Comrie Development Company Limited v John Keddie

No Substantial Judicial Treatment

Court
Land Court

Judgment Date
22 August 2025

Case reference: SLC/35/24

Scottish Land Court

[2025] SLC 9, 2025 WL 02444557

Court members: Lord Duthie , Mr T Campbell

22 August 2025

In the appeal under section 25(11) of the Agricultural Holdings (Scotland) Act 2003

Subjects: 4.27 hectares of land at Overton Farm land (entry number AT1700 in the Register of Community Interests in Land

Representation

Appellant: Lean , solicitor; Shepherd and Wedderburn LLP.
Respondent: Colquhoun , advocate; rradar (Scotland) Limited.

Opinion
Lord Duthie

Introduction

1. This is an appeal under section 25(11) of the Agricultural Holdings (Scotland) Act 2003 against the decision of the Keeper of the Registers of Scotland, dated 3 May 2024, to reject the appellant's challenge to the registration of the respondent's notice under section 25(1) of the 2003 Act . The notice concerns an interest in acquiring 4.27 hectares of land at Overton Farm (the "Subjects"), recorded as entry number AT1700 in the Register of Community Interests in Land ("RCIL"). The effect of the entry is to give the respondent a pre-emptive right to buy the Subjects should the appellant seek to sell them. The appellant argues that the respondent does not hold a qualifying tenancy under the Agricultural Holdings (Scotland) Act 1991 (a requirement for the registration of such a notice) and, therefore, the registration should not have been permitted. The respondent maintains that he is the tenant of the Subjects under a 1991 Act tenancy, and that the Keeper was correct in rejecting the appellant's challenge.

Events giving rise to these proceedings

2. The Subjects form part of Muirside Estate, near Oakley in Fife. From at least the mid-1970s until in or around 1996, Overton Farm (and therefore the Subjects) were owned by the National Coal Board ("NCB"), at which point they were sold to Land Regeneration and Development Limited ("LRD"). In 2006, the respondent

bought three parcels of Overton Farm from LRD and in 2008 bought three further parcels. Following those purchases, the only remaining areas still owned by LRD and farmed by the respondent were fields immediately to the south of Blairhall Village, and the Subjects. LRD entered administration on 17 July 2015, creditors voluntary liquidation on 11 July 2016 and were dissolved on 23 September 2023. The respondent surrendered his occupation of the fields immediately to the south of Blairhall Village in October 2017, leaving the respondent in occupation only of the Subjects.

3. In 2021, the appellant bought the Subjects from LRD's administrators. The respondent remained in occupation of the Subjects. The respondent attempted to make payments of rent to the appellant, who refused payment on the basis that the respondent was not a tenant. In or around September 2022, the appellant fenced off the Subjects. In Spring 2023 the respondent removed part of the fence in order to sow crops on the Subjects.

4. Against the background of this emerging dispute, on advice the respondent registered his interest in the Subjects in the RCIL. That application was accepted by the Keeper and the Subjects were registered with reference AT1700. The appellant challenged that registration on 21 March 2024.

5. The Keeper's decision letter dated 3 May 2024 states that she has received conflicting evidence from parties as to the existence or otherwise of a 1991 Act tenancy; that the Keeper can only rescind an entry in the Register where it is clear there is material inaccuracy in the Register; that the evidence provided is not sufficient to allow her to determine whether there is a material inaccuracy in the Register; and that the entry under AT1700 will therefore remain on the Register unamended. The appellant appeals against that refusal.

The 2003 Act

6. Section 25 of the 2003 Act provides, inter alia, as follows:

> "(1) a tenant of a 1991 Act tenancy may apply to have registered an interest in acquiring the land comprised in the lease by sending a notice (in this Section referred to as a "notice of interest") to the Keeper.
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> …
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> (5) On receipt of the notice of interest, the Keeper must—
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> (a) register—
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> (i) the tenant's interest in acquiring the land;
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> (ii) the details specified in the notice of interest; and
>
> (iii) the date of registration; and
>
> (b) send an extract of the registration to the tenant and the owner of the land.
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> …
>
> (8) If the owner of the land disputes any matter contained in the extract of registration, the owner may, by notice in writing to the Keeper, challenge the registration of the

tenant's interest in acquiring the land on the grounds that any matter contained in the extract is inaccurate.

