

Agriculture Legal Update

The Demise of Saunders v Ralph

Succession rights, which were introduced under the Agriculture (Miscellaneous Provisions) Act 1976, have been a fundamental element of the agricultural tenancy market for well over thirty years. The rights created by that Act have since evolved into the consolidating statute which is well known to everyone involved in the agricultural land market, namely the Agricultural Holdings Act 1986.

Succession rights were designed to introduce stability and security for the tenant farming families who benefit from them, giving families the opportunity to farm and enjoy the occupied holding for up to three generations, meaning a holding could be let to them for over 100 years.

In 1993 the wide scope of the statutory opportunity for farming tenants to invest in their holdings was substantially undermined, following comments made in the High Court, as part of the judgement in the case of Trustees of Saunders v Ralph (1993) 66 P&CR 335, a case referred to the High Court from the Agricultural Land Tribunal. The case concerned a memorandum executed by members of the same farming family in 1957 which created a joint tenancy of the subject holding. The landlord and the tenant in the early 1990s were in dispute as to the status of that memorandum and whether it amounted to a deemed first succession under the Agricultural Holdings Act 1986, notwithstanding the fact that the memorandum was dated some 19 years before statutory succession rights were introduced in 1976. In the event and on the facts before the court, the memorandum was found to be a 'variation' of the original 1943 tenancy. As a result, no succession could have taken place in 1957 but His Honour Judge Jowitt considered, as an aside, the retrospective application of the introduction of succession rights in 1976 and implied that the 1957 event could have amounted to a succession in certain circumstances.

The outcome of the judgement has left some agricultural tenants considerably disadvantaged ever since.

During the subsequent 16 year period, many agricultural tenants will have retired or died and many applications will have been made to the Agricultural Land Tribunal for successions by close relatives qualifying under the 1986 Act. The judgement in Saunders v Ralph will have weakened the applicant's hand, as landlord's will have been able to question the potential legitimacy of the application where the applicant's family has been in situ on the holding prior to 1976 for a number of generations.

Secondly, those tenants who invested in their holdings to support the next generation's ambitions have been inhibited by the prospect of future successions being denied. Ironically, it is the tenant farming families with the longest history on a holding and deepest knowledge of it who have been most disadvantaged.

His Honour Judge Jowitt's comments were considered in the High Court in late November 2009, following an application by a Norfolk tenant farmer in the case of Kemp v Fisher (to be reported). Birketts LLP acted as instructing solicitors on behalf of the tenant. Having considered the arguments presented by Martin Rodger QC including the original interpretation of the Agriculture (Miscellaneous Provisions) Act 1976, His Honour Judge Raynor QC was unequivocal in his rejection of the uncertainty created by Saunders v Ralph. His view was that pre-1976 'succession' events within the same tenant farming family should be wholly ignored for the purposes of assessing the number of successions applying to any particular tenancy under the 1986 Act. The judgement will not be appealed and will stand as good law.

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