Case No: HC-2016-001551

Neutral Citation Number: [2016] EWHC 1508 (Ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/06/2016

Before :

CHIEF MASTER MARSH

- -

Between :

VANQUISH PROPERTIES (UK) LIMITED PARTNERSHIP **Claimant**

- and -

BROOK STREET (UK) LIMITED **Defendant**

- -
- -

Mark Warwick QC (instructed by **K & L Gates LLP**) for the **Claimant**
Guy Fetherstonhaugh QC and James Tipler (instructed by **Taylor Walton LLP**) for the **Defendant**

Hearing date: 20 June 2016

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Judgment

Chief Master Marsh :

1. This judgment concerns premises on the lower ground floor of 108 Fenchurch Street, London EC3 ("the Premises") which is part of a seven-storey building. By a lease dated 17 October 2011 ("the Lease") the Mayor and Commonalty and Citizens of the City of London ("the City Corporation") demised the Premises to the Defendant for a term of ten years commencing on 28 October 2011. Clause 7 of the Lease contains a break clause and the principal issue in the claim is whether the break clause has been operated to bring the Lease to an end on 27 September 2016. The second issue concerns whether a notice under section 25 of the Landlord and Tenant Act 1954, served at the same time as the break notice, is valid. However, a decision as to the validity of the break notice will, in effect, determine the second issue.

2. 108 Fenchurch Street forms part of a larger site which will be the subject of a major redevelopment to be carried out by the Claimant. On 29 May 2014 planning permission was granted for the larger site which permits demolition of 108 Fenchurch Street and the construction of a number of new buildings, including a 34-storey building.

The Lease

3. The relevant provisions of the Lease are as follows:

   i) The City Corporation is defined as the "Lessors" and that expression includes the estate owner or estate owners for the time being of the reversion of the premises granted by the Lease.

   ii) Clause 7 contains the break clause and provides:

   > "If the Lessors … shall be desirous of determining this Lease on the twenty seventh day of September 2016 two thousand and sixteen and of such desire shall give to the other not less than six months previous notice in writing then upon the expiry of such notice this Lease and the term shall cease and determine but without prejudice to the rights and remedies which either party may have against the other in respect of any antecedent breach of any of the covenants herein contained."

   iii) Clause 8(a) contains provisions relating to the service of notices. There is no issue about service in this case, but the clause specifies that:

   > "A notice under this Lease must be in writing and signed by or on behalf of the party giving such notice …".

The Claimant

4. The Claimant is a limited partnership established under the Limited Partnerships Act 1907. It was created on 11 April 2011 and initially had two partners, Vanquish Properties Initial GP Limited and Vanquish Properties LP Limited. The former was the general partner to the partnership and the latter a limited partner. The following day, Vanquish Properties GP Limited ("Vanquish GP") became the general partner in

place of Vanquish Properties Initial GP Limited. On 17 June 2011 three new limited partners became partners.

5. The Limited Partnerships Act 1907 amends the general law of partnership, under the Partnership Act 1890, at common law and in equity, but the general law remains applicable to a limited partnership save to the extent it is inconsistent with the 1907 Act (section 7). The 1907 Act creates two special classes of partner, general partners and limited partners. The essence of the regime created by the 1907 Act is contained in sections 4(2) and 6(1):

> "4(2) A limited partnership … must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed."

> "6(1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm:"

6. There are two further important parts of the regime created by the 1907 Act. First, the partnership must include either "limited partnership" or "LP" at the end of the business name of the partnership (section 8B) and, secondly, details of the limited partnership are registered with the Registrar of Companies (section 5). In the case of the Claimant, the register reveals:

    a) the certificate of registration dated 11 April 2011;

    b) the identity of the initial partners in Form LP5 which lists the general partner first and limited partner second;

    c) the deed constituting the Claimant;

    d) changes to the identity of the partners registered on 17 June 2011 that I have summarised above which are made on Form LP6. Section h. of the form names the new limited partners in the following way:

