“Touching The Time of The Beginning of A Lease For Yeares”

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The Conveyancer [1993] 206

Introduction

One of the issues in the recent case of *Whelton Sinclair (A Firm) v. Hyland* was the precise point when a lease commenced and, in consequence, when it terminated. Upon that question depended the validity of a notice under section 25 of the Landlord and Tenant Act 1954.

The facts, so far as they relate to that question, were as follows. Mr. Hyland held business premises under a lease which stated that the lessee was “to hold the premises from June 27, 1976, for a term of 10 years.” In 1985 he received a notice from his landlord under section 25 of the 1954 Act terminating the tenancy on June 26, 1986. His solicitor argued that the notice was invalid; he failed to convince the landlord, and Mr. Hyland eventually moved out. Later, the solicitors sued for their fees, and Mr.

Hyland counterclaimed successfully for the loss of a premium which he would have obtained on the sale of a renewed lease; one of the points the Court of Appeal had to decide was the validity or otherwise of the section 25 notice.

Section 25(4) of the Landlord and Tenant Act 1954 provides that, in the case of a tenancy that cannot be brought to an end by notice to quit:

"a notice under this section shall not specify a date of termination earlier than the date on which apart from this Part of this Act the tenancy would have come to an end by effluxion of time."

The landlord drafted the section 25 notice in the belief that the lease began on June 27, 1976, and ended on June 26, 1986. However, the following proposition is to be found in *Hill and Redman*:

"Where the term is expressed to commence 'from' a specified day, this day is in strictness not included in the term, and generally the term therefore lasts during the whole anniversary of the day thus specified; while if it commences 'on' a specified day, that day is included."

The tenant's solicitor therefore argued that the lease commenced at the first moment of June 28 and ended at the last moment of June 27, so that the notice was one day early.

The notice was found to be valid. Glidewell L.J. noted that there were two possible ways of saving it. The first is pointed out by *Hill and Redman*, who go on to say:

"But the deed must be interpreted so as to give effect to the substantial rights of the parties, and for practical purposes this distinction can usually be ignored. . [T]he circumstances (e.g. that the first payment is to be on the day from which the term is expressed to run) may lead to the conclusion that the true intention of the parties was that that day was to be included in the term: *Ladyman v. Wirral Estates*."

Glidewell L.J. accepted that *Hill and Redman's* general proposition was correct. But he noted that in *Ladyman v. Wirral*, a case on an identical point about a section 25 notice, the lease was to run:

"from May 1, 1963, at a rent payable quarterly in advance on May 1 ... the first of such payments to become due on May 1, 1963."

It was held in that case that it could not possibly have been the parties' intention that the rent should become due on a day before the commencement of the term, so that the lease in fact began on May 1 (and would end on April 30).

In Mr. Hyland's lease the rent was to be paid "in advance on Monday of every week, the first such payment to be made on 27 June." At first sight, therefore, the position was just like that in *Ladyman v. Wirral Estates* and the notice was valid. But in 1976, June 27 was a Sunday; so a mistake had been made in the wording and it could not be relied upon.

However, the lease was granted on the expiry of an earlier lease, to the same tenant (of whom Mr. Hyland was an assignee), which expired at the last moment of June 26, 1976; it was therefore held that it could not have been the parties' intention that the premises should, for one day, not have been the subject of a lease. Glidewell L.J. concluded that "the new lease must have been intended to commence, and did commence, at the very moment when the old lease terminated, *i.e.* at the last moment of June 26, 1976, and the first moment of June 27, 1976."

The lease therefore ended at the last moment of June 26, 1986, and the section 25 notice was valid.

What strikes one about this decision is that if the landlord had been wrong, and the tenancy had ended on June 27, one would feel that he had made an understandable mistake. If L negotiates a lease with T, and they agree that it is to be "for 10 years from January 1, 1990", one might expect the tenant to go into possession on January 1. Similarly, if a colleague says that he will be away "from next Wednesday" we would not expect to find him in the office on that day. This rule of construction may thus not always be in accord with the parties' intentions, and it seems worth examining how it arises.

THE POSSIBILITIES

There is no confusion where a lease is expressed to commence "on" a certain date; that date is included in the term, and the expression has been stated to be "clear and unambiguous".

It is suggested that where the terms of the habendum are that the tenant is to hold "for a term of 10 years from January 1, 1990," the possible meanings are:

(1) The lease begins at the first moment of January I and ends at the last moment of December 31, 10 years later.

(2) The lease begins at the last moment of January 1 and ends at the last moment of January 1, 10 years later.

(3) Both January 1, 1990, and January 1, 2000 are included in the term.

The third possibility can be discounted at once; it results in a lease for one day longer than the stated term, and there is no authority for it. One might slip into this interpretation by considering the beginning and the end of the tenancy in isolation from each other. Some allowance has been made for the tendency to do that; in *Sidebotham v. Holland*, notice to quit, which must expire on the last day of a period, was served requiring possession "on 19th." It was held that even though the tenancy started on the 19th, so that its anniversary was not included, the notice to quit was by custom valid, because in all similar cases it had been held to be so.

