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Another Piece in the Jigsaw: Non-domestic Rate Liability for Unoccupied Commercial Property Despite a CVA

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Key Points

- Does the tenant of commercial premises, having entered a company voluntary arrangement with its landlord, returned the keys and ceased to occupy and trade from those premises, remain liable for the non-domestic rates (otherwise known as "business rates")?
- On 30 January 2026 the Divisional Court confirmed in *The Mayor and Commonality and Citizens of the City of London v Robinson Webster (Holdings) Limited [2026] EWHC* 151 (Admin) that it does.
- The essential reasoning was that, as the landlord had declined to accept its tenant's offer to surrender their lease, the lease subsisted; hence the tenant remained the "owner" of the hereditament (aka the basement and ground floor shop) – s 65(1) Local Government Finance Act 1988 (LGFA 1988) – and the liable party for the unoccupied rates due under s 45 LGFA 1988.

Introduction

The aim of this article is to unpack and explain this important recent decision in the Robinson Webster (Holdings) Limited (RWHL) appeal, and its significance for tenants, landlords and billing authorities (BAs). It is necessary to first set the case in context and sketch out the landscape which governs liability for rates in respect of unoccupied property.

Rates Liability: Unoccupied Property

Before 1966 liability to pay rates was founded *only* upon occupation of property. The law then changed with an enactment allowing BAs to resolve to charge rates on unoccupied property.1 The Local Government Finance Act 1988 (LGFA 1988) gave birth to a 50% liability which, from 1 April 2008, was increased to parity with that for occupied property. The core legislative provision is s 45 LGFA 1988 which provides that a person is liable to pay rates to the BA for any day of the financial year on which the hereditament is shown in the local non-domestic rating list, it falls within a class prescribed by regulations (s 45(1)(d)), none of the hereditament is occupied, and that person is the "owner" of the whole of the hereditament. Section 65(1) LGFA 1988, then defines the "owner" as:

"(1) The owner of a hereditament or land is the person entitled to possession of it."

The Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 (2008 Regulations) determine which types of hereditaments are liable for rates on unoccupied property. This is done in a rather clumsy way. Regulation 3 provides that the class of non-domestic hereditaments comprises "all relevant nondomestic hereditaments other than those described in regulation 4". In other words, unless the property in question is within a reg 4 exemption the owner will be liable for unoccupied rates. For a landlord of commercial property, the loss of its tenant could be unwelcome and expensive news; resulting in no rental income

coupled with a liability to pay the rates at 100%. Very broadly, rates equate, depending upon the relevant multiplier, to roughly half the passing rent. Such circumstances create fertile ground for the sowing of the seeds of schemes designed to mitigate, or avoid, the payment of rates.

The Long Shadow of Covid-19

The difficulties facing high street retailers is well known. The sad demise of traditional brands and familiar names attests to that. The "Jigsaw" brand, founded by John Robinson in 1970, flourished and, by 2019, had a portfolio of 84 shops. But when COVID-19 struck trading difficulties ensued which, by 13 August 2020, led to the directors of RWHL proposing a company voluntary arrangement (CVA) under ss 1-7 of the Insolvency Act 1986 (IA 1986) and Sch A1.

The CVA

The objectives of RWHL's CVA included rationalising its leasehold obligations aimed at restoring the viability of the business, dividing the retail leases into categories A-D. The lease of the shop occupying the ground floor and basement of 44 Bow Lane, London (the shop) was in category D. Namely, rent arrears were compromised and released at 8% with effect from 3 September 2020, being the date upon which the CVA came into effect.

The Lease and the Parties

The triangular relationship between the parties was as follows. The freehold interest in the shop was owned by a CBRE company which had granted RWHL a 10-year lease term commencing on 5 September 2016.

The City of London Corporation (Corporation) was the rates billing and collecting authority. As a category D property, the CVA "exit" included the proposed surrender of the shop lease. However, on 21 September 2020 CBRE wrote to RWHL explaining it had not, and would not, accept a surrender of RWHL's lease.

The Corporation's NDR Recovery Action

Because RWHL informed the Corporation that its right to occupy the shop had ended on 3 September 2020, by September 2022 the Corporation had summoned CBRE for unpaid rates as the freehold owner of the unoccupied hereditament (the shop). Considering CBRE's contention, after taking legal advice, the Corporation withdrew the summons and then served demand notices upon RWHL which culminated in it seeking a £220,364.58 liability order for unpaid rates due from 1 April 2021 to 31 March 2024. RWHL disputed liability and, at the hearing on 14 October 2024, the judge accepted its primary contention that as "it did not have a 'real and practical entitlement' to possession during the disputed period and was accordingly not the owner". In other words, the "owner" was CBRE who, of course, were not before the court as the earlier summons had been withdrawn when the Corporation had changed tack.