> "BNP Paribas Jersey Trust Corporation Limited and Anley Trustees Limited (as trustees of the Vanquish I Unit Trust)
>
> BNP Paribas Jersey Corporation Limited and Anley Trustees Limited (as the trustees of the Vanquish II Unit Trust)
>
> Aimco LH (Jersey) Trustee Limited (as Trustee of the Leadenhall Unit Trust"

7. A limited partnership, like a partnership under the Partnership Act 1890, has no distinct identity and is "… merely a combination of persons for the purposes of carrying on a particular trade or trades": *Re Barnard* [1932] 1 Ch 269 at 272; *Lindley and Banks on Partnership* at 29-01. This truism is emphasised in clause 2.2 of the

partnership deed. After having made provision for the role of the general partner and the limited partner it concludes by stating :

"The Partnership shall have no legal personality of its own and all Partnership Assets shall be the undivided joint property of the Partners."

The expression "Partnership Assets is a widely defined in the deed.

8. Clause 5.1 of the deed sets out the general purposes for which the partnership was set up, which was to investigate and, if appropriate, make property investments. Clause 9.2 provides that third parties dealing with the partnership were not required to enquire into the authority of the general partner, to take any action or make any decision on behalf of the partnership. It goes on to say that the general partner has the power to bind the partnership in every manner to any agreement or any document.

The Claim

9. This claim is brought in the name of the Claimant as a limited partnership, as is required by CPR 7.2A and Practice Direction 7A paragraph 5A.3.

10. The Claimant seeks declarations that both the break notice and the section 25 notice are valid. The Claimant's case is that the Overriding Lease dated 22 March 2016 was granted to the Claimant, as a limited partnership, acting by its general partner Vanquish GP. The alternative case relied upon is that Vanquish GP became the lessee under the Overriding Lease and thereby became the Defendant's lessor.

The Overriding Lease and the Notices

11. On 22 March 2016 the City Corporation granted a lease of 108 Fenchurch Street to "Vanquish Properties (UK) Limited Partnership acting by its general partner Vanquish Properties GP Limited". The Overriding Lease was for a term of six years and two months from 22 March 2016 and, therefore, it was not subject to compulsory registration with the Land Registry.

12. On the same day as the Overriding Lease was granted, K & L Gates LLP sent two letters to the Defendant. One letter contained two notices; the other letter gave notice that the Claimant (defined in the letter as "the Partnership") had been granted a lease of 108 Fenchurch Street and had become the Defendant's landlord. Notification was given requiring the payment of rent to an account in the name of the partnership.

13. The letter containing the two notices is in the following terms:

> "We are instructed by Vanquish Properties (UK) Limited Partnership, the landlord of the above property of which you are the tenant under a lease dated 17 October 2011.
>
> We enclose a rent authority letter following our client being granted a lease of 108 Fenchurch Street by the City of London.
>
> We now enclose by way of service Notice of Termination pursuant to clause 7 of your lease along with Notice pursuant to section 25 of the Landlord and Tenant Act 1954.

Please acknowledge safe receipt."

14. The clause 7 notice referred to in the letter is a single-page document headed "Notice of Termination" and addressed to the Defendant. It is dated 22 March 2016, signed by K & L Gates LLP who are described as "Solicitors for the Landlord". The operative part of the notice is in the following terms:

> "We, K & L Gates LLP, of One New Change, London, EC4M 9AF, solicitors and agents for Vanquish Properties (UK) Limited Partnership, the landlord under the Lease ("the Landlord"), notify you as follows:
>
> > The Landlord hereby gives you notice pursuant to clause 7 of the Lease that the Lease will determine on 27 September 2016."

15. The letter also contained a notice under section 25 of the Landlord and Tenant Act 1954 giving notice to end the Defendant's tenancy on 27 September 2016. It stated that the Claimant was opposed to the grant of a new tenancy and, if the Defendant asked for a new tenancy, it would oppose the application on the ground specified in section 30(1)(f) of the 1954 Act. It is common ground that the section 25 notice can only be effective if the notice under the break clause is effective.

