Marito Holdings SA v Borham Deneche & L Lundborg

On appeal from Bromley County Court (Her Honour Judge Hallon) Central London Civil Justice Centre (His Honour Judge Collins CBE) before Simon Brown LJ (Vice President of the Court of Appeal, Civil Division) Sedley LJ, Lady Justice Arden. 22nd January 2003

JUDGMENT : LADY JUSTICE ARDEN:

We have before us two appeals. The first is an appeal with the permission of the judge against the order of Her Honour Judge Hallon sitting in the Bromley County Court, dated 24 May 2002, granting possession of premises known as Flat 1, Bramley Court, 47-55 Knowles Hill Crescent, London SE13 6DT. The second appeal is from the order dated 30 September 2002 of his Honour Judge Collins CBE sitting in the Central London Civil Justice Centre. By his order the judge granted possession of premises known as Flat 9A, 77 Linden Gardens, London W2 4EU and ordered the defendants to pay the claimant the difference between the contractual rent, which was £125 per week, and the amount of housing benefit received by the claimant in respect of the period 24 May 2002 to the date on which possession was recovered. The second defendant in those proceedings played no part in the trial and has played no part in this appeal.

2. I granted permission to appeal in this second case on 30 December 2002 and gave a direction that as the first issue in this appeal is similar to that raised by the appeal in **Osborn v Dior**, those two appeals should be heard together, if possible. The common issue arises out of section 20 of the Housing Act 1988, to which this judgment is solely directed.

3. In both the cases under appeal the court held that the premises were held on an assured shorthold tenancy which had been properly terminated. Where an assured shorthold tenancy is created, the landlord is entitled to possession on serving notice requiring possession. If, however, the tenancies were not assured shorthold tenancies but only assured tenancies, the landlord had to show one of the statutory grounds for possession.

4. At the time the tenancies in question were created, section 20 of the Housing Act 1988 provided for notice to be served on the tenant before the tenancy agreement was signed:

"(1) Subject to subsection (3) below, an assured shorthold tenancy is an assured tenancy -

(a) which is a fixed tenancy granted for a term certain of not less than six months; and

(b) in respect of which there is no power for the landlord to determine the tenancy at any time earlier than six months from the beginning of the tenancy; and

(c) in respect of which a notice is served as mentioned in subsection (2) below.

(2) The notice referred to in subsection (1)(c) above is one which -

(a) is in such form as may be prescribed;

(b) is served before the assured tenancy is entered into;

(c) is served by the person who is to be the landlord under the assured tenancy on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be an assured shorthold tenancy."

The Act does not require this notice to served on the tenant in all circumstances -- see subsection (4), which provides:

"Subject to subsection (5) below, if, on the coming to an end of an assured shorthold tenancy (including a tenancy which was an assured shorthold but ceased to be assured before it came to an end), a new tenancy of the same or substantially the same premises comes into being under which the landlord and the tenant are the same as at the coming to an end of the earlier tenancy, then, if and so long as the new tenancy is an assured tenancy, it shall be an assured shorthold tenancy, whether or not it fulfils the conditions in paragraphs (a) to (c) above."

5. As already stated, subsection (1)(c) requires the service of notice. Subsection (4) does not apply in circumstances set out in subsections (5) and (5A), as amended by the 1996 Housing Act, but I need not read those.

6. Subsection (2) was recently considered by the Court of Appeal which held that the notice could be served on an agent of the tenant: see **Yenula Properties Ltd v Naidu** (2002) 42 EG 162.

7. The form of notice which had to be given was that prescribed by the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1988 (SI 1988 No 2203), Form 7, "or a form substantially to the same effect": see regulation 2 of those regulations. The prescribed form contains a number of boxes into which information is to be filled, including a box for the name of the tenant, another for the address of the property, and others for the dates between which the tenancy is to run.

8. Immediately before paragraph 1 there are some bullet points, which include:

"• *If there is anything you do not understand you should get advice from a solicitor or a Citizens' Advice Bureau, before you agree to the tenancy.*
• *The landlord must give this notice to the tenant before an assured shorthold tenancy is granted. It does not commit the tenant to take the tenancy*
• *This document is important, keep it in a safe place."*

Below the bullet points the name of the proposed tenant will appear, and paragraph 1 stating: *"You are proposing to take a tenancy of the dwelling known as"*, and there then is a box for completion; *"from"* and there are two boxes for completion of the relevant dates; and a note: *"The tenancy must be for a term certain of at least six months."*

The form then continues:

"2. This notice is to tell you that your tenancy is to be an assured shorthold tenancy. Provided you keep to the terms of the tenancy, you are entitled to remain in the dwelling for at least the first six months of the fixed period agreed at the start of the tenancy. At the end of this period, depending on the terms of the tenancy, the landlord may have the right to repossession if he wants.

3. The rent for this tenancy is the rent we have agreed. However, you have the right to apply to a rent assessment committee for a determination of the rent which the committee considers might reasonably be obtained under the tenancy. If the committee considers (i) that there is a sufficient number of similar properties in the locality let on assured tenancies and that (ii) the rent we have agreed is significantly higher than the rent which might reasonably be obtained having regard to the level of rents for other assured tenancies in the locality, it will determine a rent for the tenancy. That rent will be the legal maximum you can be required to pay from the date the committee directs."