(9) On receipt of notice under subsection (8), the Keeper is to make such enquiry in connection with the tenant's interest in acquiring the land as the Keeper considers appropriate; and following such an enquiry, if the Keeper considers that the notice of interest is inaccurate, the Keeper—

(a) must, if the inaccuracy is material, rescind the registration of the tenant's interest; and

(b) may, if the inaccuracy is not material, amend that registration.

…

(11) The tenant or the owner of the land may appeal to the Land Court against any decision made, following notice under subsection (8), by the Keeper in respect of the registration of the tenant's interest in acquiring the land; and in an appeal under this subsection the Court may make such order as it considers appropriate."

Witness evidence

7. At the appeal hearing the appellant led evidence from Robert Haugh, Callum Carmichael and Alan Kenney. The respondent gave evidence himself and led evidence from Lynsey Pender, Edward Henderson and Luke Devine. All witnesses had signed witness statements containing their evidence which were lodged in advance of the proof diet, are available in the Court Process and should be referred to for their full terms. With the exception of Mr Devine (who was unable to attend the proof diet due to illness) all witnesses attended court and adopted under oath their respective statements as their evidence. On the respondent's unopposed motion, the court allowed Mr Devine's evidence to be received without the need for him to attend or be cross examined. The remaining witnesses were all subject to cross examination. We do not consider any real issues of credibility arise, however, in the context of this dispute there are clear limits as to the matters to which some witnesses, particularly those led on behalf of the appellant, could speak.

The appellant's witnesses

Robert Haugh's evidence

8. Mr Haugh is a director of the appellant. The appellant purchased the Subjects in January 2021 for non-agricultural development, with planning permission already in place. At the time of purchase, he was unaware of any agricultural use or tenancy claims by the respondent. No rent has been accepted from the respondent since the appellant acquired the Subjects. Mr Haugh firmly believes that the respondent does not hold tenancy rights over the Subjects and accordingly challenged the respondent's attempt to register a pre-emptive right to buy, leading to the current proceedings.

9. We accept Mr Haugh's evidence, *quantum valeat* . However, this witnesses' evidence does not assist the court on the critical issues, that is to say, the existence or otherwise of a tenancy and the respondent's use and occupation of the Subjects prior to the appellants' purchase of the same, for the simple reason that he has no knowledge of the Subjects prior to the appellant's acquisition of the Subjects in 2021.

Callum Carmichael's evidence

10. Mr Carmichael is an insolvency practitioner and partner at FRP Advisory Trading Limited. He gave evidence regarding the administration and liquidation of LRD. During LRD's insolvency processes, the respondent sought to purchase agricultural land, claiming tenancy rights. However, the respondent was never accepted as being a rent-paying tenant during the administration or liquidation period.

11. While Mr Carmichael's belief that the respondent is not a tenant may well be sincerely held, this witness is not in a position to speak to agreements entered into before the insolvency process and accordingly his evidence does not assist the court.

Alan Kenney's evidence

12. Mr Kenney is a development liaison consultant and former member of Fife Council. He spoke to his long-standing involvement with the Comrie site, including its transition from mining operations to land development. He worked with LRD during its planning and restoration efforts and assisted insolvency practitioners during LRD's liquidation. He is unaware of any agricultural use or tenancy agreement involving the respondent on the disputed land. A comprehensive search during the liquidation process revealed no tenancy rights held by third parties. The respondent did not assert any such rights or make rent payments at that time.

13. We consider Mr Kenney was attempting to assist the court, however, he is not in a position to dispute the respondent's evidence. He cannot speak to the agreement between LRD and the respondent, nor to whether rent was tendered.

