NEW SQUARE Chambers

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THE VALUE OF HARD WORK: A CAUTIONARY TALE FOR TENANTS

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Where "*residential accommodation is offered and accepted with exclusive possession for a term at a rent, the result is a tenancy*"; so said Lord Templeman in the seminal case of *Street v Mountford* [1985] AC 809.

Of course, as the Court of Appeal clarified in *Ashburn Anstalt v Arnold* [1989] Ch 1, the common law has long recognised that a valid lease may still exist even where no rent is payable.

Yet, a tenancy '*under which for the time being no rent is payable'* falls outside the definition of an assured tenancy and is excluded from the usual statutory protections under the Housing Act 1988 ("***the 1988 Act***")[1]. Consequently, in such cases, the landlord need not establish a ground for possession or comply with the requirements of section 21; they need only serve a notice to quit to become entitled to a possession order.

The Court of Appeal in *Garraway v Phillips* [2026] EWCA Civ 55 decided that a tenancy requiring the tenant to provide services for which no monetary value was attributed was just such a case.

BACKGROUND

The tenant, Ms Garraway, occupied a property in Hildenborough, near Tonbridge in Kent. The parties entered into what was described as a "*rudimentary*" tenancy agreement dated 23 January 2023. The weekly "Rent" was expressed as:

> *"Minimum of 2 days work on the estate with hours from 9:00 to 17:00. Breaks to be agreed."*

The landlords served notice on 26 May 2023 that the tenancy would terminate on 22 July 2023. This was followed by a notice to quit on 27 September 2023, expiring

[1] Schedule 1, paragraph 3.

31 October 2023. The tenant failed to vacate and possession proceedings were commenced on 14 December 2023.

The District Judge at first instance held that the tenancy was one under which no rent was payable within the meaning of the 1988 Act. Although the provision of services could amount to rent at common law, the 1988 Act required payment of money or, if it took the form of provision of services, the parties had to agree the monetary value of those services. The tenant therefore fell outside the statutory scheme and the landlord was not required to prove a ground for possession. The Circuit Judge agreed on appeal.

The tenant made a second appeal to the Court of Appeal, arguing that the services could qualify as rent within the meaning of the 1988 Act because it would be possible for the Court to determine their value.

JUDGMENT OF THE COURT OF APPEAL

The Court of Appeal upheld the decision of the judges below and dismissed the appeal.

Males LJ, giving the leading judgment, set out the position at common law that rent need not consist of the payment of money and that, where it took the form of some payment in kind, no monetary value need be attributed to the goods or services provided.

Indeed, he noted that section 205(1)(xxiii) of the Law of Property Act 1925 provides an example of a statutory definition of rent which includes payment "*in money or money's worth*", encompassing even those cases where the parties have not expressly attributed a value to the goods or services in question.

The statutory context of the 1988 Act though was different. The Rent Acts provided a level of protection to tenants by limiting the rent which landlords were able to charge and giving tenants security of tenure. In so doing, the legislation excluded from its protections those tenancies were no rent was payable or where rent was below a specified level. The meaning of "rent" in such cases was consistently held in authority to be limited to rent payable "*in money and money alone*" – *Hornsby v Maynard* [1925] 1 KB 514.

The Court agreed however with the observations of Denning LJ in *Montagu v Browning* [1954] 1 WLR 1039 in which he said this of the decision in *Hornsby*:

> *"… I cannot agree with that restricted meaning of the word 'rent'. It seems to me that even under the Rent Acts, in cases when rent is not payable in money but in kind, as in goods or services, then, so long as the parties have by agreement quantified the value in terms of money, the sum so quantified is the rent of the house within the meaning of the Rent Restriction Acts…"*

Similarly, in *Barnes v Barratt* [1970] 2 QB 657, Sachs LJ said this:

> *"'In the decades which immediately followed this clear decision [in Hornsby], and indeed in the decades which subsequently transpired, there were passed a whole series of statutes which adopted the Act of 1920 as the principal Act and brought into operation extensive amending provisions, using, in every case, the same phraseology so far as was relevant to the meaning of the word "rent". In none of these Acts was that word given a fresh definition, nor has it been given any fresh definition in the Act of 1968. In such circumstances it is axiomatic that the legislature must normally be taken to have been aware of the courts' well-established view of the meaning of a specific word and to have embodied that meaning in the succeeding statutes. That, in itself, would be a good ground for holding that the Hornsby v Maynard [1925] 1 KB 514 interpretation of the word "rent" continues in force in essence.*
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> *However, if one turns to look at the structure of the Rent Acts as a whole, it is equally clear that their provisions with regard to rent restriction can only, in practice, be operated if that interpretation is correct. The effective basis of the restrictions turns on there being quantified sums to which the provisions of the Act can apply. …'*

The task for the Court then was to ascertain the meaning of the statutory words in light of the context and purpose of the statute viewed as a whole and in its historical context. The Court considered what is sometimes known as the *Barras* principle (arising out of *Barras v Aberdeen Steam Trawling and Fishing Co Ltd* [1933] AC 402) of particular relevance, namely:

> *"Where an Act uses a word or phrase that has been the subject of previous judicial interpretation in the same or a similar context it may be possible to infer that the legislature intended the word or phrase to bear the same meaning as it had in that context"*

The Court found that Parliament had intended the word "rent" to bear the same meaning under the 1988 Act as had been ascribed to it in the above authorities interpreting the Rent Acts. Four principal reasons were given:

1. The express purpose of the 1988 Act was to amend the Rent Act 1977. The 1988 Act gave no definition or rent nor any other indication that a different meaning was intended;

2. The language in paragraph 3 of Schedule 1 to the 1988 Act was the same as was used in the exclusionary provisions in the Rent Act 1977. Males LJ described it as "*inconceivable that Parliament intended a significant change in the meaning to be attributed to these terms*";

3. The rationale for holding that rent in the Rent Acts referred to a payment of money was that the provisions for increasing the rent and recovery by the tenant of

overpaid rent would otherwise be unworkable. Males LJ considered the same rationale applied equally to the provisions of the 1988 Act, though Falk LJ was "*less convinced on this point*", noting that "*consideration in the form of goods or series is capable of valuation, even if there is some difficulty in doing so*";

4. The Court found some significance in the fact that, at the same time as enacting the 1988 Act, Parliament also inserted section 3A into the Protection from Eviction Act 1977, which excluded from its protections a tenancy "*granted otherwise than for money or money's worth*". Of this, Males LJ said:

   "Parliament was, therefore, well aware of the possibility of extending statutory protection to a tenancy granted in exchange for money's worth without any monetary value being attributed to the goods or services provided, but chose not to adopt the same definition when dealing with assured tenancies within the scope of the 1988 Act itself".

The Court therefore found that Ms Garraway's tenancy was not an assured tenancy and, consequently, upon serving a notice to quit, the landlord was entitled to an order for possession.

COMMENT

Although tenancies for non-monetary consideration are relatively rare, this case highlights the importance of clear drafting in such an agreement. Where the parties intend that the tenant should have security of tenure under the 1988 Act, some quantifiable value ought to be specified for the goods or services payable in kind to ensure the tenancy is not one "*under which no rent is payable*".

Further, while the Renters' Rights Act 2025 makes considerable changes to the 1988 Act, paragraph 3 of Schedule 1 will remain unaltered and no alternative definition of "rent" is proposed. It is therefore likely, in the author's view, that this decision will continue to represent the state of the law for the foreseeable future notwithstanding the enhanced protections afforded to tenants in the new Act.

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