

## Third-party Relief Against Forfeiture

Mark Pawlowski asks whether a tenant may be relieved from forfeiture of his lease where arrears of rent are paid to the landlord by a third party with the tenant's consent and authority

It is well settled that payment to a landlord by a stranger to the tenancy of a sum equivalent to the amount of rent owing by the tenant is not a good satisfaction of the rent, even if it is accepted by the landlord, unless it is made by the payer as agent for, and on behalf of, or in the name and on account of, the tenant, or with his authority or subsequent ratification: *Simpson v Eggington* (1855) 10 Exch 845, 847; *Smith v Cox* [1940] 2 KB 558. Thus, in *London and County (A & D) Ltd v Wilfred Sportsman Ltd* [1971] 1 Ch 764, the payment of arrears of rent by a surety was held to constitute a payment in discharge of its personal contractual obligation and not payment of rent by or on behalf of the tenant. Similarly, in *Bessa Plus plc v Lancaster* (1998) 30 HLR 48, the landlord was held entitled to reject payments of rent when made by a stranger who was neither a party to the tenancy agreement nor an agent for the tenant. The general principle, therefore, is that a landlord is not bound to accept tender of arrears of rent from a third party which would not, in law, operate to discharge the debt or which would otherwise prejudice his position as against his tenant by, for example, creating a new tenancy in some other person or operating as a waiver of some default by the tenant: *Richards v De Freitas* (1974) 29 P & CR 1.

### Payment by someone other than the party being sued

In *Matthews v Dobbins* [1963] 1 WLR 227, the landlords had brought an action in the County Court for possession of premises on the ground of non-payment of rent. When the arrears and costs were paid into court by a person other than the defendant, the action was removed from the list for hearing and the trial judge refused to restore the action to the list. The Court of Appeal held, allowing the appeal, that the action did not cease, under s.191(1) of the County Courts Act 1959, if payment into court was made by someone other than the tenant being sued by the landlord, and that, accordingly, the action had to be restored to the list for hearing. Ormerod LJ, at 229, put the matter this way:

“What is submitted by Mr. Bagnall is that although the section provides that the action shall come to an end if the money is paid into court by the lessee, the ‘lessee’ in this particular context means not only the ‘lessee’ as defined by subsection (5)(b), but the lessee who is sued in the action in accordance with section 191(1). If I may read that part of it again, it says: ‘Where a lessor is proceeding by action in a county court ... to enforce against a lessee a right of re-entry’ - and then paragraph (a) says: ‘if the lessee pays into court ...’ and so on. Mr. Bagnall submits that ‘lessee’ in paragraph (a) must refer to the lessee who is sued by the lessor and is referred to in the earlier part of the subsection. That, I think, must be right. It does not appear to me that the wording of the section is so wide as to put an end to the action whenever any

person other than the person sued or someone on his behalf pays the arrears of rent and costs into court.”

And Donovan LJ, at 230:

“... the actual words of section 191(1)(a) are: ‘if the lessee pays into court ... all the rent in arrears ...’ How can a person with no privity of contract with the landlord and in no property relationship with him pay in *rent*? He may pay money, but the Act uses the expression ‘rent’.”

### **Payment with tenant's authority and consent**

In *Barking & Dagenham London Borough Council v Omokudu* [2020] EWHC 2620 (Ch), the tenant was a pastor at a church, which was also a limited company and registered charity. The demised premises were the subject of a deed of trust which stated that the tenant held the premises on trust for the church. The landlord began forfeiture proceedings against the tenant, who applied for relief from forfeiture under s.138(3) of the County Courts Act 1984. On 5 March 2018, the tenant's solicitor paid £112,000 to the landlord from his client account for arrears of rent. The landlord was dissatisfied with the source of the money and returned it to the solicitor. Prior to the relief from forfeiture hearing, the tenant was adjudged bankrupt. The bankruptcy order was subsequently rescinded, but not annulled.

In October 2018, the application for relief from forfeiture was heard. The recorder allowed the relief on the basis that the money had been paid by the tenant's solicitor, acting as the tenant's agent, and that the church had been the source of the funds, paid with the tenant's authority. The recorder also refused to make any order for repayment of the money returned by the landlord to the solicitor, finding that the landlord had not asked for such relief. On appeal, the landlord submitted that the recorder had erred as, under s.284(1) of the Insolvency Act 1986, where a person was made bankrupt, any disposition of property was void, and so the payment to the landlord had been void and could not constitute payment from relief against forfeiture. Section 284(1) and (2) read as follows:

“(1) Where a person is made bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

(2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.

Marcus Smith J, however, rejected this analysis. On the issue of the payment of the arrears, the recorder had found that the immediate source of the payment was the solicitor's client account and that it had come from the church's funds. The payment, therefore, was not caught by s.284(1) of the 1986 Act since it had not been made by the tenant. It was also apparent that the payment had been made with the tenant's authority: (1) it had been made by a solicitor out of a client account; (2) the tenant was the solicitor's client; and (3) the solicitor had been instructed by the tenant. The case of *Matthews*, relied on by the landlord, stated that payment

of arrears of rent had to come from the party liable to pay and not from a stranger or third party. This echoed the well-known rule that, where there was a payment of money by a stranger to pay off a debt, there was no discharge of that debt; the debt remained and the payee could sue the debtor for it. However, the situation was very different in the present case where a payment had been made by a stranger with the debtor's consent or ratification. That was not the same as it being made by a third party. In the instant case, there was a particularly close relationship between the tenant and the church. The tenant held the lease on trust for the church, and he was a pastor at the church. The solicitor could only tender the rent if the payment had been made with the tenant's consent. The inference was, therefore, inevitable that, when the solicitor paid out the money from the client account, he did so on the authority and consent of the tenant: see also, *Pellatt v Boosey* (1862) 31 LJCP 281, where rent was accepted from a person acting on the tenant's behalf.

As for repayment of the money, whilst forfeiture was a matter of equity and a landlord should be fully compensated for arrears of rent, the money had been paid on 5 March and that was the end of the matter. What the landlord had done, namely, pay the money back to the solicitor, was its own choice. The recorder, therefore, had been right to find that he had no jurisdiction to deal with that part of the case.

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