

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**THE ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Tuesday, 19 February 2013

**B e f o r e:**

**MR JUSTICE HOLMAN**

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**Between:**

**PALL MALL INVESTMENTS**

**Appellants**

v

**LONDON BOROUGH OF CAMDEN**

**Respondents**

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**Mr Fred Banning, solicitor advocate, appeared on behalf of the Appellants**

**Miss Christine Cooper (instructed by London Borough of Camden) appeared on behalf of the Respondents.**

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J U D G M E N T

MR JUSTICE HOLMAN: The context of this case is rating, but the essential issue is as to the law of evidence and in particular the concept of weight. The appellants own the rateable premises in question. Did the mere production by them of a sheet of paper headed "Lease" discharge the evidential burden of showing that they were not entitled to occupy the premises in question so as not to be liable to pay the business rates?

The essential facts may be stated very shortly, for most of them are not, and never have been, in dispute. The appellants, Pall Mall Investments Limited, own premises at the fifth and sixth floors of 34 to 35, Hatton Garden, London EC4. The London Borough of Camden, being the relevant rating authority and now the respondents to this appeal, set business rates. They duly demanded payment of them by the appellants for the period 1 April 2009 to 31 March 2011 in the total sum of £34,710.29. The appellants did not pay and the local authority issued a summons for non-payment. This was finally heard by District Judge (Magistrates' Courts) James Henderson at Highbury Corner Magistrates' Court on 31 May 2011. He adjudged that the defendants (viz Pall Mall Investments) were liable to pay the aggregate amounts specified. Pall Mall Investments now appeal to this court by way of case stated.

Before quoting the more material parts of the case stated, it is first necessary to describe aspects of the procedural history. The summons for non-payment of business rates was first issued on 16 February 2011, summoning Pall Mall Investments to a hearing on 17 March 2011. However, there was correspondence and various exchanges between Pall Mall Investments Limited and Camden such that it became clear that the liability to pay the business rates would be disputed.

As I understand it, at all material times the premises in question were not in fact physically occupied by anybody. They were completely vacant, empty and unused. However, rating

law prescribes that in the event that premises are in that way unoccupied, the liability to pay business rates falls upon the person or body entitled to occupy the premises. From an early stage, Pall Mall Investments Limited asserted to Camden that although they were at all material times the owners of the premises, they were not at the material time entitled to occupy them. In support of that assertion they produced to Camden a piece of paper headed with the word "Lease" of which I now scan a facsimile into the transcribed text of this judgment.

# Lease

FOR GRANTING OF A TENANCY FOR OFFICES & PREMISES  
5th & 6th Floors 34-35 Hatton Garden London EC1n 8DX

Landlord; PALL MALL INVESTMENTS LIMITED WHOSE REGISTERD OFFICE IS  
AT NEW BURLINGTONHOUSE 1075 FINCH.LEY ROAD LONDON NW1 OPU

Tenant; Lonia Ltd (Registered Charity) 8 Millfields Road London E5 0SB  
Charity No. XN56527

Rent; £ 20,000.00 P.A INCLUSIVE OF SERVICE CHARGE & BUILDING INSURANCE ONLY

Term; FIVE YEARS



Commencement; 1<sup>st</sup> APRIL 2009



Conditions;

- (1) the tenant to pay for rent quarterly in advance
- (2) The landlord to have right to re-entry and forfeiture this agreement if the tenant is 21 days in arrears with rent.
- (3) The landlord to have right access to the premises for inspection or repair upon prior appointment by reasonable notice in case of an emergency the landlord to the right to access without notice to the tenant
- (4) The tenant is allowed to assign sublet or in any way dispose of the whole or part of the above premises
- (5) The tenant is to keep his premises in good repair and is responsible for interior repair
- (6) The tenant will enter into the premises once this lease has been signed

PALL MALL INVESTMENTS LTD

LONIA LTD

Director   
Secretary 

Director   
Director 

As I understand it, Camden made clear in correspondence that they did not accept that piece of paper as being an authentic lease. As a result, and it is very important to stress this, two sets of directions were made by the magistrates' court. The first set of directions was made on 7 April 2011. This required Pall Mall Investments to serve their skeleton argument and witness statements within 21 days, namely by 28 April 2011. It then provided for Camden to serve their skeleton argument and witness statements 14 days thereafter, namely by 12 May 2011.