The Court of Appeal in *Sidebotham v. Holland* did *not* decide that the words "on" and "from" in a demise are equivalent, in spite of what the headnote to the case says. Lindley L.J. stated:

"When considering the validity of a notice to quit ... expiring on the anniversary of the commencement of a tenancy, I can find no distinction ever drawn between tenancies commencing 'at' a particular time, or 'on' a particular day and 'from' the same day. 'At', 'on' and 'from' are *for this purpose* equivalent expressions."

The emphasis is added, and points to the fact that the equivalence of these expressions is asserted only for the purposes of the validity of a notice. Indeed, it is a premise of the judgment that "on" does not mean the same as "from," which is precisely why the validity of the notice was in doubt.

Reverting, then, to our possibilities 1 and 2; the distinction between them can be expressed as whether the word "from" is used so as to be inclusive of the date to which it refers, or exclusive.

THE AUTHORITIES

Hill and Redman quote a number of authorities in support of the general rule that "from" is exclusive, of which the earliest is Coke, who states:

"if a lease be made by indenture, bearing date 26 May, &c. to have and to hold from the date, or from the day of the date, it shall begin on the twenty-seventh day of May."

A number of cases are quoted which are found to follow this interpretation. In an anonymous case in 1773 a notice to quit expressed to expire on the anniversary of the day "from" which the lease was to run was held to be valid. In *Cutting v. Derby*, an exclusive interpretation was again adopted but a notice expiring on the anniversary was upheld because the distinction was "trifling." In *Ackland v. Lutley* it was held that a lease for 21 years "from 25th March 1809"' did not expire until the end of March 25, 1830. That decision was followed in *Meggeson v. Groves*.

Woodfall on the other hand, says that:

"Some confusion springs from the divergent authorities as to when a demise 'from' a certain date actually starts."

Woodfall states, as do *Hill and Redman*, that the word 'from' in this context is generally to be construed exclusively, subject to contrary evidence as to the parties' intentions. However, reference is made to *W. H. Brakspeare & Sons Ltd. v. Burton*, where the divergent authorities are set out. The case related to a demise "from" March 25, 1920; the lessee had held previous leases of the same premises. The question was whether the increased rent under the new lease was caught by the Increase of Rent and Mortgage Interest (Restrictions) Act 1920. This would be so if it amounted

to an increase "since March 25, 1920." McCardie J. adopted an exclusive interpretation of the word "from" in the demise, so that the new rent began to accrue at the first moment of March 26. He did so with great reluctance, so as not to cast doubt on a decision, *Raikes v. Ogle*, which had been taken as authoritative in cases on the Rent Restriction Acts. His reluctance arose because, he said, it was plain that several "weighty authorities" had not been before the court in *Raikes v. Ogle*; and he expressly restricted the ratio of his decision to cases depending on the word "since" in the Rent Restriction Acts. He reserved the right of further considering *Raikes v. Ogle* in cases outside that field, and made it clear that he was not happy with the exclusive interpretation of the word "from."

Among the "weighty authorities" to which McCardie J. referred was *Pugh v. Duke of Leeds*, where the question was whether or not a lease expressed to run "from the day of the date of the said indenture" was granted in possession. Lord Mansfield in his judgment expressed the view that "from" in ordinary language can be inclusive or exclusive:

"In grammatical strictness ... the sense of the word 'from' must always depend upon the context and subject matter, whether it should be construed as inclusive or exclusive of the *terminus a quo*; and ... a hundred instances or more [occur] to me, both in verse and prose, where it is used inclusively or exclusively."

He considered that the authorities on the point down to 1743 were evenly balanced between the two. Coke's statement of a general rule arose, he said, from two cases decided around 10 years before Coke was writing. In those cases it had been held that "from the date" of a lease and "from the day of the date" mean the same thing (with which Lord Mansfield agreed) and that both were exclusive. On that point, he said, these authorities "were at the time grumbled at, as being against the sense of mankind."

He examined cases arising after Coke's statement of a general rule, and noted four instances of an inclusive definition and one inclusive down to

1743. Later came the *Countess of Portland's Case* where an exclusive construction was adopted; Lord Mansfield went on to show in some detail why that decision was wrong. He therefore decided that the lease under consideration in *Pugh v. Duke of Leeds* was granted in possession, thus interpreting the word inclusively. He did so largely in reliance on the obvious intentions of the parties, having concluded that the authorities disclosed no general rule.

McCardie J. in *Brakspeare* found further support for an inclusive construction of "from" in *Russell v. Ledsam*. This concerned a patent, dated February 26, 1825, and the question whether or not it had commenced on that date so as to expire at midnight on February 25, 1839. Parke B. stated:

"in this case the question is when the term given by the patent commences; and the same rule would apply as to the commencement of a term, which, if it is to run from the date of the lease, includes the day of the date."

He concluded:

"the day of the date would be included, and the patent would expire at midnight on the 25th February, 1839."