9. In Form 7 as originally prescribed by the regulations, there then appears at paragraph 4, *"This notice was served on you on* [blank]", with a space for the date to be inserted. However, that particular paragraph was removed from Form 7 and it does not appear in the notices that were served in the present case.

10. Form 7 continues: *"To be signed by the landlord or his agent (someone acting for him). If there are joint landlords each must sign, unless one signs on behalf of the rest with their agreement."*

Then there are boxes for the signature and then *"Name(s) of landlord(s)"*, *"Address of landlord(s)"*, *"Tel(ephone)"*. The form continues "*If signed by agent, name and address of agent"*, with boxes for completion, and then *"Tel(ephone)"* and then "*Date*". There then appears the following information in a box:

"Special note for existing tenants
• *Generally if you already have a protected or statutory tenancy and you give it up to take a new tenancy in the same or other accommodation owned by the same landlord, that tenancy cannot be an assured tenancy. It can still be a protected tenancy.*
• *But if you currently occupy a dwelling which was let to you as a protected shorthold tenant, special rules apply.*
• *If you have an assured tenancy which is not a shorthold under the Housing Act 1988, you cannot be offered an assured shorthold tenancy of the same or other accommodation by the same landlord."*

11. I now turn to the facts of the appeals.

Osborn v Dior

12. The notice in this case was signed by Francesca Kamei, an employee of Winkworths, the agent for the landlord. The spaces for the name, address and telephone number of the landlord were left blank, but the equivalent particulars were given after the statement in the form, *"If signed by agent, name and address of agent"*, and those particulars were the particulars of the agent.

13. Before the judge, it was argued that the identity of the landlord was integral to the tenancy. The court was referred to a recent decision of this court, namely **Ravenseft Properties Ltd v Hall [**2002] HLR 624. The judge rejected the argument that, if the landlord had been named, the tenant could have obtained further information as to the landlord's intentions at the end of the tenancy on the basis that the tenant was not entitled to this information. The judge further held that the tenancy agreement would in any event identify the landlord. This was not a situation in which the tenant had to serve a counter notice. Moreover, the identification of the landlord was not required for an assured tenancy and therefore it was difficult to see why it should be required for an assured shorthold tenancy. Indeed, I would add that no prior notice at all is required for an assured tenancy. Furthermore, all other information required by the form had in this present case been given, in the judge's judgment. Finally, he held that the form was ambiguous as to whether the name, address and telephone number of the landlord were required where the same particulars were given of the landlord and it was the agent who had signed.

Marito Holdings v Deneche

14. In this case, the form that was given was signed by the agent and the agent's name, address and telephone number appeared in the correct part of the form. However, the space for the name, address and telephone number of the landlord was also completed, but with the name and address of a company which was not in fact the landlord, although its name subsequently appeared in the tenancy agreement. In the tenancy agreement, the particulars of the landlord were given "care of" the agent, whose name had been given (as the name of the agent) in the notice served pursuant to section 20(1). No name was given for the landlord at all. Accordingly, in this case the tenant would not know from the terms of the notice or the terms of the tenancy agreement who the landlord was.

15. In this case, his Honour Judge Collins had first to determine a dispute as to whether the notice under section 20 was ever served. The judge rejected the appellant's evidence on this and held in effect that the notice had been signed by him and had been duly served upon him. No objection was taken to the fact that the tenancy agreement did not identify the correct landlord and it was common ground that at the date of the proceedings the claimant was indeed the landlord. The explanation given to the court for not inserting the name of Marito Holding Ltd into the tenancy agreement was that it was thought that it would be easier for the agent to receive the housing benefit. The landlord is a company incorporated in Panama.

16. The judge rejected the argument that the section 20 notice was invalid. He said*: "The tenant is not prejudiced in any way by the section 20 Notice not stating precisely who the landlord is, provided it is given on behalf of the landlord as it is in this case. I am well aware of the provisions of section 47 and 48 of the Landlord and Tenant Act 1987 which provides that the tenant has got to have somewhere he can write to if he needs to, but that is complied with by Clause 8 of the tenancy agreement, where Norbury Property Services [the agent] is given."*

17. It may be convenient if at this point I refer to sections 47 and 48 of the Landlord and Tenant Act 1987. Section 47 provides:

"(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely --
(a) the name and address of the landlord .... "

It is further provided in subsection (4) that *"demand"* means a *"a demand for rent or other sums payable to the landlord under the terms of the tenancy."*

18. Section 48 provides:

"(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
(2) Where [no such notice is served] any rent or service charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection".

I need not read subsection (3).

19. In this connection I would also refer to section 1 of the Landlord and Tenant Act 1985, which provides:

"(1) If the tenant of premises occupied as a dwelling makes a written request for the landlord's name and address to -

(a) any person who demands, or the last person who received, rent payable under the tenancy, or
(b) any another person for the time being acting as agent for the landlord, in relation to the tenancy,
that person shall supply the tenant with a written statement of the landlord's name and address within 21 days".

It is also provided that failure to comply with the request amounts to a summary offence which is liable on conviction to a fine.

Submissions on behalf of the appellants

20. Mr John Holbrook, for the appellant in **Osborn v Dior**, makes the following submissions. First, he submits that Form 7 was not ambiguous: it required particulars of the landlord, and, if the agent signed, the agent. Secondly, because an assured shorthold tenancy conferred less security, it was more important for a prospective tenant under such a tenancy to know who the landlord was. The proposed tenant may know the proposed landlord, either by reputation or personally, and this may affect the proposed tenant's decision whether or not to enter into the tenancy. In addition, the tenant may wish to contact the proposed landlord to see what his attitude might be about allowing him to continue in the property after the expiration of the fixed period.

