Case Name: *Cardtronics Europe Ltd & Ors v Syke & Ors (Valuation Officers)* 2018 EWCA Civ 2472 (09 November 2018)

Full case: Click Here

Commentary: This Court of Appeal case considered the correct approach in law to the rating of the site of an automated teller machine ("ATM") in a supermarket, shop or petrol filling station, in circumstances where the occupier of the larger premises and the operator of the ATM are not the same company. The Upper Tribunal (Lands Chamber) ("Tribunal") had determined on 12 April 2017 that separate entries in the 2010 rating list for each of the ATM sites should not be disturbed

Each of the disputed alterations to the rating list had the effect of including the site of the ATM as a separate hereditament with its own rateable value, but in most cases without any corresponding reduction in the rateable value of the shop or other premises in which it was located. The sites are in supermarkets owned by Sainsbury's, Tesco and Co-op (with ATMs operated by banks within the same corporate structure as the retailer) and in premises where an ATM is operated by Cardtronics Europe Ltd in shops and other premises in which Cardtronics has no legal interest.

The Court of Appeal agreed with the appellants that the ATMs in the retail premises in question (irrespective of whether they are within the premises or are accessible from outside via a "hole in the wall") are not separate units for rating purposes and the alterations to the rating list should not have been made.

The two main issues before the Court of Appeal were:

1) Did the Tribunal err in its approach to the identification of a hereditament?
2) Did the Tribunal err in its approach to the rateable occupation of the ATM sites?

On the first question, the Court held that the Tribunal had (rightly) distinguished between circumstances in which the bank operating the ATM has a "right of occupation of a specific unit of property" and those where it has nothing more than a "right of access to a machine wherever it [happens] to be located". To be a hereditament, a unit must be identifiable as a self-contained "unit of property". There was no error of law in the Tribunal's approach, which conforms with the authorities on the concept of a hereditament and is faithful to the "geographical" test in Woolway v Mazars [2015] UKSC 53. The appellants argued that the presence of an ATM (itself non-rateable plant and machinery) is not relevant to the identification of a separate hereditament and is prior to the question of occupation. The Court of Appeal disagreed with that approach and said that one could not ignore completely the presence of the non-rateable plant and machinery when determining the existence of a separate hereditament.

On the second question, the retailers Sainsburys, Tesco and the Co-op had submitted to the Tribunal that the Valuation Tribunal for England (and the Tribunal) had been wrong determining the sites of the ATMs to be in the sole occupation of the banks operating the ATMs – they argued that there was no separate rateable occupation by the banks.

The Court of Appeal agreed and held that the Tribunal did err in its approach to the issue of rateable occupation.

The Court held that "general control" remains the decisive factor in establishing who is in rateable occupation of a site whether there are competing parties with the right to possession. Lindblom LJ agreed with the appellants' submissions that the principle of "general control" applies where: (a) the "owner" has not given up possession or actual occupation of the site in question; (b) where the purpose of occupation (here the operation of an ATM) is a common purpose with that of the other

party in occupation and is of direct benefit to the "owner"; and (c) where the "owner" retains physical or contractual control over the site to realise that benefit and this can be demonstrated by objective evidence. There would be no need to consider the "dominant" or "primary" purpose in this case, as argued by the respondents. The question from the landmark case of Westminster Council v. Southern Railway (House of Lords) [1936] AC 511 is whether the "owner" retains "general control" of the site. The Court of Appeal considered that, in all of the current appeals, the "owner" of each of the internal and external ATM sites had retained sufficient general control of the site to be in rateable occupation of it.

This decision is consistent with the approach in the Scottish cases of Clydesdale Bank Plc v Lanarkshire Valuation Joint Board Assessor for Lanarkshire 2005 SLT 167 and Assessor for Central Scotland Joint Valuation Board v Bank of Ireland [2011] RA 195. This approach is also consistent with the decision in Stringer (VO) v J Sainsbury Plc [1992] RA 16 (from which the Tribunal had consciously departed).

The Valuation Office Agency is considering whether to appeal the decision to the Supreme Court.

Case summary prepared by Martin Dawbney and Lucy Morton