16. At the date the notices were served, the Claimant was a limited partnership comprising one general partner, Vanquish GP, and four limited partners.

The parties' respective cases

17. The Claimant's primary case is that both notices are valid on the basis that the limited partnership was, at the date of service of the notice, "the Lessors" for the purposes of clause 7 of the Lease and the competent landlord for the purposes of the 1954 Act. The Claimant's secondary case is that if, the Overriding Lease did not vest in the limited partnership, Vanquish GP became the Defendant's landlord upon the grant of the Overriding Lease, the notices were served on behalf of Vanquish GP, by solicitors authorised by it and the mistake in the name of the party serving the notice would have been clear to a reasonable recipient. Thus, the Claimant's secondary case relies upon the decision of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 ("*Mannai*").

18. The Defendant's case is that both notices are invalid because they were given by a party who is not the Defendant's landlord under the Lease. Furthermore, the Defendant says either that the break notice cannot be saved by the *Mannai* principle because essential preconditions to the operation of the break clause were not met or, alternatively, that a reasonable recipient would not have understood the notice in the manner the Claimant suggests.

19. It will be necessary to develop these submissions and to deal with them in detail in this judgment. The notice could only be served by "the Lessors" as defined in the Overriding Lease and the essential underlying question for the court to determine is the identity of the "Lessors". As the case has developed three alternatives have been put forward:

i) the limited partnership (the Claimant);

ii) some, or all, of the partners in the limited partnership; or,

iii) Vanquish GP.

The evidence

20. The evidence which is relevant to the determination is limited in its scope and has not been the subject of challenge. Vivienne Jane Harte-Lovelace, who is a partner with K & L Gates LLP, has made three statements on behalf of the Claimant. Save for the documents she exhibits, the only material aspects of her evidence are:

    i) Her first witness statement confirms that K & L Gates LLP had authority to serve notices on behalf of the Claimant.

    ii) Her second statement confirms that her firm had authority to serve notices on behalf of Vanquish GP, the partnership's general partner.

21. It is common ground that evidence about the Defendant's actual knowledge, such as it may have been, about the Claimant, the Claimant's plans for the property and the nature of the proposed development, is irrelevant and it is therefore unnecessary for me to make any reference to the additional witness statements which have been served by the parties.

The Lessors

22. It is common ground between the parties that the person in whom the interest granted under the Overriding Lease was vested, became "the Lessors" for the purposes of the Lease and the person entitled both to exercise the break clause and to serve a section 25 notice. Mr Warwick QC's principal submission is that the Overriding Lease was granted to the Claimant, the limited partnership, and it was the Claimant which gave notice under clause 7. It is, however, accepted by Mr Warwick QC that a limited partnership (like an ordinary partnership) has no legal personality. The difficulty the Claimant faces is that it seeks to establish what is legally impossible. A legal estate in land can only be held by a legal person or persons. And in the case of a partnership with five partners, the legal estate cannot be vested in more than four persons. The legal owners will hold the legal title in trust for all the partners. This is clear from:

    i) Section 34(2) of the Trustee Act 1925 (S.34(2) TA) which provides that:

    > "In the case of settlements and dispositions creating trusts of land made or coming into operation after the commencement of this Act –
    >
    > (a)the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the first four named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;"

    ii) Section 34(2) of the Law of Property Act 1925 (S.34(2)LPA) provides that:

> "Where, after the commencement of this act, land is expressed to be conveyed to any persons in undivided shares and those persons are of full age, the conveyance shall (notwithstanding anything to the contrary in this act) operate as if the land had been expressed to be conveyed to the grantees, or, if there are more than four grantees, to the four first named in the conveyance, as joint tenants in trust for the persons interested in the land."

iii) *Woodfall's Law of Landlord and Tenant* Volume 1 at 3.005 says:

> "If land is leased to a partnership, the partners who are parties to the lease, if four or fewer in number or if more than four, the four first named, will hold the land as joint tenants in trust. The beneficial interest will belong to the partnership, i.e. to the persons who constitute the partnership and who together are entitled to the partnership property."