21. In support of this submission Mr Holbrook relies on **Morrow v Nadeem** [1986] 1 WLR 1381. In that case, a notice in the prescribed form for terminating a business tenancy in accordance with section 25 of the Landlord and Tenant Act 1954 stated that the solicitors were acting as agents for the landlord, deleted references to the landlord and gave the solicitor's address as that of the landlord. The Court of Appeal held that the form of the notice prescribed by the Act of 1954 required the name of the landlord to be stated and that the notice was invalid because it failed to do so. However, it is important to note that in that case the information which this court held was needed by the tenant included information as to the identity of the landlord for the purposes of Part II of the Act of 1954 and that the landlord would not necessarily be the same person as granted the tenancy to the tenant, or the person to whom the tenant paid his rent. Moreover, the notice required the tenant to give a counter notice to the landlord stating whether or not he would be willing to give up possession at the expiration of the period of notice. It is therefore not a case on all fours with the present.

22. Thirdly, Mr Holbrook relies on the test set out in the **Ravenseft** case. I will refer in detail to the **Ravenseft** case below. Mr Holbrook submits that on the basis of the approach in the Ravenseft case there is a need to identify the tenancy and to identify the landlord. Fourthly, Mr Holbrook also relies on the judgment of the Court of Appeal in **R (o/a Morris) v London Rent Assessment Committee** [2002] EWCA Civ 276, where it was held that a notice served on a tenant pursuant to section 4 of the 1954 Act and addressed to the tenant's predecessor in title was not a good notice to the tenant.

23. The essence of Mr Holbrook's submission is that the identity of the landlord is required. That identity is essential to the relationship of landlord and tenant and therefore this notice fails because it did not give the requisite information.

24. In the **Marito** appeal Mr Paul Staddon appears for the appellant. He relies on **Manel v Memon** [2001] 33 HLR 24 in which the Court of Appeal held that the failure to include the preliminary bullet points at the top of Form 7 meant that the notice did not comply with the Act. That case, in Mr Staddon's submission, makes it clear that the notice can be defective and fail to comply with the Act even though the information which is omitted is not that which is required by section 20 itself. Mr Staddon further submits that the form requires information and unless there is good reason for thinking that that information is not substantial, it must be treated as important and therefore presumed to be an essential part of the form. Further, Mr Staddon submits that the information in the present case was substantial. He draws attention to the fact that if the entry in the **Marito** case had been correctly made, the form would have revealed that the true landlord was a Panamanian company and it was possible -- Mr Staddon could put it no higher -- that the prospective tenant would not have been content with that.

Submissions on behalf of the respondents

25. The respondent in **Osborn v Dior,** for whom Mrs Helen Galley appears, seeks to uphold the judgment of the judge. Mrs Galley submits that the purpose of the notice was to state that the tenancy was an

assured shorthold tenancy. She submits that the proper approach is to look at the statutory objective of the notice which is to make the statement required by section 20(2)(d), and then to ask whether the notice did actually inform a reasonable recipient of what was required by the Act, and then, if that was so, it would be likely that the notice would be to substantially the same effect. She submits that in the present case Form 7 does not make it clear that the omission of particulars regarding the landlord would make the form invalid. She further draws a distinction between the notice required to be served under section 20 with Form 5, in the 1988 regulations, which is required to be served if during the course of a tenancy it is proposed to increase rent, and also with notices required under Part II of the Landlord and Tenant Act 1954. In those cases the tenant may need to contact the landlord and so his particulars must be given. She further submits that, if the notice was in fact invalid, it would not be rendered valid by giving the information in some other way. In support of that submission she referred the court to **Speedwell Estates v Dalziel** [2002] HLR 813. She also submits that, although a tenant may wish to know about any intention to redevelop, if that were an essential purpose of the notice it would have been required in the section 20 notice that the landlord should provide that information or make it available in some way. Mrs Galley submits that the purpose of requiring particulars to be given under the signature was so that the prospective tenant could be satisfied that the notice was a proper notice of which he should take note.

26. In the second appeal, **Marito v Deneche**, Mr Szelco is the advocate for the respondent. He adopts Mrs Galley's submissions in general terms, although not in absolutely every respect. For instance, he did not accept that the function of the particulars under the signature was as Mrs Galley suggested. Mr Szelco submits that in the case of an assured tenancy, as opposed to an assured shorthold tenancy, it may be more important to know the identity of the landlord because that is a more long-term arrangement and yet Parliament did not think fit to provide for any pre-tenancy agreement notice such as is required by section 20. He also submits that if the particulars of the landlord were not given when the agent signed, or were given incorrectly, the tenant might have remedies at common law such as for misrepresentation. Fourthly, he made a submission that there was in fact no prejudice in this case because the tenant at first denied that notice was ever given by the landlord and so could not have been affected by its contents.