Pall Mall Investments did not serve any witness statements by 28 April 2011 or indeed at all. As a result, Camden wrote to the magistrates' court and the court made a further set of directions on 12 May 2011. These required Pall Mall Investments to confirm in writing within 7 days details of all witnesses that they intend to call at the trial and to serve their witness statements within 7 days, namely by 19 May 2011. The directions then required Pall Mall to confirm in writing within 7 days whether they intend to adduce any other documents other than the lease agreement at the trial and requiring Pall Mall Investments to serve a skeleton argument within 7 days setting out their legal position and explaining how they discharged the burden of proving that they were not in rateable occupation of the premises during the liability period. Finally, the directions provided that Camden should serve their skeleton argument and witness statements 14 days thereafter.

There were indeed exchanges of skeleton arguments, but right up to the date of the hearing itself, namely 31 May 2011, Pall Mall Investments did not serve any witness statement at all. It is perhaps a moot point as to any cut-off date for Camden to serve any witness statements of their own, given that those directions clearly contemplated a sequential exchange of witness statements beginning with all those by and on behalf of Pall Mall Investments. As I understand it, it was only very shortly indeed before the actual hearing that Camden did

produce a statement by an official, Kasia Woropajew.

The position at the hearing on 31 May 2011 appears to have been as follows. No statement of any kind had been produced by, or on behalf of, Pall Mall Investments. As I understand it, the only persons present in the court at the hearing on behalf of Pall Mall Investments were their solicitor advocate, Mr Fred Banning, and a surveyor giving him technical assistance on rating matters. As I understand it, there was simply no one present at the court at all in any way directly connected with, or employed by, Pall Mall Investments; and, specifically, there were not present the Director or Secretary, whoever they may have been, who purport with illegible signatures to have signed the "Lease". On behalf of Camden, there was present their solicitor, Mr Siaf Alam, who conducted the case on their behalf that day and is indeed present in court here today, although now instructing counsel, Miss Christine Cooper.

Having now described at some length that procedural background, I can quote verbatim from parts of the later case stated by the district judge dated 24 June 2011.

"1. On 31st May 2011 Pall Mall Investments appeared before the Highbury Corner Magistrates' Court, on an application by the London Borough of Camden for a liability order in respect of business rates for ... (the property).

2. Pall Mall Investments asserted that they were not responsible for the business rates in that they were not entitled to occupation of the property.

3. I find the following facts set out in separate lettered paragraphs:

(A) The statutory requirements were satisfied: The rate had been properly set, demands for rates from Pall Mall Investments had been sent in proper form and reminders sent in proper form.

(B) The rates had not been paid by Pall Mall Investments.

(C) Pall Mall Investments were the Freeholders of the relevant property.

(D) Pall Mall Investments produced a document that purported to be a lease granted as from 1 April 2009.

(E) No evidence on oath was called by the London Borough Camden or Pall Mall Investments.

(F) I was not satisfied on a balance of probabilities that the lease was genuine.

#### 4. The Evidence:

...

Objection was taken to [the witness statement of Kasia Woropajew] being admitted into evidence as her statement had been served on the last working day before the hearing. She was not called to give evidence but as noted below certain exhibited documents were formally admitted by the parties.

Pall Mall Investments produced a bundle of documents containing correspondence between Pall Mall Investments and LBC, unsigned letters from Lonía Limited asserting that they are a registered charity and in possession of a lease for [the property] which commenced on 1 April 2009. These were not formally admitted in evidence.

The parties formally admitted:

A form of lease stated to commence on 1 April 2009 between Pall Mall Investments Limited and Lonía Limited.

To the extent that they were issued in the correct year (the rate demands) were in the form required by the regulations.

All necessary reminders were sent.

The respondent (Pall Mall Investments) is the free-holder of the property.

#### 5. The Appellant's Submissions:

That in accordance with the cases of Des Salles d'Epinox v Kensington [1970] 1 All ER 18 and Forsyth v Rawlinson [1981] RVR 97, Pall Mall Investments had, in producing the lease, rebutted the Local Authorities [sic] case that Pall Mall Investments were in rateable occupation.

