

CO/2743/2010

Neutral Citation Number: [2010] EWHC 2921 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 3 November 2010

B e f o r e:

MR JUSTICE CALVERT SMITH

Between:

ALI IMTIAZ MALIK

Claimant

v

LONDON BOROUGH OF TOWER HAMLETS_

Defendant

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(Official Shorthand Writers to the Court)

Mr Zane Malik (instructed by Pembrokes) appeared on behalf of the **Claimant**
Ms Genevieve Screeche-Powell (instructed by LB Tower Hamlets) appeared on behalf of
the **Defendant**

J U D G M E N T

1. MR JUSTICE CALVERT SMITH: This is a statutory appeal against a decision of the Valuation Tribunal given on 29 January 2010. The Tribunal found that 176 Vallance Road, London E2 was a house in multiple occupation by licensees, and that the owner of the property (this appellant) was therefore liable to pay Council Tax in respect of it for the years 2003 to 2009.
2. The regulation which the Tribunal had to consider was Regulation 2 of the Council Tax (Liability for Owners) Regulations 1992 made under section 8 of the Local Government Finance Act 1992. Regulation 2 reads:

"The following are the classes of chargeable dwellings prescribed for the purposes of section 8(1) of the of section 8(1) of the Act-

[Houses in multiple occupation]

Class C a dwelling which-

...

(b) is inhabited by a person who, or by two or more persons each of whom either-

(i) is a tenant of, or has a licence to occupy, part only of the dwelling; or

(ii) has a licence to occupy, but is not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of the dwelling as a whole."

3. The Council's case was that a Mr Ahmed lived at the property under a complimentary licence from the appellant for that period 2003 to 2009. Their submission was that there was evidence that a number of other people had lived there over that period under a verbal licence, thus bringing the property within the class of chargeable dwellings to which I have just referred.
4. The case for Mr Ahmed and Mr Malik at the hearing was that that was simply not true; there had not been such people living at the property. This being a Tribunal, and perhaps being somewhat informal, it appears to have been the somewhat unusual position that Mr Malik and Mr Ahmed were both parties to the hearing, but Mr Malik was also representing Mr Ahmed in his capacity as a solicitor.
5. The respondent submits that the finding included a finding that they had been licensees during the period. The appellant submits that there is no specific finding in the judgment to that effect, and that therefore the matter should be remitted to the Tribunal for that question to be considered.
6. In order to decide which of those submissions is correct, it is important to look at the detail of who the people were who were identified as occupying the premises during the period. Five or possibly six people had registered as voters at that address during the period up to but not including 2009. Voter registrations, it was submitted, are

hand-delivered to addresses, thus suggesting that the persons who filled them in would have been at the addresses to receive them.

7. Next, a family of six people was occupying the house when it was visited by a counsel employee on 14 August 2009. Next, a woman aged 75 had in 2007 presented a utility bill from the address in support of her application for parking vouchers to be allowed to park at that address. Next, another person had in the same year (2007) stated on a form that the property had been his last address, and when further enquiries were made by the Local Council, he said that he had not in fact moved out but that it was his parents' address, and in due course the names of those parents, not the appellant or the agreed licensee Mr Ahmed, were given.
8. Finally, a document purporting to be signed by the appellant and sent to the Council claimed that in 2003 the appellant was actually living at the address with his family.
9. Mr Zane Malik, who has represented the appellant today, submits that the judgment can only be taken as indicating that Mr Ahmed's word about who had been living at the property had been disbelieved, rather than the word of the appellant in this case, so that there had not been actually an adverse finding so far as he was concerned. This may be attributable in part to the confusion in Mr Malik's role, both as a party to the proceedings and as a solicitor for the other party, but there are a number of passages in the judgment of the Valuation Tribunal which suggests strongly that Mr Malik was putting a positive case on his (Mr Malik's) behalf.
10. Mr Malik told the Tribunal that Mr Ahmed lived at the property on a complimentary basis; there had been no need for a tenancy agreement. He said that he had not been informed of the visit of the Council's Inspector when the Inspector visited and found the family living there in August 2009. But he could advise that there had been builders at work in the house while Mr Ahmed was abroad. He said that he believed that the utility bill from the property which had been produced by the lady in connection with parking vouchers was a bogus bill.
11. He suggested that the reason for another person giving the address may be the fact that that person had once been a client of his in immigration matters, who had since been deported to Pakistan.
12. In summary, it is perfectly clear to me that Mr Malik did indeed give evidence before the Tribunal which was being considered by the Tribunal in its judgment. It is in those circumstances that the decision has to be considered.
13. In its decision and reasons, the Tribunal said:

"Mr Malik has advised that the three bedroom property has been without tenants from 2003 until March 2009, and the sole occupier throughout this period has been Mr Ahmed."
14. In the next paragraph the panel recorded these words:

"However, the Panel is of the opinion that the weight of evidence

provided by Mr Tattoo supports his argument that more than one occupier has been in residence at the address since 2003."

The Panel goes on to explain why.

15. That seems to me to be a clear finding that Mr Malik's advice that the property had been without tenants and the sole occupier had been Mr Ahmed has not been believed.
16. It is right to say, as Miss Screeche-Powell has conceded, that the Tribunal nowhere referred in their judgment to a specific finding that the persons they found had been living there had been living there as licensees. However, it seems to me that her submission that it is a necessary consequence of the first finding is sound. How, one asks oneself, could there be a finding that Mr Malik had simply not told the truth about the place being occupied solely by Mr Ahmed, and a finding that over the years a large number of people had been living there, clearly to the knowledge at the very least of Mr Ahmed. The inference to be drawn must be that they had been living there as licensees, whether of Mr Ahmed himself or of Mr Malik or perhaps of both.
17. In those circumstances, it seems to me that the first point made by the respondent to this appeal is a good one, and therefore I need go no further into the other points made. However, in deference to them, I ought to mention them.
18. Miss Screeche-Powell makes a further point on the assumption that the failure to mention the word "licensee" in the judgment affected the validity of the judgment. She submits that in fact, albeit it was not a point made at the original hearing, the finding that the house was a house in multiple occupation was on the basis that it was occupied by a person on the case of Mr Malik himself, who had a licence to occupy only part of the dwelling: that is to say, under (b)(i) of the regulations already quoted.
19. Mr Zane Malik on the appellant's behalf submits that that is a point that should have been taken, if it was to be taken at all, at the original hearing, and it is quite clear that it was not, and that if there is anything in the point, the case should be remitted to the Tribunal for them to consider it.
20. For her part, Miss Screeche-Powell submits that, since the answer to the question is so obvious, the court, if it were considering the point, should take the sensible course of rejecting the appeal on the basis that, if the matter were to be remitted, there could only be one result. I am bound to say I am bound to favour that submission against the submission of Mr Zane Malik, but, as I have said, it is not necessary for the disposal of this appeal to make a conclusive finding.
21. Accordingly, this appeal has to be dismissed.
22. MISS SCREECHE-POWELL: My Lord, there is the matter of costs. I am not asking you to summarily assess them today. I do not have a costs schedule. I ask that they be taxed.
23. MR MALIK: My Lord, I cannot realistically defend this.

24. MR JUSTICE CALVERT SMITH: That must be right. If I may say so, you both presented this case with great economy and efficiency, and I thank you both very much.