iv) *Lindley & Banks on Partnership* (19th edition) deals with the same issue at paragraph 18-61:

> "Land held by a firm can be vested in no more than four partners; accordingly in any case in which the firm comprises five or more partners, the legal estate in partnership land will inevitably be held by some of the partners on trust for themselves and their fellow partners, according to their respective beneficial interests. … Where a lease is to be granted to a firm comprising more than four partners, as a matter of strict conveyancing practice only the trustee partners need to be made parties thereto."

v) At paragraph 3-14 of *Lindley & Banks* the decision in *Wray v Wray* [1905] 2 Ch 349 is referred to. The paragraph simply records that "… it was held that a conveyance of freeholds to 'William Wray in fee simple' passed the legal estate to the persons who were at the time of the conveyance the members of the firm which traded under that name".

23. *Wray v Wray* concerned the purchase by a partnership of a property in Highgate under which the purchaser was described as "William Wray". A partnership was carried on under the style of "William Wray" and the conveyance was signed by one of the partners, Henry Wray, in the name "William Wray" with the concurrence of the other partners. The claim gave rise to an issue of construction, namely, what was the effect of the conveyance to William Wray. Having referred to a number of authorities, Warrington J said this:

> "I have to ascertain who was meant by the person described as William Wray in the deed; and I find on the authority of this judgment that I may instead of William Wray read the deed as a conveyance to the four partners, Eliza Wray, Henry Wray, William James Wray and Joseph Turnbull. So reading the deed and inserting the names of the partners, it becomes a conveyance to these four persons. The legal estate is not affected by the fact that the purchase money was partnership

> money; and the beneficial interest was already vested in the four partners."

24. I note that in referring to the decision in *Wray v Wray* at paragraph 3-14 the editor of *Lindley & Banks* in a footnote says: "For the current effect of a conveyance to partners see the Law of Property Act 1925 section 34(2) …". Taking as a starting point the unassailable proposition that a legal estate cannot be vested in the name of a partnership, the court is entitled to admit extrinsic evidence in order to establish the identity of the true parties to the lease (see paragraph 10.07 of The Interpretation of Contracts 6th Edition by Sir Kim Lewison). *Wray v Wray* is an example of that approach being adopted although fortuitously in that case there were only four partners.

25. Mr Warwick QC relies heavily on the decision in *Wray v Wray* in support of the proposition that a lease may be granted to a partnership. However, it seems to me that the decision in *Wray v Wray*, in fact, supports precisely the opposite proposition. The judge in *Wray v Wray* was asked to construe the conveyance and to establish the meaning of the conveyance to "William Wray". He construed the conveyance as meaning that the conveyance was to the four partners in the firm, not a conveyance to the partnership.

26. Here, the position is rather different. At the time the Overriding Lease was granted, the partnership had five partners. The issue for the court is not just a matter of construction of the Overriding Lease but, rather, the application of the provisions of s.34(2) TA 1925 and s.34(2) LPA 1925. It seems to me that the passages set out above from *Woodfall's Landlord and Tenant* [3.005] and *Lindley & Banks* [18-61] are entirely consistent with this approach. Land held by a partnership can be vested in no more than four partners. The two sections provide a mechanism by which, if there are more than four persons named in the conveyance (the term used in s.34(2) LPA 1925) or settlement and disposition creating trusts of land (as in s.34(2) TA1925), it is ensured that the "first four named" persons shall hold the legal estate and act as trustees. Both sections are drafted on the assumption that the persons are named in the operative document. In most cases, therefore, there should be no difficulty in establishing in whom the legal estate is vested, and those person who act as trustees, even though there may be more than four persons named in the operative document. Here, the Overriding Lease describes the lessee as the Claimant acting by its general partner. The only partner named is Vanquish GP.

