

Case Name: *Cardtronics UK Ltd and others v Sykes and others (VOs)* [2020] UKSC 21 (20 May 2020)

Topic: ATMs in supermarkets and shops - identification of hereditament and identity of rateable occupier.

Full case: [click here](#)

Summary: Automated teller machines ("ATMs") had been entered by valuation officers in the 2010 rating list as individual hereditaments and rating demands were issued to the operators of the machines. The Court of Appeal had found in favour of the supermarkets and Cardtronics (overturning the Upper Tribunal's decision that the external ATMs were in the occupation of the machine operators and subject to separate assessment but the remainder were not) that none of the VO alterations should have been made. The Supreme Court dismissed the VO's appeal and determined (upholding the Court of Appeal's decision) that none of the ATMs should be separately assessed.

Commentary: The majority of ATMs under consideration were "external", in the sense that they could be accessed by members of the public without entering the premises of the host (the supermarket or other retail premises). The remainder were either in a fixed position and accessed internally or mobile units within a shop (the latter category comprising those operated by Cardtronics within convenience stores and other premises).

The two issues considered by the Supreme Court were (1) whether the sites of the ATMs were separate hereditaments (the machines themselves were non-rateable) and (2) assuming they were, who was in occupation of them? Appeals relating to some 10,000 other sites had been stayed pending the outcome of this case, hence the significance of the decision.

The Court recognised the contributions made in the VTE, the Upper Tribunal and the Court of Appeal towards clarifying the issue and emphasised the importance of the Upper Tribunal's reasoning, based on the facts (as the appeals thereafter could be on points of law only). The Court relied extensively on the Upper Tribunal's findings and stated that "in this highly specialised area of the law the higher courts should give particular weight to the expertise which has been developed by the senior judges and members of the Upper Tribunal (Lands Chamber)". The Court was also clear that intervention at a higher level is only possible if it goes beyond identifying a difference of evaluative assessment. It is this approach which underlies the Court's decision.

In all cases the ATM was operated not by the retailer but by a related banking company (or Cardtronics Maintenance for the convenience store ATMs). Unless it were established (as a matter of fact) that the operator of the machine enjoyed exclusive occupation of the space occupied by the machine (to the exclusion of the retailer), that occupation would not be rateable. It is essential to consider the question of rateable occupation as it is inextricably linked to whether a separate hereditament exists.

The Court considered the benchmark case of *Westminster Council v Southern Railway* [1936] AC 511 and the observations of Lord Russell concerning paramountcy of occupation of the premises in question, being the determining factor where there is concurrent occupation.

The VO's case was that the person in paramount occupation of the premises in question is the ratepayer to the exclusion of the owner of the larger hereditament of which they form part.

In the same case Lord Herschell had referred to the element of general control exercised by a landlord over lodgers in a residential building, where by reason of that control the landlord remained the rateable occupier of the whole building.

The Court was clear in this case that the factual matrix would determine the outcome in any situation where there could be said to be competing claims to occupation. In *Wimborne DC v Brayne Construction Co Ltd* [1985] RA 234 Lloyd LJ had sought to reconcile the concepts of exclusive and concurrent occupation by referring to the degree of control by one occupier over the other (or by a third party) as the determining factor. There had been sufficient control by Vtesse Networks of the pair of fibres used by it within a network (owned by the cable company) to cause it to become the rateable occupier, as decided by the Court of Appeal in 2006.

Although the ATMs themselves were not rateable, the Court accepted that the presence of non-rateable plant and machinery can be a factor to weigh up in determining if a separate hereditament exists or not. The value of such plant must be ignored in the valuation exercise, but that is not to say that the existence of the plant is also ignored in answering the basic question (subject to exclusive occupation having been established on the facts).

The Court referred to the Scottish case of *Assessor for Central Scotland Joint Valuation Board v Bank of Ireland* [2011] RA 195, where there was no direct link between the operation of an external ATM by the bank and the sub-post office business carried on behind the façade. In that case the ATM premises were separately rateable (there being no control by the post office). The Scottish Lands Valuation Appeal Court distinguished an earlier case (*Clydesdale Bank plc v Lanarkshire Valuation Joint Board Assessor for Lanarkshire* 2005 SLT 167) in which it had decided that free-standing internal ATMs accessible only from within the premises were not rateable.

Interestingly, the Supreme Court prefaced its reasoning by stating that there is a danger of over-analysis in such cases. It emphasised that the factual context is what matters.

Dealing with the two key points before it, the Court determined:

(1) the Plant and Machinery Regulations do not extend to ignoring entirely the existence of the ATMs, including for the purpose of identifying the hereditament. This had been confirmed by the Upper Tribunal and accepted by the Court of Appeal. The Supreme Court also rejected an argument by the retailers that the ATM site was not self-contained and did not therefore satisfy the test in *Woolway v Mazars*;

(2) the operation of the ATMs was an integral part of the business activity of the store, so is distinguishable from the circumstances in *Southern Railway* or *Wimborne*. The retailer does not exercise any control which may be said to interfere with the operations of its banking arm at the ATM. In this respect the Court followed the reasoning of Lord Herschell in *Southern Railway*.

The Supreme Court considered that the Upper Tribunal had taken an unduly narrow approach by determining that the external ATMs were in rateable occupation by the banks, due to the physical separation of those ATMs from the business of the store. The Court found no difference between external and internal ATMs – in both cases the retailer remained in occupation of the ATM site.

In conclusion, the principle emerging from this decision is that control is key – where possession of part of a larger building is given to another on a non-exclusive basis the former retains rateable occupation of the whole. In the retail context it is sufficient if the ATM is operated as part of the overall business, provided there is a close connection with the retail operation of the store.

This will apply equally to external and internal ATMs and (clearly) to free standing ATMs, save for external ATMs where the ATM operator is entirely separate from the business of the host company (as in Bank of Ireland).

By emphasising the importance of the factual context, the Supreme Court has left open the prospect of cases appearing before the Upper Tribunal where the element of control is not so clearly evidenced or is unclear. Future cases will turn on their facts, as the Court has acknowledged.

Town Legal LLP