The respondent's witnesses

The respondent's evidence

14. The respondent has farmed the Subjects for around 50 years. Overton Farm was initially tenanted by the respondent's father and uncle in partnership (the firm of J&J Keddie). The respondent joined the partnership in or around 1975 and has farmed there ever since. The area of land farmed under the tenancy was originally far larger than the Subjects: over the years various parcels of land have been sold, in some cases to him. The partnership paid rent to the landlord, who until 1996 were NCB. The respondent's uncle retired from the partnership in 1988. His father retired in "about 1993" and not 1988 as stated in his witness statement (this point was clarified during cross examination). The original partnership came to an end and he became the sole tenant, farming under the same trading name: accounts prepared for the year to Martinmas 1994 lodged with the court show him as "John Keddie T/A J, D & J Keddie". Subsequent accounts lodged with the court for 1996, 1998, 1999, 2000, 2003, 2005, 2006, and 2008, show rent payments in respect of the Subjects being made by the partnership he subsequently formed with his wife. He has been in partnership with his son since 2008 and his daughter since c.2020.

15. Sales particulars prepared on behalf of the then landlord, LRD, in 1996 record the respondent as being the tenant, paying £11,750 annually (see page 10 of the respondent's production number 2). He is unaware whether there was ever a written lease: if there ever was, it has been lost. In 2008 the respondent requested documentation from LRD to vouch the existence of a lease in order to demonstrate to the Scottish Government Rural Payments and Inspections Directorate (SGRPID) his eligibility to claim agricultural support payments for farming the subjects. In response, LRD provided the undated document lodged as Item 4 on the respondent's first inventory of productions. This document records the respondent rather than any partnership as tenant.

16. LRD entered insolvency proceedings in 2015. (Note: the respondent refers to LRD being in receivership, however, it is not understood to be disputed that in fact LRD entered administration on 17 July 2015 and a creditors voluntary liquidation on 11 July 2016; and were dissolved on 23 September 2023). The respondent wrote to Mr Carmichael, the insolvency practitioner dealing, offering to pay rent in respect of the Subjects but received no response. He was, however, invited to attend and did attend a meeting with the insolvency practitioners and other stakeholders on the basis of his tenancy. Mr Kenney, who was acting for the insolvency practitioner, also attended that meeting. At that meeting it was accepted that the respondent had a secure agricultural tenancy over, *inter alia* , the Subjects. The respondent agreed to release some land (but not the Subjects) from the tenancy. Thereafter the respondent calculated that the rent due in respect of the Subjects, being the only part of Overton Farm still subject to the tenancy, was £160 per annum. However, the insolvency

practitioner never responded with details of how to pay the rent. Following the appellant's purchase of the subjects, the respondent's solicitors sent the applicants a cheque covering rental payments due for 2021, 2022 and 2023, however, this was returned along with a denial as to the existence of any tenancy.

17. The respondent claimed agricultural support payments in the name of the partnership under the IACS scheme. Such payments were made not to him personally, rather, to the partnership. He did not have a personal bank account until he turned 65 and so made use of his business account with such payments being made to the partnership. He did not distinguish in his own mind between himself and the family partnership of which he is the principal. He was farming the Subjects but using the partnership as a vehicle for his finances.

18. We found the respondent to be a straightforward, credible witness who was trying his best to give truthful evidence. We do not consider that the various inconsistencies brought out during cross examination as against the contents of his witness statement and his pleadings (for example, in respect of the year during which his father retired from the partnership and when his wife became a partner) impugn his credibility. He was prepared to be corrected on points of detail, to his credit. He plainly takes more interest in farming the Subjects than spending time thinking about what are to him arcane legal niceties (eg which juristic entity holds the tenancy; the finer points of partnership law), however, that is hardly unusual for witnesses appearing in this court, still less a basis to impugn his credibility.

Lynsey Pender's evidence

19. Ms Pender is a solicitor who was instructed by the respondent in respect of his acquisition of land from LRD's liquidators in 2017. She speaks to the partial renunciation by the respondent of the respondent's interest in the lease in 2017. When she previously worked at Stevenson and Marshall LLP, she was instructed by the respondent in connection with his proposal to acquire land forming part of Muirside Estate from LRD's liquidators. She was instructed to bid for land which the respondent advised he had been farming. Her instructions came from the respondent who was lead partner for the partnership, the Firm of J & D Keddie. The land which is the subject matter of this dispute is not the same as the transaction she was involved in. However, the respondent asserted that he had a tenancy over land which other parties wanted to buy and this alleged tendency became relevant when a global bid was being submitted.