27. Mr Warwick QC submits that it is possible to identify the persons holding the legal estate by reference to the publicly filed information concerning the Claimant at Companies House. It is, I think, implicit in this submission that the proper construction of s.34(2) TA 1925 and s.34(2) LPA 925 is that the expression "the first four named" does not mean named in the operative document (the conveyance, lease, trust deed and so on) but the four first persons, established by extrinsic evidence, in this case the forms in which the partners are named in the publicly filed documents. He says this leads to the conclusion that the Overriding Lease was granted, if not to the limited partnership, to Vanquish GP, Vanquish Properties LP Limited and the first two additional limited partners named in Form LP6 filed with Companies House on 21 June 2011 (they are in fact the same persons acting in different capacities).

28. It seems to me 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 granted to the partners, provided, as in *Wray v Wray*, their number does not exceed four. However, it seems to me that it is impossible as a matter of construction to determine how the legal estate is held where there are more than four partners, because it is impossible to establish the intention of the parties about the identity of the partners who will hold the legal estate. Thus, the decision in *Wray v Wray* does not assist the Claimant in this case. Equally, neither s.34(2) TA 1925 nor s.34(2) LPA 1925 assists the Claimant because the mechanism provided by those sections is incapable of being applied in the absence of any of the partners in the limited partnership being named in the Overriding Lease. The "first four named" persons cannot, on a proper construction of s.34(2) TA 1925 and s.34(2) LPA 1925, be established by reference to documents such as those filed in accordance with the provisions of the Limited Partnerships Act 1907.

29. Even if that proposition were to be wrong, there are real difficulties for the Claimant because there are a number of filed documents and it is difficult to know how to apply the expression "the first four named" because, taking the documents filed in chronological order and seeing the order in which parties are named, would mean that Vanquish Properties Initial GP Limited is one of the lessees. Alternatively, ignoring a partner which has retired, Vanquish and Vanquish Properties LP Limited are the first two named partners. How the third and fourth partners are identified where the first two new limited partners are the same joint trustees has not been adequately explained.

30. It follows that, as an answer to the first issue, I conclude that the Overriding Lease was not granted to the limited partnership, as this is not possible in law, and was not granted to four of the partners. The break notice refers to the Claimant being the landlord under the Lease. That description in the notice is not correct and the Claimant was not in a position to give the notice as the "Lessors", that being the defined party for the purposes of clause 7 of the Lease.

31. It is necessary therefore to consider the Claimant's alternative argument based on the assumption that, if the Claimant did not become the Lessors, then Vanquish GP was the lessee which the Defendant accepts is the only other possibility.

32. The notice of termination is addressed to the Defendant and refers to the Overriding Lease. That part of the notice is unobjectionable. However, the notice continues in the form set out above. The Claimant is described as the landlord under the Lease and it is the landlord who gives notice pursuant to clause 7 that the Lease will determine on 27 September 2016. The notice is signed by K & L Gates LLP, solicitors for the landlord. Vanquish GP is not mentioned in the notice and the court is asked to proceed on the basis that the reference to the Claimant in the notice was a mistake and that the notice can be saved applying the doctrine in Mannai.

33. For these purposes, of course, the court must disregard what the Defendant actually knew and consider the notice in its relevant context. This context includes the letters which accompanied the notice, the Overriding Lease and the documents filed at Companies House concerning the Claimant.

34. Mr Fetherstonhaugh QC submits that the Mannai principle has no application at all because in this case the notice failed to comply with a precondition to the exercise of the unilateral break clause. That submission is based on the requirement set out in clause 8(a) of the Lease that a notice "… must be in writing and signed by or on behalf of the party giving such notice …". The party giving the notice, on the Claimant's alternative case, was Vanquish GP. Thus, it is said that the notice was not signed by K & L Gates LLP on behalf of Vanquish GP, which was not named in the notice, notwithstanding that K & L Gates LLP had authority to give such a notice on behalf of Vanquish GP.

35. In *Mannai* (at 776) Lord Hoffmann illustrated the sort of precondition that has to be strictly complied with by saying:

> "If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease."

