

## Break clauses and entity identity errors

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**Property analysis:** David Nicholls, a barrister at Landmark Chambers, explains that the decision in *Vanquish Properties vs Brook Street* serves as a reminder of the difficulties that can arise when dealing with unconventional legal entities.

### Original news

*Vanquish Properties (UK) Limited Partnership v Brook Street (UK) Ltd* [2016] EWHC 1508 (Ch)

*The Chancery Division dismissed the claimant's claim for declarations that a break clause in a lease had been operated to bring the lease to an end. Further, notices purporting to demise certain premises to the defendant company had not been valid.*

### What issues did this case raise? Why is it significant?

The case concerned the validity of a break notice served by a landlord, which was a limited partnership (LP) and the tenant under an overriding lease. There were two main issues:

- identifying the person entitled to serve the break notice, and
- applying the *Mannai* principle (see *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749, [1997] 3 All ER 352) to the mistake in break notice

The overriding lease was granted to a LP acting by its general partner (GP). However, the LP (as with ordinary partnerships) has no legal personality. Therefore, the overriding lease could not be vested in the LP. At the time the overriding lease was granted, there were five partners in the LP. But, as a matter of law, the legal estate could only be vested in four of them, eg, the first named four in the lease. Here, however, only the GP was named in the lease in addition to the LP.

The court considered that in some circumstances it may be possible to construe a lease granted to a tenant in the name of a partnership as being a lease to the partners, provided their number does not exceed four. However, there are real difficulties in trying to identify which four partners out of a greater number should be treated as being vested with the legal estate, even by reference to publicly filed information such as that at Companies House.

It followed from this conclusion that the overriding lease was not granted to the LP nor to four of the partners. Therefore, the break notice in the name of the LP was invalid because the break notice could only be given by the lessor, ie, the tenant under the overriding lease.

Could the break notice be saved by applying the *Mannai* test? The court thought not, rejecting an argument that the mistake in the name of the party serving the notice (ie, referring to the LP instead of the GP) would have been clear to a reasonable recipient. A mistake had occurred because the lease incorrectly named the LP as the lessee and the mistake was repeated in the notice. There was nothing in the letters, notices or surrounding context that would make the mistake clear to the reasonable recipient. Indeed, it was far more likely that the reasonable recipient would have appreciated that the legal estate could not be held by the LP and would therefore have been puzzled by what the notice meant.

### How helpful is this judgment in clarifying the law in this area? Are there any remaining grey areas?

This judgment is a useful reminder of some of the difficulties that can arise when dealing with unconventional entities, such as limited partnerships. A simple mistake in correctly identifying the person in whom the legal estate was to be vested was not subsequently picked up and has caused numerous consequential problems. The court has not granted relief and so the LP will either have to appeal or serve a fresh notice.

### What does this mean for lawyers and their clients? What should they do next?

Transactional lawyers need to give greater thought to the identity of their clients and the legal consequences that flow from that identity. The limitations of the *Mannai* principle should be noted—when serving a break notice, it is important to get it right first time.

### How does this case fit in with other developments in this area of the law?

There have been a number of cases in recent years concerning the validity of break notices and the application of the *Mannai* test. As the property market strengthens and more developments are undertaken, there are greater incentives for landlords to seek to exercise break clauses and for tenants to seek to stay put if possible.

### Do you have any predictions for future developments?

It will be interesting to see if the LP appeals the decision and on what basis. It should be borne in mind that the decision is only at the level of a Chancery Master.

*Interviewed by Lucy Trevelyan.*

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