007 Rules now requires that, before making an application, notice must be given to "the interested parties" (with the difficulties of interpretation which have already been noted).

56. In some cases, the applicant may be unaware of the identity of the landlord. The applicant is not the tenant of the holding and may well have had no previous dealings with the

landlord. An applicant may even be entirely absent from the holding while in higher education for up to three years before the tenant's death and still remain eligible.

57. As the facts of this case illustrate, the reversion to the tenancy of an agricultural holding may be transferred between members of the same family, or may be vested in a family company or trust without any prior notice to tenants. Changes of that nature may not be apparent at the time they take place and, when the 1986 Act was enacted, may not readily have been discoverable. In its Third Report on Land Registration, the Law Commission estimated that compulsory registration of title extended to areas covering 85% of the population of England and Wales (Law Com No 158, 31 March 1987, para 2.12) but large swathes of rural land were not designated as areas of compulsory registration.

58. It is the death of the person most likely to know the identity of the landlord, namely the tenant, which triggers the opportunity for an application under Part IV and the tenant may or may not have informed each of their potentially eligible close relatives of that information before their demise. But even the tenant may be unaware of the identity of the landlord. Rent may have been paid to the same agent without any change in the identity of the landlord being notified. Section 47(1), Landlord and Tenant Act 1987, which suspends the obligation to pay rent until the landlord has supplied the tenant with an address in England and Wales at which notices may be served on him, post-dates the 1986 Act and applies only to premises which include a dwelling house. Rent is usually payable by two six-monthly instalments under tenancies of agricultural holdings, and even where rent demands are served a change in the identity of the landlord may not come to the tenant's attention for many months after it has taken place.

59. Parliament was conscious of the problems which could be created for tenants of agricultural holdings by a change in the identity of the landlord (which could impede the tenant's ability to seek arbitration on rent or compensation for improvements, or to enforce repairing obligations, all of which require prior notice to be given). Section 93(5), 1986 Act provides protection until notice is given of a change of landlord by deeming any notice or document served on the original landlord to have been served on the new landlord. But section 93(5) applies only to a notice or other document served by the tenant. No similar protection is provided by the Act for a close relative of the deceased tenant who wishes to exercise the right conferred by section 36 to apply for a direction for a new tenancy of the holding.

60. In *Natt v Osman*, at [40], Sir Terence Etherton C described as a "powerful point" the fact that tenants required to serve an initial notice before exercising the right of collective enfranchisement may not be in a position to know who all the qualifying tenants are on whom the notice must be served, although he did not consider that it outweighed other cumulative indicators of the legislative intention in that case.

61. Important though the right of collective enfranchisement is, what is at stake in applications under Part IV, 1986 Act is of a different level of significance for those involved on both sides. An applicant may well have lived on the holding for the whole of their life, they will have worked there and, to succeed, must demonstrate that they have depended on the holding for their main source of livelihood for at least five of the last seven years. A

successful applicant will obtain lifelong security of tenure at a favourable rent, with the potential for a further succession for their spouse or the next generation of their family. As a general proposition, therefore, Parliament is unlikely to have intended that an application to the Tribunal under Part IV would be defeated at the outset by the inability of the applicant to provide a piece of information which they may have no reliable way of finding out and which the prospective respondent may have a strong incentive to conceal. Nor can the risk of an application being defeated in that way be dismissed as fanciful. The three-month period allowed for making an application is relatively short, and section 93(5) demonstrates that Parliament was aware of the difficulties which a lack of transparency in ownership might create.

62. Consideration of the statutory scheme does not seem to me to compel the conclusion that a valid application must include the correct name of the landlord. On the contrary, rather than require that the landlord be made a party to the application, the Act requires instead that rules make provision for the landlord to be given separate notice of the application.

63. Once the applicant has made an application to the Tribunal under section 39, the Act and the procedural Rules vest the Tribunal with certain duties and with the procedural tools to carry them out. There is no possibility of a succession application being nodded through on the basis that it is unopposed. Whether or not the landlord is named in the application or participates in the proceedings, the Tribunal is required to satisfy itself that the applicant was an eligible person at the date of death and has not ceased to be so (section 39(2)). Before making a direction the Tribunal is also required to afford the landlord an opportunity of stating his views on the suitability of the applicant (section 39(7)) and an opportunity of applying for consent to a notice to quit (section 44(1)). To enable the Tribunal to discharge these obligations it will have to be satisfied of the identity of the landlord, or at least that sufficient steps have been taken to ensure that the landlord is aware of the application and of the opportunities available to it. If there is any doubt over the identity of the landlord the applicant can be required to prove it by evidence. An applicant who failed to provide evidence, or a credible explanation for their inability to do so, would risk the application being struck out by the Tribunal as an abuse of process or as likely to obstruct the fair disposal of the proceedings under rule 34. In all probability a landlord who had been misidentified in the application would become aware of the proceedings and would make representations to the Tribunal, which would have power to add them as a new party under rule 10 and to extend time for them to file a reply under rule 4. The applicant would be in no position to object.

64. It is also notable that the Act makes no provision for cases where the identity of the landlord cannot be established. Such provisions are common in statutes conferring rights of enfranchisement or compulsory acquisition where a price is payable (for example section 33, Landlord and Tenant Act 1987, and section 85, Commonhold and Leasehold Reform Act 2002) and enable the statutory right to be exercised without naming the person entitled to object. The absence of such a provision is supportive of the conclusion that it is not required because a valid application can already be made under section 39 without naming the landlord.

65. The factors identified in *Elim Court* also point away from interpreting Part IV of the Act as requiring that an application which does not correctly name the landlord should be treated

as invalid. It is irrelevant in this or any other case whether the applicant in fact knows who the landlord is. I do not suggest that correctly identifying the landlord is unimportant or trivial but for the reasons I have given I do not consider that it is critical that the landlord's name be included in the application when it is first submitted; Lewison LJ did not rule out the possibility that the failure to take a step which was "of critical importance in the context of the scheme" would not invariably invalidate the procedure ("the non-compliance with the statute will generally result in the invalidity of the notice"). The statute itself does not include a requirement to name the landlord in the application. The requirement is now contained in the 2007 Rules, but the only Rules in force when the 1986 took effect prescribed a form which did not refer to applications under the 1986 Act at all. That is not a solid basis for inferring an intention by Parliament that strict adherence to the rules should be a condition of the validity of an application of such huge significance to the applicant.

66. The conclusion I have reached, therefore, is that a failure correctly to name the landlord of the holding is not fatal to the validity of an application under section 39, 1986 Act.

67. The second question can be answered much more easily. If a valid application can be made without correctly naming the landlord, time will stop running against the applicant when that step is taken. Whether an order adding or substituting a new person as respondent relates back to the date of the original application will not matter since the only step required by section 39 will have been taken in time: an application will have been made to the Tribunal, whether or not is has been made against a landlord.

68. Mr Paton acknowledged that, if it is right to regard the failure to name the correct landlord as an irregularity, rather than as fatal to the integrity of the application as a whole, the facts of this case provide strong support for the approach taken by the ALT. Rule 47 is clear that an irregularity "does not of itself render the proceedings invalid". There was no prejudice to the Company in not being named in the application, and indeed it protected itself by filing a timely reply disputing the applicant's right to a direction. It was only the fact that the Company reserved the right to object by stating that the reply was without prejudice to its right to argue that the application itself was invalid, that made it necessary to consider the issue in this appeal.

69. In my judgment the ALT reached the right conclusion and I dismiss the appeal.

Martin Rodger QC

Deputy Chamber President

18 January 2021