36. The starting point is to ask what are the essential requirements for the break notice. Clause 7, taken in isolation, contains no preconditions save for the period of notice, and the specified date when the notice could take effect, and that the notice must be in writing. The Defendant relies on clause 8, which applies to any notice served under the Lease. Although clause 8 undoubtedly applies to a notice given under clause 7, it is not specific to it and applies equally to other notices given under the Lease, such as a rent review notice given by the landlord under the Fourth Schedule. It seems to me that, properly construed, clause 8(a) is not intended to impose a precondition for the operation of notice under the break clause. Clause 8(a) repeats what is already in clause 7, that the notice must be in writing, but adds a requirement that the notice must be signed "by or on behalf of the party giving such notice". The emphasis in clause 8 is that any notice must be signed and the requirement that a notice must be signed on behalf of the party giving it is self-evident and adds nothing of substance. If a notice were to be signed otherwise, it would not be a notice. It seems to me that the Defendant's primary point elevates the requirements of clause 8(a), which are not referred to in clause 7, to a level which is inappropriate. Although a notice served under clause 7 is a "notice under this lease", had it been intended that there was to be a further essential precondition to the service of an effective break notice, it would have been specified in clause 7 itself. It follows that, in my judgment, it is not right to say that the Claimant's alternative case falls at the first hurdle because the party giving the notice, on the face of the notice itself, was not Vanquish GP but the limited partnership. I turn therefore to consider how the *Mannai* principle may operate in the circumstances of this case and whether it can save the notice.

37. In the course of his submissions Mr Warwick QC referred to remarks made by Lord Hoffmann in his opinion in the House of Lords in *Kirin-Amgen v Hoechst Marion Roussel Ltd* [2005] 1 All England 667. However, I do not consider that the passage at [32] provides assistance when considering the validity of a unilateral notice served with the intention of operating a break clause in a lease. As Mr Fetherstonhaugh QC submitted, and I accept, the idea of commercial absurdity has no role to play when considering an application of the *Mannai* principle. The threshold for satisfying the *Mannai* test is high and the test "… can only be satisfied where the reasonable

recipient could be left in no doubt whatever" – *per* Lord Steyn at [773]. A defective notice is merely a scrap paper with no effect.

38. Mr Warwick QC placed great emphasis on the decision of the Court of Appeal in *Lay v Ackerman* [2004] EWCA Civ 184. He drew attention to three features of the case which he said were of importance:

    i) It is the latest case showing the operation of the *Mannai* principle;

    ii) The leading judgment was given by Neuberger LJ (as he then was);

    iii) The case concerned a notice in which the name of the landlord was wrong.

39. Neuberger LJ in *Lay v Ackerman* when referring to the Mannai test said:

    "The correct approach on the basis of the decision and reasoning in Mannai is as follows. One must first consider whether there was a mistake in the information in the notice (as there was as to the date in Mannai, and there was as to the landlord, in the present case). If there was such a mistake, one must consider how, in the light of the mistake, a reasonable person in the position of the recipient would have understood the notice in the circumstances of the particular case. Finally, one must consider whether, as a result, the notice would have been understood as conveying the information required by the contractual, statutory or common law provision pursuant to which it was served".

    This is a very useful summary of the Mannai principle but it seems to me, however, that the circumstances in *Lay v Ackerman* were some considerable distance from those which I am considering in this case. Mr Fetherstonhaugh QC provided five points of differentiation between the circumstances in this case and those in *Lay v Ackerman*. In summary they are:

    i) The requirements of a notice under section 45(1) of the 1993 Act are less strict than those under clause 7 of the Lease. Section 45(1) merely requires that the landlord serves a counter notice by a date. Subsection (2) requires that the notice contains certain information, but the absence of such information was not where the problem lay.

    ii) The counter notice was responsive to the tenants' notice.

    iii) The counter notice identified the landlord's address and the tenants could not have been in any doubt that the notice, generally, was sent on behalf of the Portman Estate.

    iv) The counter notice was served by Farrer & Co with whom the tenants had already had dealings, where Farrer & Co were acting on behalf of the Portman Estate.

    v) It would have been immediately obvious to the tenants that there was a mistake in the name of the landlord given in the counter notice.

