Case Name: *Woolway v Mazars* [2015] UKSC 53 (29 July 2015)

Topic: Unit of Assessment

Full case: click here

Summary: All floors in a multi-occupied office building occupied by the same entity must be separately assessed even where the floors are contiguous, save where there is a direct link (e.g. an internal staircase) without passing through the common parts.

Commentary: This Supreme Court landmark case related to premises leased by a firm of accountants in Tower Bridge House, being on the 2nd and 6th floors of a multi-occupied office building. The intervening floors were leased to a firm of solicitors.

The question before the court was whether the two floors should be assessed for business rates as a single hereditament or as two separate hereditaments, the former being generally advantageous for ratepayers where the combined area of the premises is sufficient to attract a quantum allowance (although this was not the case for Mazars, hence their representation by an Advocate of the Court, at public expense).

The practice of the Valuation Office prior to this case starting its journey through the various courts had been to enter parts of an office building occupied by the same entity as a single hereditament where they were contiguous but as separate hereditaments where they were not. As long ago as 2010 Mazars had applied to merge the two entries with effect from November 2007, when they had started to occupy the space, on the basis that the floors were functionally inter-dependent.

The VTE agreed and directed merger, with a fragmentation allowance of 5%. On appeal by the valuation officer, the Upper Tribunal (Lands Chamber) affirmed the VTE's decision, but with no allowance. The Court of Appeal dismissed the VO's appeal. The Supreme Court took the opportunity to review and seek to rationalise the case law dating from as far back as the 19th century and considered a number of Scottish cases decided on the same principles as those applicable in England.

The Court analysed the geographical and functional principles which underpinned the early Scottish cases under which, in the absence of a functional connection of an objective nature, different buildings should be separately assessed. A unit of occupation which was self-contained and could be separately let was invariably separately assessed in a number of Scottish cases. An attempt to argue that the use made by a particular business of premises separated by a main road was unsuccessful in a case decided by the Lands Tribunal for Scotland in 2001 – the underlying purpose [of rating legislation] was said to be to provide a tax on property, not a tax on persons or businesses.

Lord Sumption derived three basic principles from these Scottish cases:

1. The primary test is geographical (where premises are contiguous they will only be assessed as one if there is intercommunication);

2. Where two premises are geographically distinct a functional test may enable them to be a unified assessment but only where the use of one is necessary to the effectual enjoyment of the other; and
3. The question of "necessary to the effectual enjoyment" depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects.

The Supreme Court was highly critical of the decision which had previously stood the test of time – Gilbert v Hickinbottom [1956] 2 QB 40. In short, it was said that the decision could not be supported on the grounds relied upon by the judges involved. Similar criticism was levelled at the reasoning of the then President of the Upper Tribunal (Lands Chamber) when the Mazars case came before him.

Lord Sumption's conclusion was that the premises demised to Mazars should be separately assessed as they are not contiguous and even if they were the void between each floor (belonging to the landlord) would render them separate in the absence of an intercommunicating staircase.

Lord Gill agreed and emphasised that functionality is not a reference to the use which the ratepayer chooses to make of the premises. It is instead a reference to a necessary interdependence of the separate parts that is objectively ascertainable.

He also rejected the Valuation Officer's suggestion that the decisive criterion is contiguity. He failed to see how the proximity of two separate floors in an office building where the only means of access is via the common parts made any difference to their treatment as two separate hereditaments.

Lord Neuberger added that by interlinking the two floors by an internal staircase one would make them one hereditament, so emphasised the importance of the self-containment criterion. In his words "if they are each self-contained from the other, then, absent very unusual facts, they should be separate hereditaments… Absent a communicating internal staircase or lift, passing through the void, two consecutive floors in the same building would be physically separated in much the same way as two non-consecutive floors."

Lord Carnwath expressed doubt as to whether contiguous floors in single occupation should be separately assessed but that set of facts was not before the Court and he did not, therefore, need to develop that line of reasoning.

Following an announcement in the 2017 Budget the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill was introduced in the House of Commons and received Royal Assent on 1 November 2018. The Act has retrospective effect from 1 April 2010 and provides that where two or more hereditaments are occupied by the same person (whether or not in the same building but provided they are not used for a different purpose) and meet the "contiguity condition" they will be assessed as one hereditament (contrary to the Mazars SC decision). Premises will be contiguous if either (a) they are on consecutive floors of a building and some or all of the floor of one hereditament lies directly above all or part of the ceiling of the other hereditament (ignoring voids for services etc) or (b) they share a common wall, fence or other means of enclosure. Importantly, there is no reference in the Act to any internal means of communication

between the two (or more) contiguous hereditaments as being required to achieve a single assessment.

This Supreme Court decision has become the new benchmark in identifying the unit of assessment and the 2018 Act is intended to restore the VOA's practice of assessing as a single unit of occupation contiguous floors of multi-occupied office buildings. However, there is expected to be a body of developing case law engendered by the Act and the attendant Regulations.