McCardie J. also made reference to *English v. Cliff*, a case about perpetuities. A settlement dated May 13, 1892, conveyed property to trustees to hold "during the term of twenty-one years from the date of these presents," and the question arose whether the term commenced at midnight on May 12 or 13. Warrington J. cited both *Pugh v. Duke of Leeds* and *Russell v. Ledsam* and concluded that the word "from" was inclusive here, so that the term commenced at midnight on May 12. He also quoted *Norton on Deeds*:

"In computing a period of time from the date, or the day of the date, of a deed, or any fixed day, that day is prima facie to be excluded, but the context or other admissible evidence may shew that it is to be so included. There is no absolute rule with regard to the inclusion or exclusion of the day on which a particular event takes place."

Finally, reference is made in *W. H. Brakspeare* to the "strong body of opinion (including that of the Lord Chancellor)" in support of the inclusive interpretation in an Irish case, *Wilkins v. M'Ginity*.

After *W. H. Brakspeare* the decisions on the point adhere to the principle set out in *Hill and Redman* and in *Woodfall*, that as a rule "from" is exclusive, subject to evidence of contrary intention. See, for example, *Eyre v. Price* where it was as said that:

"where, as in the present case, there was no indication as to what the parties had intended, a lease starting from a named date came into operation immediately afterwards, *i.e.* that date was exclusive."

This brings us back to *Ladyman v. Wirral*. Here, Fisher J. stated that:

"a general rule can be derived from the authorities, namely, that, prima facie, a lease in these terms commences from the first moment of the day following that named, but it seems to me equally well-established by the cases that this is only a prima facie indication, and that it can be displaced if, on the construction of the lease a contrary intention can be derived."

Support for this prima facie indication was claimed from a case on the construction of a bequest and another on insurance; and Fisher J. voiced disapproval of dicta of Lord Denning M.R. in *Trow v. Ind Coope (W.M.) Ltd*. [1967] 2 Q.B. 899 to the effect that in everyday language the phrases "beginning with," "beginning from", and 'beginning on" all mean the same thing. Nevertheless, an inclusive interpretation was adopted in *Ladyman*, thanks, as we have seen, to the evidence afforded by the provisions as to payment of rent.

Woodfall cites *Ladyman v. Wirral* and suggests that the provisions of the lease as to payment of rent will often assist. Where the actual date of payment is stated, it is likely that that date will not fall outside the term. However, it is suggested, it is not logically necessary that the date on which rent is paid should fall within the term of the lease. Moreover, in a lease where the actual date of payment is not stated but the reddendum merely requires payment "in advance," say, or where there is an error as there was in *Whelton Sinclair v. Hyland*, that guideline is of no assistance.

CONCLUSION

It is therefore suggested that:

(1) If there is a rule that the word "from" is to be construed exclusively, it would seem to have arisen from an undue reliance on Coke's statement, and without regard for the evenly balanced authorities both before Coke and up to the early years of this century.

(2) The exclusive interpretation is not always going to coincide with the commonsense usage of the word. Lord Mansfield's dicta to that effect remain true, and it is a pity that his view did not prevail. The use of the inclusive interpretation even as a starting point may work injustice, and one wonders what useful purpose it serves.

(3) Indeed, *Hill and Redman* would appear to overstate the position when they say that "this day ['from' which the lease commences] is not in strictness included in the term." In a case as recent as *Ladyman v. Wirral* the most that was said was that the court takes an exclusive interpretation as a prima facie starting point, which was displaced relatively easily.

PRACTICAL POINTS

The problem of determining the precise point of commencement has in the past been relevant to all manner of leases. In the era before widespread statutory intervention, a landlord might need to know exactly when he could re-enter after effluxion of time, and for a periodic tenancy must ensure that his notice expired on the last day of a period. Many residential leases granted now to run from year to year will fall within the regime of the Housing Act 1988, so that notices to quit are not relevant, and there are perhaps few surviving from before January 15, 1989. The problem appears to have been confined in recent years to business tenancies and the validity of notices under section 25 of the 1954 Act.

So far as the drafting of leases is concerned, it is suggested, with great respect to many precedents, that the use of an habendum "from the ---------- day of ---------- for the term of ----------" may be misleading, and indeed it misled the landlord in *Whelton Sinclair v. Hyland*. Murray Ross, in "*Drafting and Negotiating Commercial Leases*" suggests that "good drafting demands clarity on this point" and recommends wording such as "beginning on" or "from and including." The Law Society Business Lease uses the words "starting on---------and ending on----------." Equally, problems may be avoided by specifying the expiry date by words such as "for such a term as shall expire on."

Where the damage has already been done, and an existing lease runs "from" a certain date, a party seeking to avoid an exclusive interpretation

may use evidence such as the date of payment of rent to indicate that the parties had a contrary intention. But such evidence may not be available. Nevertheless, ample support for an inclusive interpretation is to be found in the older cases. It is suggested that there is no need for the court to take the view, as it did in *Whelton Sinclair v. Hyland*, that the general proposition in *Hill and Redman* is a rule that must be adhered to in the absence of other evidence.

Here is information on how to order *Drafting Trusts and Will Trusts* and other books by James Kessler QC.

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