That there was no evidentiary basis upon which the court could conclude that the lease stated to commence on 1 April 2009 did not create a tenancy and therefore did not transfer the right of occupation.

#### 6. The court noted the following with respect to the form of lease:

- a. It was undated.
- b. The signatures were illegible.
- c. It comprised one side of A4 paper.
- d. There was no reference to liability for rates.
- e. It did not contain the detail generally found in a commercial lease.

7. The Questions for the opinion of High Court are:

- a. Did I err in law in finding that there was sufficient evidence to conclude that the purported lease was inadequate to demonstrate a transfer of the property?
- b. Did I err in law in finding that Pall Mall Investments had failed to satisfy me on a balance of probabilities that they were not entitled to occupation of the property?"

As is clear from that case stated, and as has been expressly confirmed to me today by

Mr Banning, and indirectly by Mr Alam, the district judge was not asked to hear, and did not hear, any evidence at all. Further, no statements of evidence were admitted into the proceedings. There simply were no statements of evidence by or on behalf of Pall Mall Investments. Objection had been taken (rightly or wrongly) to the statement of Kasia Woropajew but, effectively, most of the essential matters in that statement were clearly the subject of admissions.

Further, the bundle of documents that Pall Mall Investments had prepared was not admitted into evidence. Effectively, all that happened was that Mr Banning (without having any representative of his clients present) simply handed up to the district judge a sheet of paper which was the piece of paper headed "Lease". Within paragraph (4) of the case stated, the district judge has recorded that "the parties formally admitted a form of lease stated to commence on 1 April 2009 ...". It is, however, quite clear from other parts of the case stated, and is indeed freely accepted by Mr Banning, that Camden were certainly not admitting at all the authenticity, validity or legal effect of the "form of lease". It is quite clear that Camden were challenging its authenticity, and the words "the parties formally admitted a form of lease" can only mean that Mr Alam, on behalf of Camden, was not objecting to that particular piece of paper being received by the district judge and being the subject of consideration by him; whereas Mr Alam had successfully opposed the other



documents in the bundle of documents produced by Pall Mall Investments from even being received and considered by the district judge at all.

As I also understand from Mr Banning and indirectly from Mr Alam, there was some discussion between the two advocates and the district judge at the hearing as to whether there should be an adjournment for either or both parties to assemble and adduce formal evidence, either in written and/or oral form, on oath or affirmation, but Mr Banning tells me that in the end neither he nor Mr Alam formally applied for an adjournment and the hearing simply proceeded.

As is clear from the case stated, Mr Banning adopted the stance which effectively is the same stance that he adopts today, that mere production of the piece of paper headed "Lease" was sufficient to discharge any evidential burden upon Pall Mall Investments Limited to show that they were not entitled to occupy the property; and that there was a positive burden of proof upon Camden to establish that the lease was not a genuine or authentic document if that was their case.

As can be seen from his case stated, the approach of the district judge was to note a number of features of the document headed "Lease" which he identified in paragraph 6 of the case stated, and to reach the overall conclusion on that part of the case, expressed in paragraph 3(F) of the case stated, that "I was not satisfied on the balance of probabilities that the lease was genuine". Mr Banning submits today that paragraph 3(F) of the case stated contains within it a serious error, because it appears to have placed a burden of proof upon Pall Mall Investments positively to prove that the lease was "genuine" whereas, he submits, once the piece of paper had been produced, then the burden was upon the local authority to disprove that it was genuine.

It is next necessary to make some relatively brief reference to the now subordinate legislation

and some reported authorities on the approach to evidence and proof in rating cases.

I mention generally that the earlier authorities make reference to section 97(1) of the General Rate Act 1967. That Act has been repealed and, insofar as is material to this case, the relevant legislative provision is now the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989/1058). Regulation 12 in Part III of those regulations is headed "Application for Liability Order". Regulation 12(2) provides:  
"The application is to be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to that person to appear before the court to show why he has not paid the sum which is outstanding."