27. In reply Mr Holbrook raised a further argument -- and he was supported in this by Mr Staddon -- that some significance should be attached to the fact that the special notes to existing tenants refer to the same landlord. This, he said, confirmed his submission that it was important for the prospective tenant to know who the landlord would be and that this was so even if the notice was signed by the agent. Mrs Galley responds to that argument by submitting that even if it was in fact the case of a protected tenant of the same premises receiving a further tenancy from the same landlord, the omission to state the particulars of the landlord could not prevent the statutory protection coming into operation and the same applied for note 3. It seems to me there is force in that submission. Furthermore, she submits that if the agent concealed, or the landlord concealed, the identity of the landlord from the prospective tenant so that the prospective tenant was deceived into signing a new assured shorthold agreement, when they were actually entitled to a new protected agreement or some greater form of security than an assured shorthold tenancy, they would have remedies at common law. Accordingly she concurs with Mr Szelco's submission on that point.

Conclusions on the question of the validity of the notices in these appeals under section 20 of the Housing Act 1988

28. I start by referring to the decision of this court in **Ravenseft Properties v Hall**, to which, it will be recalled, HHJ Hallon referred. In **Ravenseft Properties v Hall** and two other conjoined appeals, this court considered the effect on the validity of a section 20 notice of certain errors. The leading judgment is that of Mummery LJ. At paragraph 10 he set out the essential features of a section 20 notice:

"It is worth noting the more significant features of the prescribed form before consideration of the authorities on the interpretation of section 20 and the Regulations and of the respects in which the particular notices actually given in the three cases under appeal deviated from the prescribed form.

(i) The notice must be given before the person proposing take a tenancy agrees to the tenancy, it being expressly stated that the notice does not commit the tenant to take the tenancy.

(ii) Although no particular length of time between the giving of the notice and entering into the tenancy is specified, it is contemplated that the recipient of the notice will have an opportunity to take advice, including legal advice.

(iii) The notice contains only selective information about the proposed tenancy: the name of the proposed tenant, the name and address of the landlord, the address of the premises to be let and the start and end dates of the tenancy, which must be for a term certain of at least six months. Other important information about the terms of the proposed tenancy does not have to be stated in the notice. For example, the amount of the rent is not required to be stated. All that is said about the rent is that it is 'the rent we have agreed', coupled with an explanation of the right to apply to the rent assessment committee for a determination of the rent for the tenancy. So, the notice is not intended either to serve as a record of the tenancy agreement or to be a substitute for such a tenancy agreement. It is contemplated by the notice that there will be a subsequent document.

(iv) The purpose of giving the notice is clearly stated in paragraph 2 and is in accordance with section 20(2)(d) of the 1988 Act:

'This notice is to tell you that your tenancy is to be an assured shorthold tenancy .... '

Shorthold is a special kind of tenancy, as the paragraph goes on to explain: the tenant has security for the first six months of the fixed period agreed at the start of the tenancy, but, depending on the terms of the tenancy, the landlord may have the right to repossession if he wants at the end of that six months period.

(v) The Regulations expressly contemplate that deviations from the prescribed form do not necessarily invalidate a notice. Errors and omissions are expressly catered for by the provision in Regulation 2 that a reference to a form is a reference not only to the prescribed form but also includes a form 'substantially to the same effect'.

29. As to whether the content of a notice which is actually given complies with section 20, Mummery LJ set out the general approach of the court in paragraphs 11 to 13 of his judgment:

"11. .... the question whether a notice under section 20 is in the prescribed form or is in a form 'substantially to the same effect' is a question of fact and degree in each case, turning on a comparison between the prescribed form in Annex I and the particular form of notice given. The resolution of that question is not [a] decision on a point of law which is binding on later courts. The value of the authorities is in illustrating the general approach of the court to the issue of the validity of a notice under attack for its errors or omissions.

12. There are two general statements steering the courts to a consistent approach:

(i) Purposive Approach

*In **Manel v Memon** Nourse LJ posed these questions at paragraph [21]:*

'What, then, is the substance of a notice under section 20? Its essential purpose is to tell the proposed tenant that the tenancy is to be an assured shorthold tenancy, with the consequences specified in paragraphs 2 and 3 of the Form 7, in particular that "the landlord may have the right to repossession if he wants." Although we are now familiar with the notion that an assured shorthold tenancy gives the tenant a very limited security of tenure, that would not have been the case in 1988.'

Nourse LJ mentioned the importance of the presence on the form of the reference to advice, including legal advice, and the statement that the giving of the notice did not commit the tenant to take the tenancy.

(ii) The Reasonable Recipient

*In a significant ruling in **York v Casey** Peter Gibson LJ, with whom Bennett J agreed, held that the objective test which the House of Lords said in **Mannai Investment Ltd v Eagle Star Life Assurance Co Ltd** [1997] AC 749 applied to the validity of a contractual tenancy notice also applied to the validity of a section 20 notice. On that approach a notice containing an error, such as a wrong date, may nevertheless be a valid notice if, 'taking into account the relevant contextual scene', the notice is quite clear to a reasonable person reading it, so that he would not be misled by it or left in any reasonable doubt as to its effect. As Lord Clyde said in **Mannai,** the standard of reference is that of the reasonable person 'exercising his common sense in the context and in the circumstances of the particular case.'*

*13. In applying the **Mannai** approach, it is therefore important to have well in mind the context of the evident purpose of the requirement of a notice in the prescribed form. If, notwithstanding errors or omissions, the substance of the notice is sufficiently clear to the reasonable person reading it, that notice is likely to serve the purpose identified by Nourse LJ."*

30. In the **Ravenseft** appeal, the section 20 notice stated that the tenancy was to begin on 24 June 1996. Mummery LJ held that the authorities did not lay down a two-stage test which could only be operated when the error was *"obvious*". The question was simply whether, notwithstanding any errors and omissions, the notice was "*substantially to the same effect*" in accomplishing the statutory purpose of telling the proposed tenant of the special nature of the assured shorthold tenancy. Tuckey LJ and Lord Phillips MR agreed.