Rossendale

To understand the judge's reasoning at first instance it is necessary to appreciate the actual *ratio* of the earlier Supreme Court decision in *Rossendale Borough Council v Hurstwood Properties (A) Limited and others, and Wigan Council v Property Alliance Group Ltd* (*Rossendale*). That case involved certain rates mitigation schemes concerning unoccupied commercial property involving the use of leases granted to Special Purpose Vehicles (SPVs). The two variations before the court in *Rossendale* relied upon an exemption from unoccupied rates liability identified in The Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008. Namely, reg 4 (k):

"whose owner is a company which is subject to a winding-up order made under the IA 1986 or which is being wound up voluntarily under that Act.

Under the Hurstwood companies' variant the SPV was dissolved without any prior liquidation process, so that the liability for rates passed from the SPV to the Crown upon the vesting of the lease in the Crown as *bona vacantia*. Under the Property Alliance Group variant, the SPV was placed in members' voluntary liquidation within a few days of the grant of the lease to trigger the winding-up exemption. In essence the Supreme Court, applying the *Ramsay* principle (*WT Ramsay Ltd v IRC* [1982] AC 300) and adopting a purposive construction to the relevant legislation, held both variants were ineffective in avoiding rates liability. *Rossendale* involved test cases which came before the Supreme Court as appeals from successful "strike outs" in the Court of Appeal. So, the facts were necessarily assumed. The Court of Appeal, in *R (Emeraldshaw Limited) v Sheffield Magistrates' Court*4 had on 9 December 2025 explained the decision in *Rossendale* [43] – which the Divisional Court then adopted [58].

"Thus, the ratio of Rossendale is that the 'owner' of a hereditament for the purposes of s.65(1) of the LGFA 1988 is the person who has the immediate legal right to actual physical possession, unless, in the circumstances of the case, he or she has no real or practical ability to exercise the right, so as to bring the property back into use, and has only been granted that right for the purpose of avoiding liability for rates."

From a careful reading of the actual *ratio* it is apparent how the judge fell into legal error in declining to make the liability order sought against RWHL.

The Corporation's Successful Appeal

Faced with unpaid rates of over £220,000 and a failed application for a liability order the Corporation appealed by way of case stated. This process requires the judge in the magistrates' court – with the assistance of the parties – to identify what it had decided, why, and pose the question whether it was correct in law to do so. The judge's essential reasoning is identified at [48]-[53], the question then posed for the Divisional Court being [54]:

"Whether on the evidence I was entitled to decide that RWHL did not have a 'real and practical entitlement' to possession following the Supreme Court in Rossendale and was therefore not the 'owner' of the premises within s.45(1) of the Local Government Finance Act 1988 during the disputed period?"

The short answer was "No".

The Divisional Court's Reasoning

The identification of the "owner" starts with the lease. At [59] it is explained:

"The word 'owner' in s.65(1) LGFA 1988 refers ordinarily to the person who as a matter of the law of real property has the immediate legal right to actual physical possession of the relevant property (Rossendale at [47]). The Act requires the 'owner' to be identified as the person who has not disposed of that right, starting with the freeholder and working down the tenurial chain [50]."

In the instant case this being a simple exercise. CBRE was the freeholder/lessor and RWHL the lessee. There were no complicating sub or under-leasehold interests to consider.
And at [60]:

"But the Supreme Court read down that property law meaning of 'owner' so as to exclude a party with such a right to possession, but without any real and practical ability to exercise it, where that

right was conferred for no purpose other than the avoidance of liability for rates (see also [59]-[61]).”

The rest of the discussion is a “compare and contrast” exercise between the avoidance schemes in *Rossendale* and CVAs generally, and this CVA in particular.

Takeaways and Relevance

So, what are the key points to take away? For the tenant in trading difficulty considering its options it is important to understand that entering a CVA will not divest it of rates liability unless its landlord is willing to, and does, accept a surrender of the lease of the property in question. Absent a surrender the tenant will remain “on the hook” for unoccupied rates. That may feed into the terms of compromise the nominee is able to propose in a CVA. From the point of view of the landlord, it may need to weigh up whether, and if so when, to “strip out” such a property, aiming to have it taken out of the local non-domestic rating list because it is “incapable of beneficial occupation”, thereby absolving it from potential liability should its tenant completely “fail” and the landlord be unable to rely on an exemption in the 2008 Regulations.

From the perspective of the hard-pressed BA, it is important to correctly identify the “owner” of unoccupied property and seek recovery from the right person. Liability to rates arises daily and the assumption that the situation at the start of the financial year on 1 April will remain the case until the following 31 March may not prove correct. The statutory regulation of rates collection and enforcement requires the issue and service of “demands” as soon as possible in the relevant financial year. If a BA falls short in that regard it may find itself faced with a Defence based on prejudice caused to the ratepayer. Due to the difficult economic climate facing high street retail chains it seems probable that the use of CVAs will increase.

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