The actual wording of that part of the regulations is not identical to the wording of section 97(1) of the General Rate Act 1967, but appears to be to exactly the same effect. Accordingly, insofar as the earlier authorities reflect or are based upon the language of section 97(1) of the General Rate Act 1967, they are equally in point, albeit that the relevant provision is now regulation 12(2) to which I have referred.

I have been referred helpfully to the authorities of Des Salles d'Epinoix v Kensington and Chelsea (Royal) London Borough Council [1970] 1 WLR 179, Forsyth v Rawlinson [1981] RVR 97 and Ratford v Northaven District Council [1987] 1 QB 357. The essence of the earlier two authorities is, however, completely considered and reflected in the later analysis and decision of the Court of Appeal in Ratford v Northaven. There, so far as is material to this case, Slade LJ, with whom the other members of the court agreed, said at page 370E:

"(3) ... all the rating authority has to show in the first instance is that (a) the rate in question has been duly made and published; (b) it has been duly demanded from the respondent, and (c) it has not been paid..."

Pausing there, all three of (a), (b) and (c) were of course admitted in the present case. Slade LJ continued:

"If these three things are shown [in this case admitted], the burden then falls on the respondent to show sufficient cause for not having paid the sum demanded ... The question whether a person who appears to be in occupation of a particular property is in actual occupation of it will be peculiarly within his knowledge. It seems to me probable that the legislature in enacting s.97(1) would have contemplated that the burden of proving a defence based on non-occupation of the property would in the first instance fall on the respondent. (4) However, the standard of proof will merely be that of the balance of probabilities and in Donaldson LJ's words in Forsyth v Rawlinson:

'like all cases of the burden of proof of litigation, it is a swinging burden.'

As the evidence of varying weight develops before the magistrates, the eventual burden of proof will, in accordance with ordinary principles of evidence, remain with or shift to the person who will fail without further evidence."

In a later case of Westminster City Council v Tomlin [1990] 1 All ER 920, Croom-Johnson LJ,

with whom the other members of the Court of Appeal agreed, said very similarly at page

921:

"The rating authority cannot know the full circumstances surrounding each rateable property in its area, and as s.97(1) contemplates that, if the authority establishes a prima facie case that the rates have been properly demanded and not paid, the burden of proof then shifts to the respondent to the summons to appear and show for one reason or another why he has not paid ... In the present you case the issue is whether Mr Tomlin was in rateable occupation."

Although the factual circumstances of that case, which involved joint occupation of a former embassy by trespassers, could hardly have been more different from the factual circumstance of the present case, the fundamental issue is the same, namely whether or not Pall Mall Investments "was in rateable occupation".

It seems to me, therefore, and indeed Mr Banning does not argue otherwise, that once the primary facts had been established or admitted there was an evidential burden which "swung" or "shifted" to Pall Mall Investments to show that they were not in rateable occupation. Mr Banning submits that mere production of the piece of paper headed "Lease" by him was, and must be, sufficient to discharge that particular burden, so that the

evidential burden then "swung" or "shifted" back again onto Camden to establish (albeit on the balance of probability) that the "Lease" was not genuine or authentic.

Mr Banning submits that the starting point has to be that the piece of paper headed "Lease" must be taken at face value according to its terms. It is true, as the district judge observed, that on any possible view the signatures upon it are completely illegible and there is nothing at all on the document to indicate the names of any of the apparently four different signatories. Nevertheless, it does purport to be signed and so, submits Mr Banning, it is entitled to be, and indeed requires to be, treated as a genuine and authentic document unless and until the contrary is proved. He submits that there are only three possibilities in this case. The first is that it is indeed a genuine lease, as it purports to be, and is intended to have legal effect. The second is that it is simply a forgery, not signed at all by anyone by or on behalf of Lonia Limited. The third is that it is some sort of "sham", which was signed by officers of Pall Mall Investments Limited and of Lonia Limited, but was not intended to have any real legal effect. He submits that even in a case which falls to be decided on the balance of probability the law requires cogent evidence from any person or party who contends that a document is a forgery or a sham.