31. In **White v Chubb**, the second appeal heard at the same time as **Ravenseft,** the notice stated that the tenancy would begin on 1 October 1993 and end on 1 May 1994, whereas the tenancy when granted was only for a fixed period of six months. Mummery LJ held that in substance there was only one statutory question: was the notice in the prescribed form or in a form "*substantially to the same effect*", having regard to the statutory objective for giving the notice in the prescribed form (see paragraph 35 of the judgment)? At paragraph 36 of the judgment, in a passage relied on by the appellants in these appeals, Mummery LJ held as follows*: "The mistaken end date of 1 May 1994 instead of 1 April 1994, even if not obvious to the reasonable recipient, did not prevent the notice when read by the reasonable reader from fulfilling the function that it was meant to perform. He would know from reading the notice the premises to which the proposed tenancy related and the name and address of the landlord. He would also know that he had at least six months' security; that the notice did not commit him to take the tenancy and that he could seek advice before he entered into the tenancy."*

32. Lord Phillips MR went further. He held that the details inserted into the blank spaces in the form did not constitute part of the prescribed form. He held that the object of completing the blank spaces was to identify the proposed tenant to whom the notice was addressed and the proposed tenancy to which the notice related. It was not the purpose of the notice to record the terms of the tenancy. The object of the notice was to give the proposed tenant the information set out at the bottom half of the prescribed form, namely: *"The information tells the tenant of important rights that respectively both he and the landlord will enjoy under the proposed tenancy. The prescribed form also includes some useful advice to the proposed tenant in the top part of the form."*

The Master of the Rolls continued: *"If a tenancy is concluded after a section 20 notice has been given which describes the tenancy in terms that differ from those of the tenancy subsequently concluded, an issue may arise as to whether the tenancy is that to which the notice relates."*

Lord Phillips held that that was the question raised by the appeal, and that it was to be answered by asking whether, having regard to the particulars of the tenancy in the notice and all the relevant surrounding circumstances, the tenant could reasonably have concluded when he entered into the tenancy that the notice he had received related to it. Lord Phillips held that the tenant could not have been misled by the form of the notice in that case.

33. The third member of the court was Tuckey LJ. He noted the difference of approach between Mummery LJ and the Master of the Rolls. He expressed the view that the result was likely to be the same whichever question was asked. However, he expressed a preference for Mummery LJ's question "since it mirrors the language of the statute".

34. On the third conjoined appeal, **Freeman v Kasseer**, there were two errors in the notice. First, paragraph 3 was different in that the prescribed notice referred to the Rent Assessment Committee's consideration of properties let on assured tenancies, whereas the notice erroneously referred to consideration of properties let on assured shorthold tenancies. The effect of the error was to state the committee's power of investigation in more circumscribed terms than was in fact the case. Secondly, the prescribed form contained a special note for existing tenants, which misinformed the tenant about his rights. It wrongly stated that a tenant under an assured tenancy who had an assured shorthold tenancy in other accommodation would almost certainly have less security of tenure. It did not state that a new tenancy granted to a protected or statutory tenant can still be a protected tenancy; it did not state that special rules apply to protected shorthold tenants; it did not state that an assured tenant cannot be granted an assured tenancy of the same or other accommodation by the same landlord.

35. Mummery LJ held that when the notice was considered in its contractual setting neither the literal wording of paragraph 3 or of the special note for existing tenants, nor the precise information conveyed

by them formed part of the substance of Form 7. Lord Phillips agreed with Mummery LJ that the question in this case was whether the section 20 notice was in a form "substantially to the same effect" as the prescribed form. He agreed that it was. Tuckey LJ agreed with Mummery LJ that the **Kasseer** appeal should be dismissed.

36. I go back to paragraph 36 of the judgment in the **Ravenseft** case, on which, as I said, much reliance was placed on this appeal. Reliance was placed on it because Mummery LJ there attaches importance to the fact that, notwithstanding the error in the notice in that case, the information given in the notice included the name and address of the landlord. However, it seems to me that in the context of paragraph 36, the Court of Appeal was not addressing the question which has arisen in this case, namely whether the omission of that information would be fatal to the validity of the notice.

37. As regards the form and content of the notice, section 20 simply requires that the notice given to the tenant should be in a particular form, and in addition that the notice should contain the statement set out in section 20(2)(c). There is full compliance with those two express requirements in the present appeals and therefore those requirements are not in issue. Section 20 is silent about the completion of the prescribed form. The requirement to complete the prescribed form with information is implicit rather than explicit in section 20. However, the test established by the **Ravenseft** case applies whether the defect in the section 20 notice is an error in, or the omission of, information required to be inserted into the prescribed form or is an error in, or the omission of, one of the prescribed parts of the form. In either case, the ***Ravenseft*** case establishes that the test which the court must apply is whether, notwithstanding any errors or omissions that have been demonstrated, the notice is "substantially to the same effect" as a notice in the proper form which has been duly completed. In reaching its conclusion, the court must bear in mind the statutory purpose of the notice, namely that of telling the proposed tenant of the special nature of an assured shorthold tenancy.