40. By contrast, in this case:

i) There had been no prior contact between the partnership or Vanquish GP and the Defendant. The notices were received out of the blue without any prior warning and without the Defendant being aware of the grant of the Overriding Lease.

ii) The Defendant had had no prior dealings with K & L Gates LLP and had no basis for discerning on whose behalf they acted.

iii) There was no reason to believe here that K & L Gates LLP had authority to act for Vanquish GP.

41. There is, I think, considerable force in Mr Fetherstonhaugh QC's submissions about *Lay v Ackerman*. The circumstances are, indeed, very different and I do not find the facts of that case to be of any real assistance in relation to the task I have to perform. In this case a mistake has occurred because the lease incorrectly names the limited partnership as the lessee and the mistake is repeated in the notice. The issue for me is whether the reasonable recipient in possession of the relevant context would have understood that the notice, when referring to the Claimant as the landlord, was in fact intended to refer to Vanquish GP. I have to consider what assistance the recipient might have obtained from the context. I consider that the following factors are relevant:

i) The letter to the Defendant from K & L Gates LLP giving notice about the future payment of rent refers to the Claimant and thereafter, having described the Claimant as "the partnership", refers to it in those terms on two occasions. The letter directs that rent was to be paid to the Claimant.

ii) The letter enclosing the break notice also refers to the Claimant as being the landlord and to the partnership being "our client".

iii) The letters which accompanied the notice would have served to reinforce the terms of the notice itself, which is stated to have been given on behalf of the Claimant as the Defendant's landlord.

iv) Assuming that the Overriding Lease was a document reasonably available to the Defendant, the Defendant would have learned that the lessee was described as the limited partnership acting by Vanquish GP, its general partner.

v) The documents filed at Companies House concerning the Claimant would have revealed the terms of the partnership deed, and in particular clause 2.2 specifying that all Partnership Assets were the undivided property of the partners (not the general partner) and that at the date of giving notice there were five partners. The recipient would also see the terms upon which the deed specified that the partnership was to operate, in the context of the provisions of the Partnership Act 1890 as varied by the Limited Partnerships Act 1907. Disregarding clause 2.2 of the deed, the requirement under the Act, and the deed, for the general partner to deal with the management of the limited partnership does not lead to the conclusion that the general partner must hold the legal estate in land for the partnership.

42. Mr Warwick QC's submits that there were only two possibilities. The recipient of the notice would have concluded either that the Overriding Lease was vested in the partnership or that it was vested in Vanquish. However, it seems to me that imposing an either/or analysis upon the mind of the reasonable recipient, providing only two options is an approach which is much too restrictive. To my mind there is nothing in the letters, the notices or the surrounding context which would make it clear to the recipient that the reference to the partnership should have been a reference to Vanquish GP. To conclude otherwise requires the recipient of the notice to undertake a legal analysis and to reach the same conclusion that the Claimant propounds. It is far more likely that the reasonable recipient, appreciating that the legal estate could not be held by the Claimant, would have been puzzled by what the notice meant when faced with more than one possibility. I do not see how the context in which the notice was served leads unequivocally to the conclusion that the giver of the notice intended to give notice on behalf of Vanquish GP and was authorised to do so. It is equally possible that the reasonable recipient would come to the view that the notice was served on behalf of some of the partners or simply to have been unsure what was intended. I do not consider that the *Mannai* principle provides any assistance to the Claimant because of the reasonable recipient of the notice would have been left in doubt about what was intended.

Conclusions

43. For the reasons I have already given, the Overriding Lease did not vest the legal estate in the partnership or in four of the partners. Notice was not given on behalf of the "Lessors" in accordance with clause 7.

44. Assuming that the legal estate was vested in Vanquish GP as the general partner of the limited partnership, I do not consider that the notice is saved by an application of the principle in *Mannai*.

45. The claim will be dismissed.