Two into one doesn't go

Supreme Court ruling clarifies the test of what forms a single hereditament

ON RATING

Blake Penfold

Not many rating disputes make it to the Supreme Court, so those decisions, when they do arrive, are eagerly awaited and keenly scrutinised – particularly when they concern something as fundamental as what should be the unit of assessment for business rates purposes. On 29 July 2015 the Supreme Court handed down its judgment in the matter of *Woolway (VO)* v *Mazars LLP* [2015] UKSC 53; [2015] PLSCS 240, a case which concerned how to determine whether non-domestic premises constituted one or more than one hereditament for the purposes of the rating list.

A floored approach

The facts of the case were that Mazars, an accountancy firm, occupied the second and sixth floors of Tower Bridge House, an eight-storey office building in central London. The Valuation Officer ("VO") had assessed the two floors separately for the purposes of business rates and Mazars challenged this, seeking to merge the two assessments to form a single "hereditament", as units of rateable property are known. The Valuation Tribunal for England agreed that the two assessments should be merged because the two floors were occupied by the same business and were functionally interdependent.

The Supreme Court shake-up

The Supreme Court unanimously allowed the VO's appeal and determined that the two floors must form separately rateable hereditaments. The judgment suggests that the principal test of whether units of property should form a single hereditament for rating purposes is a geographical one, and that test should be one of whether or not the parts "directly intercommunicate" one with another.

In the past, this geographical test has been taken to be one of whether or not the units were contiguous, but the Supreme Court seems to suggest that mere contiguity may not be sufficient. The decision makes clear that units of property which are occupied together, but do not directly intercommunicate can, on occasion, form a single hereditament but, for them to do so, the use of one part must be necessary for the effectual enjoyment of the other part. That question depends not on the use of a particular occupier but on the objectively ascertainable character of the property. In effect, the court is saying that if two properties are occupied together, but do not directly intercommunicate, they should not be assessed together unless one part could not effectively be occupied or let without the other.

The Court disapproved of the reasoning given by the Court of Appeal in *Gilbert (Valuation Officer)* v *S Hickinbottom & Sons Ltd* [1956] 2 All ER 101, which has for many years been regarded as the leading authority on whether property should be treated as a single hereditament or more than one. Instead, the court leaned more towards the reasoning used in a series of Scottish cases which relied on a strong geographical test expressed principally through direct intercommunication.

The Supreme Court ruling has effectively demolished the reasoning in *Gilbert*, describing it as "unsatisfactory" and saying that the decision "cannot be regarded as authority for very much".

Questions remain

The Supreme Court judgment will dash the hopes of a number of ratepayers occupying more than one building, or more than one floor in a single building, that they might be able to merge their rating assessments into one. It makes clear that rates are a tax on property, not a tax on business, and that the unit of assessment must therefore be subject to a primary test that is geographic and that should be one of direct intercommunication.

The decision offers important clarification of the test of what forms a single hereditament. This is, of course, a property tax and not a business tax, but the tenets of what is rateable, and the value of what is taxed, is the occupation of property, not the property itself; it would have been reassuring to have seen more direct mention of this in the decision.

The decision will also present a conundrum for the Valuation Office Agency, which has traditionally assessed adjacent floors together as a single assessment. This practice was not specifically before the Supreme Court, as the floors in the subject case were not adjacent, but while the judgments of Lord Gill and Lord Neuberger suggest that such an approach is wrong, that of Lord Carnwath described it as "unobjectionable", and the judgments of Lord Sumption and Lord Toulson did not mention this as it was not part of the facts of the case. It would be interesting to know, and we may at some stage find out, whether "direct intercommunication" between contiguous floors could encompass such things as data cables and telephone lines, or whether the tax is so ancient that only the direct movement of people and/or goods would satisfy the test. It is extraordinary that a tax with more than 400 years of history behind it still seems to find significant unanswered questions about its very basis.

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