38. The question here is whether the information as to the landlord is required where the agent signs and the agent gives his particulars. We have not been shown any case where there has been an absence of, or error in, particulars relating to a landlord in these circumstances. Her Honour Judge Hallon thought that the form was ambiguous and indeed it is unclear. The relevant part starts, *"To be signed by the landlord or his agent (someone acting for him)"*. One might have thought that the form would require the particulars of the person who signed to be inserted in the appropriate box and no more. However, if that had been the requirement, the easier and the more natural way of drafting the form would have been to provide for the name of the landlord or the agent, with simply one box. The fact is that two boxes have been provided. The better view, therefore, it appears to me, is that the particulars of both the agent and the landlord must be included, and on this point I accept as correct Mrs Galley's submission and reject Mr Szelco's submission.

39. Parliament clearly attributed importance to the formality of a section 20 notice. The primary legislation requires that the notice must be in a particular form, which we now know as Form 7. The regulations permit that form to be substantially to the same effect, but the notice must still be in a form which is Form 7 or recognisable as such. This requirement therefore goes to the form of the notice. The notice cannot be given orally or informally in a letter. It must be in the prescribed form or a form substantially to that effect. Those latter words permit some formal defects, but the essence of the form must remain.

40. In applying regulation 2, obviously the starting-point is what Form 7 requires, and a comparison has to be made between that and the notice actually given. Then the court has to reach a conclusion as to whether what was omitted or misstated was of importance or valuable, such as to go to the substance of the form. A consideration of what would have been the correct entry, and whether what was actually given was important or valuable to the recipients, involves having regard to section 20(2)(d). That of course sets out a requirement which is essential to the validity of the notice, but that requirement not only establishes a necessary condition for validity but also sets the tone for prioritising the information in the rest of the notice: see the **Ravenseft** case. The **Ravenseft** case does not mean that all other information is irrelevant but it is of lesser importance and may cross the line between the essential and the non-essential. Omission of the information required by section 20(2)(d) (which is not the situation here) would have rendered the notice invalid. The provisions of section 20(2)(d) are therefore the lowest

common denominator. The highest common factor is full compliance with both the requirement of form and content, but there is bound to be a range of cases in between.

41. As a matter of substance, it seems to me that the purpose of the entries for the particulars of the landlord is to assist the tenant to identify the tenancy, not the landlord, to which the notice relates; and also to confirm to the tenant that the notice comes from an authorised source. Accordingly, in my judgment, where the signature is that of the agent and particulars of the agent are given, the notice is not defective. I do not consider that Parliament could have intended that the omission of the particulars of the landlord should be fatal in that case. If it had been Parliament's intention to require the landlord to be identified, that information would in my judgment have been given at an earlier part of the notice and with greater prominence. Parliament must also be taken to know that the tenant would be able to discover the name of the landlord either by exercising his statutory rights, to which I have already referred, or by simply making enquiry of the landlord's agent, or by examining the tenancy agreement. It is to be noted, however, that Parliament did not require these notices to be given at any particular time in advance, which would suggest that Parliament was not anticipating any further enquiries would be made. On the other hand, as Mummery LJ noted in the **Ravenseft** case, the opportunity might be taken to obtain legal advice and the tenant receives a reminder to that effect.

42. For all these reasons, in my judgment, even if the name of the landlord is absent the notice is still "substantially to the same effect" in accomplishing the statutory purpose of the form as a duly completed form in a case where the agent has signed and given his particulars. In those circumstances I am satisfied that the judge was correct in **Osborn v Dior**: the omission of the name, address and telephone number of the landlord did not affect the validity of the notice.

43. What was true of the omission in **Osborn v Dior** must also in my judgment be true of the error that was made in the **Marito** case. The particulars of the landlord were incorrect. Nonetheless the notice, in my judgment, passed the test set by the Court of Appeal in the **Ravenseft** case for the reasons given above. I appreciate that in the **Marito** case the landlord's name was incorrect in the tenancy agreement. But if the content of the form or the tenancy agreement misled the tenant that would be, in my judgment, a separate issue which might give rise to separate remedies which do not affect the validity of the form.

Remaining points

44. First, as Mrs Galley submits, the question of the validity of the notice must be determined objectively. This is established by the **Mannai** case. Thus the question whether the tenant was actually prejudiced is not relevant: see in particular **Manel v Memon** at paragraphs 24 and 25. Thus I reject Mr Szelco's submission to the contrary.

45. Secondly, Mr Holbrook's submission, supported by Mr Staddon, is that the identity of the landlord was fundamental to the identification of the tenancy. In my judgment that particular piece of information is not fundamental in the circumstances of this case. The tenant had adequate information from that which he was already given in the notice of the tenancy which was being offered to him. There may be attributes of a landlord which are important in some cases, for example, as HHJ Hallon noted, where a counter notice is required or permitted. But I do not accept that it is an essential purpose of section 20 that particulars of the landlord should be given.

46. Thirdly, I do not consider that the question of substance must be approached with some presumption either way arising out of the form of the notice. The fact that the prescribed form requires information is a starting point, but for my own part I would not find it helpful to say that it raises any particular form of presumption.

