The status of spouses of agricultural workers (Hook v Hawkins)

23/05/2019

Property Disputes analysis: Joseph Steadman, barrister at Wilberforce Chambers, examines the decision in Hook v Hawkins where the Upper Tribunal (UT) considered the status of the spouse of an agricultural worker under the Rent (Agriculture) Act 1976 (R(A)A 1976) after the worker leaves the home and the spouses are divorced.

Hook and another v Hawkins [2019] UKUT 147 (LC), [2019] All ER (D) 73 (May)

What are the practical implications of this case?

The decision is of importance for agricultural landlords and tenants, as well as those involved in due diligence around the sale and purchase of agricultural estates. It is not uncommon for families to farm the same estate for decades, and so there will likely continue to be tenants or licensees who seek to claim the protection of R(A)A 1976 for some time. The UT found that 'protected occupier' status is personal, so that even a joint tenant would not—if they were not an agricultural worker—share that status.

In addition, the UT's confirmation that Matrimonial Homes Act 1983 (MHA 1983) did not confer any freestanding rights on the spouses of protected occupiers is a welcome one. The 'rights of occupation' provided for in MHA 1983 were rights as between spouses, not rights which a spouse could exercise against a landlord with whom they had no privity of contract or estate. These clarifications are potentially of broader relevance outside the agricultural context, where spouses or ex-spouses seek to claim protections against landlords, for example under the Rent Acts.

Finally, the decision is an important reminder to matrimonial lawyers that they should consider whether their client's spouse has any statutory protections which might end once decree absolute is pronounced. There is a statutory vesting process which can be used to transfer protected occupier status, but this requires an order of the court, and if the opportunity is missed, then their client may well lose out.

What was the background?

The decision concerned an agricultural estate called New Shifford Farm, of which the appellants, Mr and Mrs Hook, were the owners. In 1975 the respondent, Ms Hawkins, moved into one of the estate cottages with her husband, who was an agricultural worker. The then owners of New Shifford Farm permitted Mr Hawkins to live in the cottage rent-free in connection with his employment. In 1990, the marriage broke down and Mr Hawkins left New Shifford Farm. The couple divorced, and decree absolute was pronounced in 1991. Ms Hawkins continued to live in the cottage rent-free until 1993, when she moved into another estate cottage and started paying a monthly rent of £200. In 1995, Ms Hawkins moved into another estate cottage and continued to pay a monthly rent of £200. She has lived there ever since.

The procedural trigger for the decision was a notice served by Mr and Mrs Hook following their purchase of New Shifford Farm in 2015. The notice, under HA 1988, s 13, proposed—on the basis that Ms Hawkins had an assured tenancy and so was required to pay a market rent—a new monthly rent of £850. Ms Hawkins objected to the notice on the basis that she was entitled to the protection of R(A)A 1976 and therefore that she was required only to pay a fair rent. The First Tier Tribunal (FTT) agreed with Ms Hawkins and so found that it had no jurisdiction to determine the market rent under HA 1988. Mr and Mrs Hook appealed and were granted permission on the basis that the matter was of general public importance.

The UT was required to consider the combined effect of:

- R(A)A 1976, which provided protection to agricultural workers unable to qualify as having protected tenancies under the Rent Acts (for example, because they had a licence rather than a tenancy or because they had a low rent) and has been superseded by HA 1988

RELX (UK) Limited, trading as LexisNexis®. Registered office 1-3 Strand London WC2N 5JR. Registered in England number 2746621. VAT Registered No. GB 730 8595 20. LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. © 2018 LexisNexis SA-SA-0918-035. The information in this email is current as of September 2018 and is subject to change without notice.

- MHA 1983, which provided a spouse with 'rights of occupation' where the other spouse had an estate, interest, contract, or right to remain in a dwelling house which was or had been their matrimonial home, and has been superseded by the Family Law Act 1996

What did the UT decide?

The UT agreed with the analysis put forward on behalf of Mr and Mrs Hook, which was as follows:

- Mr Hawkins had been a protected occupier of the original cottage, as a licensee, under R(A)A 1976. Ms Hawkins was not an agricultural worker, and so was not a protected occupier. Even if Ms Hawkins had a joint licence—or a joint tenancy as the FTT had found—this did not confer upon her the status of a protected occupier

- when Mr Hawkins ceased to work on the farm and left the cottage, his licence to occupy the cottage ended, however he was deemed to remain in occupation by virtue of MHA 1983, s 1(6) (which meant his wife's occupation was treated as occupation by him) and this meant that he was the statutory tenant of the cottage

- when decree absolute was pronounced in 1991, Mr Hawkins' deemed occupation ceased, and he ceased to be the statutory tenant. At that stage, Ms Hawkins was neither a protected occupier nor a statutory tenant. This was not, as was argued on behalf of the respondent, unlawful discrimination based on her marital status, but rather a difference in treatment based on her marriage—or otherwise—specifically to Mr Hawkins

- by permitting Ms Hawkins to remain in the cottage following her divorce, the then owners of New Shifford Farm had not implicitly permitted her to become the statutory tenant. The case relied upon by the respondent, *Durman v Bell* [1988] 20 HLR 340, concerned the timing of a transition in status from protected occupier to a statutory tenant, whereas Ms Hawkins had never been a protected occupier

- when Ms Hawkins moved into the second cottage in 1993, and began to pay rent, she was not a person who 'immediately before the tenancy was granted' was a protected occupier or statutory tenant. The exception in HA 1988, s 34 therefore did not apply, so that her tenancy was (in accordance with the general rule for tenancies of dwelling houses at the time) an assured tenancy. The same was true when Ms Hawkins moved into the third cottage in 1995

The case was therefore remitted to the FTT so that a market rent could be determined.

Joseph Steadman is regularly instructed in litigation involving commercial or residential property, as well as providing advice in non-contentious matters. In Hook v Hawkins, Steadman was counsel for the successful appellants.

Interviewed by Kate Beaumont.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

FREE TRIAL

The Future of Law. Since 1818.

LexisNexis

RELX (UK) Limited, trading as LexisNexis®. Registered office 1-3 Strand London WC2N 5JR. Registered in England number 2746621. VAT Registered No. GB 730 8595 20. LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. © 2018 LexisNexis SA-SA-0918-035. The information in this email is current as of September 2018 and is subject to change without notice.