Luke Devine's evidence

20. Mr Devine is a former director of LRD. LRD bought Muirside Estate, of which the subjects form part, from NCB in or around 1997/98. When LRD acquired the Estate there were a number of tenant farmers on the Estate, including the respondent who was the tenant of Overton Farm. For a time, the respondent continued to pay LRD the rent he had previously paid to NCB. In due course he purchased most of the land he had been tenant of (all of the holding other than the Subjects which he wanted to carry on working as a tenant) from LRD. Thereafter he consistently paid a reduced rent of £1,000 per annumfor the then remaining pockets of land which are the subject of this appeal.

Eddie Henderson's evidence

21. Mr Henderson is a chartered surveyor and managing partner of Hendersons Chartered Surveyors. He has provided professional services to the respondent for over 30 years. Bogside Farm is the respondent's principal farming base although he rents neighbouring land at Overton Farm. A partial renunciation agreement, signed in 2017, references the earlier lease, reinforcing its existence. Beyond that Mr Henderson's evidence appeared to be derived from what he was told by the respondent and, while we have no reason to doubt his credibility, we set it aside for present purposes.

Submissions for the appellant

22. Mr Lean adopted his written submission. Although the application is described as an appeal against the Keeper's decision, it does not follow the usual format of an appeal, as no findings of fact have yet been made. It is for the respondent to demonstrate that he is a tenant of a 1991 Act tenancy and accordingly eligible to register a pre-emptive right to buy. If the tenancy is held by the partnership rather than by the respondent personally, the appeal should be allowed. The respondent has failed to demonstrate the existence of a qualifying tenancy regulated by the 1991 Act . He is accordingly not entitled to register an interest in acquiring the subjects and

the appeal should be allowed. The court should uphold the appellants' first and second pleas-in-law and grant an order rescinding the registration.

23. The respondent's occupation of the subjects was only ever as a partner in the family firm. Any tenancy which may once have existed was held by the partnership, not by the respondent personally. Rent was paid by the partnership. Agricultural support payments were received by the partnership. The respondent has difficulty distinguishing between actions taken as an individual and those taken as a partner in the family business. This was evident in the inconsistencies between his oral evidence, his written statement and the pleadings lodged on his behalf. He ultimately accepted that the partnership had been responsible for paying rent over a number of years and had received agricultural support payments, not him personally.

24. The only documentary evidence of sole trading is a single balance sheet from 1994. This is inconsistent with the broader history of the partnership. The only document which might be construed as a lease – the respondent's Production 4 - is undated and informal. If it constitutes a lease at all, it commenced in 2008 and would therefore be regulated by the 2003 Act , not the 1991 Act .

25. A lease to a partnership terminates upon a change in its composition. A lease held by a partnership cannot survive changes in its constitution unless it is a lease to a continuing house: *Moray Estates Development v Butler 1999 SLT 1338* . Here, the unwritten nature of the arrangement precludes it from being a lease to a house. The new partnership which came into existence on the assumption of the respondent's daughter and the death of his wife has not been accepted as a tenant by the applicants. No tenancy exists in favour of any newly constituted partnership.

26. The evidence of the respondent's witnesses, including Ms Pender and Mr Henderson, are of limited value. Ms Pender acted on instructions from the partnership and Mr Henderson's knowledge is derived from the respondent. The appellants' own witnesses, while not directly involved in tenancy arrangements, confirm that no rent was accepted from the respondent following their acquisition of the land.

Submissions for the respondent

27. Counsel adopted his written submissions. An appeal under section 25(11) is a *de novo* hearing, not a review of the Keeper's decision: *Gunn v Luyken 2018 SLCR 10* . The burden lies on the Applicant to prove the averments made in support of the appeal. The appellant fails to aver facts supporting the contentions either that no lease exists over the Subjects, or that the entry in the Register of Crofts and Agricultural Land is materially inaccurate. The appeal is irrelevant.

28. A lease entered into prior to 27 November 2003 need not be in writing: *Morrison-Low v Paterson 1985 S.C. (H.L.) 49* . Evidence of parties' actings may prove the existence of an unwritten lease: *Andert Ltd v J & J Johnston 1987 SLT 268* . Where rent is agreed and occupation taken, the law implies a term of one year: *Shetland Islands Council v BP Petroleum Development Ltd 1990 SLT 82* . Consensus *in idem* as to Subjects, rent, and duration is required: *Gray v Edinburgh University 1962 SC 157* . The continued occupation and payment of rent may give rise to an inescapable inference of a lease, even where the parties were unaware of its legal effect: *Morrison-Low v Paterson* 1985 SC (HL) 49per Lord Keith of Kinkel at 78.