47. Fourthly, with regard to the special notes, these are stated to be for the information of the tenant. Both the first and the third bullet points which I have already read refer to "the same landlord". Thus, Mr Holbrook in reply submitted, the identity of the landlord would be material information and go to the substance of the matter even if the agent signed and gave his own particulars. But the fact that the landlord under the new tenancy will be the same landlord will not affect his availing himself of the benefit of the first and the third bullet points. So it is not prejudicial to him if the information is not there from which he can perceive that the new landlord is in fact the same. Of course, where there has been an

assignment of the reversion he may not know that the proposing landlord is in fact his existing landlord, which also diminishes the likelihood that Parliament regarded the identity of the landlord as essential for the purposes of the notice on the basis of a special note at the end. In addition, the view which I have formed on this point is in line with the approach which this court took to the errors in the statement of the special notes in **Freeman v Kasseer**, above.

48. Finally, if the tenant is deceived into taking a new assured shorthold tenancy in circumstances where he was entitled under the information given in the special notes to a greater form of security, there are other remedies available at law. Accordingly the possibility that the absence or misstatement of information about the landlord may amount to a misrepresentation does not in my judgment conclude the question what is required for substantial compliance with the requirement to use the prescribed form.

49. For all those reasons I would dismiss these two appeals, in the latter case, of course, only with respect to the notice point.

50. **LORD JUSTICE SEDLEY**: Somewhat to my surprise, Mrs Galley concedes at the outset of her argument that the rule-maker's evident intention is that the landlord's name and address are to be included in Form 7, but she submits nevertheless that a completed form which omits these data is still a form "substantially to the same effect" within the meaning of rule 2. I have to say that I find this incomprehensible. How can it be substantial compliance to omit something which is required to be included? The questions of waiver and cure of substantial non-compliance which provided an answer in **R v Secretary of State for the Home Department ex parte Jeyeanthan** [2000] 1 WLR 354 have not arisen on the arguments here.

51. In my judgment, there is no true ambiguity about the information required under the statutory power by the rule-maker in the prescribed Form 7. On the face of it, it gives a choice. It may be signed either by the landlord or by the landlord's agent, and whichever one signs must also spell out their name and address and telephone number. It is not a contractual document: it is a source of information. As such, what matters is that it should visibly come from an authorised source, as Lady Justice Arden says, not necessarily from two authorised sources. To the extent that the composition of the form suggests (as I apprehend it does, both to Lady Justice Arden and to Lord Justice Simon Brown) that the landlord's name and address are a free-standing requisite, the doubt is in my view resolved by the statutory regime of which the form is a part, so that here too no true ambiguity remains.

52. It is worth remembering that an ambiguity in law is more than simply an obscurity or difficulty of meaning. We are concerned here, if at all, with a form of ambiguity classified by Bennion (Statutory Interpretation, 4th edition) as "*syntactic ambiguity*". As to this, at page 384 the author quotes from **Kirkness v Hudson** [1955] AC 696 at 735, per Lord Reid*: "A provision is not ambiguous merely because it contains a word which in a different context is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."*

The context here is not merely the form or the regulations but the statutory regime of which they form part. At page 389 Bennion writes: *"Where, in relation to the facts of the instant case, the wording of the enactment is disorganised, garbled or otherwise semantically obscure, it is first necessary to determine what was the intended grammatical meaning."*

53. I suppose when one is looking at a form which contains boxes, one has to substitute "semiotically" for "*semantically*" in the phrase "*semantically obscure*", but the point is the same. Of it, Bennion goes on to say, later in the volume at page 817: *"The concept of literal construction involves treating both or all the possible constructions of a grammatically ambiguous enactment as 'literal' meanings. Here the legislative purpose is likely to be decisive in determining which of the ambiguous meanings to adopt, and it seems proper to refer to this also as a 'purposive' construction."*

This seems to me to be the right approach.

54. When one looks at the legislative regime one sees from the provisions, first of all, of sections 1 and 2 of the Landlord and Tenant Act 1985, already cited by Lady Justice Arden, that it is a criminal offence for a lessor's agent or rent collector to fail without reasonable excuse to tell the tenant the landlord's name and

address; and for the landlord then, if it is a company, to withhold the names and addresses of its directors and secretary. If one looks at sections 44 and 48 of the Landlord and Tenant Act 1987, also referred to by Lady Justice Arden, one sees that the rent becomes irrecoverable for as long as the landlord has failed to give the tenant notice of the landlord's name and address for service within the jurisdiction and irrecoverable too on any rent demand which omits these data.

55. These provisions, it seems to me, confirm with some force Mr Holbrook's submission that it is of great importance to residential tenants to know who and where their landlord is. There may, as he suggests, be things the tenant wants to ascertain about the landlord's future intentions with regard to the tenancy; there may also be things such as urgent repairs which the agent is simply refusing or failing to deal with; there may even be offences which are being committed by the landlord behind a screen of anonymity. None of these important statutory rights and obligations arises, Mr Holbrook points out, until a tenancy is in existence. By then, he argues, the tenant may have contracted with someone from whom they would not have taken a tenancy from had they known who it was to be. This, I accept, is possible but only where either the proffered tenancy agreement itself fails to identify the true lessor or a tenancy has come into being without anything being put down in writing. I am not persuaded that the minister who made the 1988 regulations was trying to cater for such cases by making proleptic provision for them, because in these, as in all other cases, the undoubted need of the tenant to know the landlord's identity and whereabouts had, by the date of these regulations, been strongly and comprehensively provided for once a tenancy was in being by Parliament in the Acts of 1985 and 1988.

