1 March 2017

PRESS SUMMARY

Newbigin (Valuation Officer) (Respondent) v S J & J Monk (a firm) (Appellant)
[2017] UKSC 14
On appeal from [2015] EWCA Civ 78

JUSTICES: Lord Neuberger (President), Lord Kerr, Lord Reed, Lord Carnwath, Lord Hodge

BACKGROUND TO THE APPEAL

S J & J Monk ("SJJM") own the freehold of the first floor of a three-storey office building. Previously the premises were occupied by tenants as a single office suite. In March 2010 SJJM entered into a building contract for the renovation of the property to make it more adaptable for use as either three suites of offices, or as a single suite, in order to attract replacement tenants. After entering into the building contract and until at least 6 January 2012, SJJM had the property marketed as available for rental either as three separate office suites or as a whole. On 6 January 2012, which is the relevant date for determining the rateable value of the property on an application to alter the rating list, the property was vacant and substantial construction work had been undertaken, with the premises stripped to a shell.

SJJM wished to reduce the property's liability to local authority rates during reconstruction. These rates are a tax on property on the rating list. The 2010 rating list listed the property as "offices and premises" with a £102,000 rateable value. On 6 January 2012 SJJM proposed to the valuation officer ("the VO") that the property description should be altered to "building undergoing reconstruction" and the rateable value reduced to £1 as the property could not be occupied due to the building works.

The issue in the appeal is whether the property should be rated having regard to its physical condition on 6 January 2012 or whether paragraph 2(1)(b) of Schedule 6 to the Local Government Finance Act 1988, as amended by the Rating (Valuation) Act 1999, requires a valuation officer to assume the property was in reasonable repair in its previous state as "offices and premises" on that date. Para 2(1) of Schedule 6 provides that the rateable value of the property is an amount equal to the rent at which it is estimated it might be expected to be let from year to year, subject to the assumption in para 2(1)(b) that immediately before the tenancy begins, the property is in a state of reasonable repair, but excluding from that assumption any repairs which a reasonable landlord would consider uneconomic.

The VO rejected SJJM's proposal to alter the description of the property on the rating list. The Valuation Tribunal upheld his decision. The Upper Tribunal allowed SJJM's appeal, holding that the property had been stripped out beyond reasonable repair. It held that the para 2(1)(b) assumption did not extend to the replacement of systems which had been completely removed. The property should be rated as a "building undergoing reconstruction" and the rateable value of the premises reduced to £1. The Court of Appeal allowed the VO's appeal and held that para 2(1)(b) created an assumption that the repairs would return the premises to their former state, provided that they were economic. This displaced the reality principle that the property should be valued as it existed on 6 January 2012. The property should be valued as if it were in a state of reasonable repair.

JUDGMENT

The Supreme Court unanimously allows S J & J Monk's appeal and restores the determination of the Upper Tribunal. Lord Hodge gives the judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

Before Parliament enacted Schedule 6 to the 1988 Act it had long been an established principle of rating law that property should be valued as it in fact existed on the material day. That principle is referred to as "the reality principle" **[12]**. The reality principle continues to be a fundamental principle of rating and is manifested in Schedule 6, in particular para 2(6) and (7), which provide that certain matters relating to the property, including matters affecting its physical state and the mode or category of its occupation, shall be taken to be as they are assumed on the material day **[14]**.

The legislative history shows that the repairing assumption introduced by para 2(1)(b) of Schedule 6 did not supplant the reality principle by requiring that the premises are to be assumed to be in a reasonable state of repair for the mode of occupation listed on the rating list, namely as "offices and premises" **[15]**. The Court of Appeal went too far in interpreting that assumption as displacing the reality principle in relation to both the physical state of the property undergoing redevelopment and to its mode of occupation. The para 2(1)(b) assumption of reasonable repair at the outset of a hypothetical tenancy is not addressing the question of whether the premises were capable of beneficial occupation. In the context of a building undergoing redevelopment that is a question that requires to be asked first. Therefore, the repair assumption applies to matters affecting the physical state of the property (para 2(7)(a)) but not to its mode or category of occupation (para 2(7)(b)) **[20]**.

A valuation officer must assess objectively whether a property is undergoing reconstruction, and therefore incapable of beneficial occupation, rather than simply being in a state of disrepair. In carrying out that objective assessment of the physical state of the property on the material day, the valuation officer can have regard to the programme of works being undertaken on the property. If the works are assessed as involving redevelopment, there is no basis for applying the para 2(1)(b) assumption to override the reality principle and to create a hypothetical tenancy of the previously existing property in a reasonable state of repair. This is both because a building under redevelopment, like a building under construction, is incapable of beneficial occupation and because the hypothetical landlord of a building undergoing redevelopment would not normally consider it economic to restore it to its prior use **[23]**.

If, during redevelopment, some part of the property becomes capable of occupation, the para 2(1)(b) assumption might apply to that part, but para 2(1)(b) does not deem the development complete **[24]**.

There is no statutory bar preventing an application to alter the rating list to reflect the actual state of the property undergoing redevelopment **[29]**. There is also no bar to implementing a proposal to alter the description of a property on the rating list from "offices and premises" to "building undergoing reconstruction" and consequently to reduce the listed rateable value to a nominal amount if the facts, objectively assessed, support that alteration. Furthermore, there is no basis for the argument that a property can be listed as being under reconstruction only once the works have proceeded so far that it is no longer economic to undertake repairs to restore the property to its former state **[31]**.

On the facts found by the Upper Tribunal, the building was undergoing reconstruction on 6 January 2012 and the Upper Tribunal was entitled to alter the rating list to reflect that reality **[33]**.

References in square brackets are to paragraphs in the judgment