He places particular reliance upon the judgment of Neuberger J in National Westminster Bank PLC v Rosemary Doreen Jones and others [2001] 1 BCLC 98. Mr Banning places emphasis upon paragraphs 36, 37 and 46 of that judgment, but the essence of the matter is encapsulated in paragraph 59 under the heading "Conclusion on Sham". Neuberger J says:

"In one sense, lawyers find it difficult to grapple with the concept of sham, presumably on the basis that, subject to questions of mistake ... there is a very strong presumption indeed that parties intend to be bound by the provisions of agreements into which they enter, and, even more, intend the agreements they enter into to take effect ... A sham provision or agreement is simply a provision or agreement which the parties do not really intend to be effective, but have merely entered into for the purpose of leading the court or a third party to believe that it is to be effective. Because a finding of sham

carries with it a finding of dishonesty, because innocent third parties may often rely upon the genuineness of a provision or an agreement, and because the court places great weight on the existence and provisions of a formally signed document, there is a strong and natural presumption against holding a provision or a document a sham."

It is, however, important to understand the context in which Neuberger J made those

observations. He referred in that passage to "a formally signed document". As

I understand it, the judgment was given at the conclusion of a considerable hearing during which the judge had heard, or at any rate received, considerable evidence as to the making of the agreements in question and as to the signing of them by the various parties to them.

In that case, therefore, there was a considerable evidential substratum against which the judge was able to consider whether or not the agreements were "sham"; and indeed to reach his final conclusion, at the end of paragraph 68, that they were not.

The situation in the present case is, frankly, a great deal more nebulous. The London Borough of

Camden have not expressly identified or asserted whether they say that the piece of paper is a "sham" or some form of "forgery", nor did the district judge use either of those words.

Rather, he identified at paragraph 6 of the case stated a number of features which raised in his mind serious doubts about the real authenticity of the "Lease" and led to his conclusion that he was not satisfied that the lease was "genuine".

It seems to me that Pall Mall Investments made a choice and a decision in this case. They had

been given an ample opportunity by the two sets of directions that I have described above to file evidence and/or call a witness or witnesses as to the making and signing of the

"Lease" and the surrounding circumstances. For instance, whoever it was who purportedly signed on behalf of Pall Mall Investments Limited could have made a statement evidencing and describing how he or she had signed the document and identifying his signature;

evidencing and describing the circumstances in which the other officer of Pall Mall

Investments did so; and perhaps evidencing and describing the circumstances in which, the

directors of Lonia Limited did so and indeed naming them.

Instead, they chose simply to hand up a piece of paper. Camden had already clearly pointed out in correspondence a number of question marks in relation to that document. Mr Alam clearly repeated those points to the district judge and there is nothing at all in paragraph 6 of the case stated that could possibly have taken Mr Banning or Pall Mall Investments by surprise. The points made are all obvious ones derived simply from looking at the piece of paper.

In my view, this appeal boils down, as I said in the very first sentence of this judgment, to the concept of "weight". That was essentially a matter for the district judge. He felt unable to attach any significant weight to a piece of paper which was simply proffered without any supporting written or oral evidence at all.

I, for my part, find the formulation of his question 7(a) a little curious, but I do no violence to it

if I reformulate it as:

"Did I err in law in finding that there was insufficient evidence to conclude that the purported lease was adequate to demonstrate a transfer of the property"?

I answer that question: no.

The second question is:

"Did I err in law in finding that Pall Mall Investments had failed to satisfy me on a balance of probabilities that they are not entitled to occupation of the property?"

I answer that question: no.

It seems to me that in the end it was a matter for the district judge to decide how much weight properly to attach to the piece of paper headed "Lease". He was entitled to conclude that he could not attach enough weight to it to swing the evidential burden back onto Camden.

For those reasons, this appeal is dismissed.

MISS COOPER: My Lord, we have had some discussions during the brief recess. Camden does make an application for its costs and Mr Banning and I have been able to agree those as £2,800.

MR JUSTICE HOLMAN: First of all, I have to determine the principle. Do you resist?

MR BANNING: I make no submissions.

MR JUSTICE HOLMAN: There will be an order that the appellants pay the costs of the respondents of and incidental to this appeal which are summarily assessed by agreement of the parties in the sum of whatever it is you have just said.

MISS COOPER: £2,800.

MR JUSTICE HOLMAN: Yes. Will you please between you draw up the short order to that effect and one of you then type it up and lodge it with today's associate?

MISS COOPER: My Lord, yes.