56. I have been more troubled by the final box on the form headed "*Special note for existing tenants*". Two of the three bullet points draw the attention of sitting tenants to the relevance of the identity of the landlord on the proposed new tenancy. This might point to a different meaning but, as Mr Szelco argues, a tenant, once alerted, certainly can ask -- and refuse to change or move until he is told -- who his new landlord is intended to be.

57. Mrs Galley has satisfied me that my expressed concern that an unscrupulous landlord could cheat a sitting protected tenant of security of tenure by introducing an undisclosed nominal new lessor is likely to be unfounded because of the provision of section 34(1)(b) of the Housing Act 1988. I do not say that my worries about the possibility of an unscrupulous landlord cheating a tenant with a protected tenancy have gone, but I do not think now that the matters to which the final bullet points are directed raise issues of protection which the obligation to provide the lessor's name and address would help to head off. This at least is my present view following, it must be stressed, brief argument on a point arising only late in the proceedings.

58. Whether these considerations are taken as eliminating any ambiguity or as resolving an existing one, the outcome is in my view the same. It is not in my judgment a legal requisite that the landlord's name and address should be given on Form 7 in cases where the agent signs and gives its name and address. But, given the problems of rent recovery which will arise for the landlord if the tenant does not from day one of the tenancy know the landlord's true name and address, agents will be wise to ensure that this information is given at a very early stage, and the earliest stage is (or was) likely to be the service of Form 7.

59. On the **Marito Holdings** case, I would not agree with Lady Justice Arden that the misstatement of the landlord's identity does not matter. It is one thing to hold, as I too would hold, that it is not obligatory to give this information so long as the agent has signed and the agent's name and address are given. It is quite another to hold that where, albeit voluntarily, the landlord's name and address are given, it is of no consequence if they are false. I would hold for my part that such falsities cross the line between the material and the immaterial because, unlike Lady Justice Arden, for reasons I have given, I consider that the form offers a true choice: so that a party who elects to exercise both limbs of the choice comes under a duty to do so accurately.

60. Accordingly I too would dismiss the appeal in the **Osborn** case, albeit for reasons very different from those of Lady Justice Arden, but for my part I would allow the appeal in the **Marito** case.

61. **LORD JUSTICE SIMON BROWN**: I agree with Lady Justice Arden that on its true construction Form 7 requires that the landlord's name, address and telephone number be included even where, as in each of these appeals, the form is signed by the landlord's agent and duly includes the agent's name, address and telephone number. The question arising in both appeals is whether the failure in these circumstances to include the landlord's correct name, address and telephone number (in the first appeal no such particulars being given, in the second incorrect particulars) is fatal to the validity of the section 20 notice, with the result that the tenant enjoys an assured tenancy rather than, as intended, merely an assured shorthold tenancy. In common with Lady Justice Arden, I too agree that this failure does not have the effect in law of invalidating the notice. Even without the landlord's correct details being included, it is my view that the form, given its essential purpose as discussed in the case law, is "substantially to the same effect" as were it to be fully and correctly completed in the relevant regard.

62. The requirement for the landlord's particulars to be given (unlike, for example, the requirement that the notice state that the assured tenancy to which it relates is to be a shorthold tenancy) is to be found, not in the statute, but rather in the prescribed form itself. That, moreover, it *is* a requirement is substantially less than immediately obvious on consideration of the form. This, of course, is well illustrated by what I understand to be Lord Justice Sedley's contrary view of the form's requirements. In these circumstances, I would be disinclined to hold that the requirement was mandatory in the sense and to the extent that failure to comply with it is fatal, unless I were persuaded that there are real and cogent reasons why these details are reasonably required by the tenant who is to receive the notice. Despite the many able and ingenious submissions in this regard advanced in support of these appeals respectively by Mr Holbrook and Mr Staddon, I remain wholly unpersuaded of any such thing.

63. For these reasons, which really do no more than briefly mirror certain of the more comprehensive reasons given by Lady Justice Arden, I too would dismiss both these appeals on the section 20 point.

ORDER:

Osborn v Dior

Appeal dismissed. The stay be lifted and possession ordered 28 days from the date of judgment, the respondent to pay the appellant's costs of the appeal. The order below to remain subject to a detailed assessment of the liability of those costs being adjourned generally. There be a detailed assessment of the defendant appellant's publicly funded costs. Application for permission to appeal to the House of Lords refused.

Marito Holdings v Deneche

Appeal dismissed by a majority. Possession stayed for 15 days with liberty to the defendant to apply for a continued stay to the county court. Application for permission to appeal to the House of Lords refused.

Balance of the appeal to be adjourned with a direction that efforts be made to resolve it through ADR and if necessary the Pro Bono Unit. If those efforts are unsuccessful it is directed that the papers, including an explanation of why mediation was unsuccessful, be passed to Arden LJ for further directions.

(Order does not form part of the approved judgment)

MR J HOLBROOK (instructed by Anthony Gold) appeared on behalf of the Appellant DIOR
MRS H GALLEY (instructed by Campbell Hooper) appeared on behalf of the Respondent OSBORN & CO
MR P STADDON (instructed by Oliver Fisher, London W8 5 EA) appeared on behalf of the Appellant DENECHE
MR G SZELCO (Solicitor) (of McEwen Parkinson, London W1G 9XQ) appeared on behalf of the Respondent MARITO HOLDINGS