

Regentford Ltd v Thanet District Council (2004)

**[2004] EWHC 246 (Admin); [2004] RA 113 : (2004) 101(11)
LSG 35 : [2004] NPC 25 : Times, March 4, 2004**

18/02/2004

Barristers

Nicholas Fairbank

Court

QBD (Admin)

Summary

As the necessary prelude to a final notice under Council Tax (Administration and Enforcement) Regulations 1992 reg.33(2) and the commencement of the six-year limitation period under reg.34(3) , a demand by the billing authority was required to transform the liability to pay council tax into a duty to pay.

Facts

The appellant (R) appealed, by way of case stated, from a decision to make liability orders against it for payment of six years' outstanding council tax for two properties. The orders were made on the application of the respondent local authority under Council Tax (Administration and Enforcement) Regulations 1992 reg.34 . The question posed by the case stated was whether the magistrates were wrong in law, or in excess of jurisdiction, in making the liability orders given that the local authority's application included amounts due on February 22, 1996, a date in excess of six years before the application. That date was the date when the local authority set the amount of council tax for the year ending March 31, 1997. The magistrates, in the case stated, held that the application had included such amounts. If the magistrates were correct in so holding, then they had been wrong in law and in excess of jurisdiction. R submitted (1) that the duty to pay council tax arose as soon as the local authority had exercised its power under Local Government Finance Act 1992 s.30 to set an amount of council tax and the amount of council tax for each category of dwelling; (2) by way of a new defence, that in serving the demand notices on it on October 2, 2002, the local authority had failed to do so as soon as practicable thereby precluding R's liability. The local authority argued that potential liability to pay council tax could only be triggered into an actual duty to pay by service of a demand for payment.

(1) A demand by the billing authority was required to transform the liability to pay council tax into a duty to pay. That was confirmed by reg.18(1) of the Regulations. The service of the demand notices made the amount of the liability demanded a sum that was due and payable, the necessary prelude to a final notice under reg.33(2) and the commencement of the six-year limitation period under reg.34(3) . The duty to pay council tax in the instant case arose on October 2, 2002 when the demand notices had been served. Accordingly the full six years' council tax was due when the liability orders were made. The

magistrates had jurisdiction to make the orders and they were valid and enforceable. The case stated had to be amended to reflect the real question at issue, to which the above was the answer. (2) R's application, to remit the case to the magistrates for re-determination to enable its new defence to be raised, was refused. The language of reg.19 permitted a construction that a billing authority's breach of the statutory duty to serve a demand notice as soon as practicable did not operate in all cases as a windfall to the person liable, but precluded a claim to payment and a duty to pay only when the breach had occasioned some procedural or substantive prejudice.

Judgment accordingly.

Permission

Lawtel 