29. A 1991 Act tenancy may only be terminated in accordance with the 1991 Act or by operation of law: see the Agricultural Holdings (Scotland) Act 1991, sections 3 , 20 , 21 , and 23 . The appellant has not produced any notice to quit, decree of removing, or other evidence of termination. The burden of proving termination lies with the party asserting it: *Inland Revenue v Graham's Trustees 1971 SLT 46* .

30. The respondent is, and has for many years been, the tenant of the Subjects under a secure tenancy governed by the Agricultural Holdings (Scotland) Act 1991 . He has occupied the Subjects continuously since the 1970s, initially as part of a family farming partnership and subsequently in his own right. Occupation was with the agreement of the landowner (first NCB and subsequently LRD). Rent was paid annually. The respondent's own evidence to that effect is supported by the evidence of Mr Devine who confirms both that rent was accepted from the respondent and that his occupation of the Subjects was permitted. Partnership accounts spanning several years record rental payments for the Subjects. The existence of a lease is vouched by the deed signed by Mr Devine in 2008 for the purposes of the respondent's subsidy application which, although not properly executed,

is spoken to by both the respondent and Ms Pender, identifies the respondent as the tenant and is consistent with the evidence of Mr Devine. The 2017 renunciation also vouches the existence of a lease.

31. Even if the original tenancy was granted to a partnership, the respondent continued in occupation and paid rent after the dissolution of the original firm. A new tenancy may arise in such circumstances. The respondent's use of partnership funds to pay rent is immaterial.

32. Such evidence as was adduced by the appellants' witnesses is of limited assistance. Mr Haugh can speak only to the period following the appellant's purchase of the land. He does not dispute the respondent's prior occupation. Similarly, neither Mr Kenney nor Mr Carmichael have direct knowledge of the respondent's tenancy. Mr Carmichael's actions in executing the renunciation tend to contradict his denial of the lease.

Decision

33. We find, on the basis of the respondent's evidence, which we accept (and which is supported by that of Mr Devine) as follows. Following dissolution of the family partnership on the retirement of his father in 1993, the respondent continued to occupy the Subjects. He did so with the consent of NCB and subsequently LRD. He paid rent annually. Following the appellant's purchase of the Subjects, he continued to tender rental payments, albeit they were refused by the appellant. We infer from these primary facts the existence of a new, unwritten lease in respect of which the respondent was tenant. This new lease came into being in or around 1993 and in any event prior to 27 November 2003. The lease is of ground used for agriculture. It is accordingly a 1991 Act tenancy. The respondent is the tenant in his own right of the Subjects under a secure tenancy governed by the Agricultural Holdings (Scotland) Act 1991 .

34. We are reinforced in this view having regard to the available contemporaneous documentation, including (i) the accounts prepared for the year to Martinmas 1994 lodged with the court showing him as "John Keddie T/A J, D & J Keddie; (ii) sales particulars prepared on behalf of LRD in 1996 recording the respondent as being tenant in his own right; and (iii) subsequent partnership accounts for the firm he formed with his wife spanning several years which record rental payments for the Subjects. The respondent's use of partnership funds to pay rent is unremarkable, particularly in circumstances where he did not have a personal bank account and standing his obvious tendency not to distinguish in his own mind between his own business interests and those of various family partnerships. The unsigned deed signed by Mr Devine in 2008 for the purposes of subsidy application, while not itself a lease, is further evidence of a pre-existing lease in respect of which the respondent is tenant, as is the 2017 renunciation running in the name of the respondent. The Keeper was correct to refuse the appellant's challenge to the registration of the respondent's notice under section 25(1) of the 2003 Act as entry number AT1700 in the RCIL.

Disposal

35. We refuse the appeal. We appoint parties to enrol any motions in respect of the question of expenses within 21 days of the date of intimation of this decision. In the event of any such motion being opposed, parties should advise the court whether they wish a hearing or are content for the question of expenses to be determined on the basis of written submissions.