



23 October 2019

## PRESS SUMMARY

**The Manchester Ship Canal Company Ltd (Appellant) v Vauxhall Motors Ltd (formerly General Motors UK Ltd) (Respondent)**

**[2019] UKSC 46**

***On appeal from [2018] EWCA Civ 1100***

**JUSTICES:** Lord Carnwath, Lady Black, Lord Briggs, Lady Arden, Lord Kitchin

### BACKGROUND TO THE APPEAL

Vauxhall Motors Ltd has a large manufacturing plant at Ellesmere Port in Cheshire on the banks of the Manchester Ship Canal. When the plant was built in the early 1960s, Vauxhall entered into a contract (“**the Licence**”) with the Manchester Ship Canal Company (“**MSCC**”) allowing Vauxhall to construct a system of pipes and chambers across MSCC’s land (“**the Spillway**”) and to drain surface water and treated industrial effluent into the Canal. Vauxhall agreed to pay £50 per year to MSCC in exchange for these rights. Clause 5 of the Licence allowed MSCC to terminate the Licence if (among other things) Vauxhall did not pay its annual rent within 28 days of a demand.

Vauxhall duly built the Spillway and has used it for drainage from its Ellesmere Port factory ever since. Its right to use the Spillway is worth several hundreds of thousands of pounds per year. In early 2014, by administrative oversight, Vauxhall failed to pay its rent within 28 days of a demand. On 10 March 2014, MSCC served notice terminating the Licence under clause 5. This meant that Vauxhall faced having to negotiate a new licence at a cost of hundreds of thousands per year for its failure to pay £50.

Vauxhall asked the High Court to grant equitable relief from forfeiture. This doctrine allows the court to relieve parties from terms which forfeit their rights in order to secure some lesser primary obligation if they operate harshly. In this case, MSCC’s right to terminate under clause 5 was a forfeiture clause which secured Vauxhall’s obligation to make an annual payment of £50.

HHJ Behrens QC granted relief from forfeiture, effectively reinstating the Licence on condition that Vauxhall paid its arrears and certain other costs. The Court of Appeal upheld his decision. MSCC’s appeal to the Supreme Court concerns whether the court had jurisdiction to grant relief on the facts of this case. MSCC argues that in relation to land the courts can only relieve parties from the forfeiture of proprietary rights - which would exclude Vauxhall’s contractual rights under the Licence. Vauxhall argues the doctrine is broad enough to protect any right to use land.

### JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Briggs gives the main judgment with which Lord Carnwath, Lady Black and Lord Kitchin agree. Lady Arden gives a concurring judgment.

## REASONS FOR THE JUDGMENT

The Court rejects MSCC’s argument that, in the context of land, equitable relief is only available for forfeiture of property rights, as opposed to a right to possession under a contract.

In the context of personal property (property which is not land), the decided cases suggest that equitable relief is available for forfeiture of “*proprietary*” or “*possessory rights*” [24]; [28]; [32]-[34]. On a proper analysis, “*possessory rights*” means something falling short of ownership, or of a proprietary interest [43].

Now that it is settled that equitable relief may apply to forfeiture of possessory rights in the context of personal property, there are powerful reasons why it should also do so in the context of land. First, the doctrine of relief from forfeiture historically developed in the context of land [44]. Secondly, there is no logical or principled reason for distinguishing between rights over land and rights over other forms of property [45]; [76]. Thirdly, MSCC’s distinction would lead to arbitrary results. The courts should identify the scope for equitable intervention by taking a principled approach and consider the nature and purpose of its power to grant relief [47].

The concept of “*possessory rights*” does not lead to significant uncertainty in the law. It is frequently used in the context of commercial law and there is no immediately obvious reason why it should not be used in relation to rights over land [41]-[42].

Therefore, the Court concludes that the courts may relieve against the forfeiture of “*possessory rights*” over land. However, the majority rejects Vauxhall’s wider argument that relief from forfeiture should extend to all rights to use land [50]. Lady Arden expresses no view on this point because it was not fully argued and is not essential to the appeal [69].

On the facts, this Licence did grant “*possessory rights*” to Vauxhall. As the Court of Appeal explained, Vauxhall gained virtually exclusive possession of the Spillway and a high degree of control over it in perpetuity. As a result, Vauxhall was entitled to ask the court for relief from forfeiture of those rights [46]; [48]; [56]-[57]; [89]-[90].

In her concurring judgment, Lady Arden sets out the underlying principles in detail [60]-[91]. On her approach, the key question is not what category of rights are at stake, but whether the circumstances in which relief from forfeiture is sought to be invoked are those in which equity would grant relief [76]-[77]. She holds that the extension of relief from forfeiture to “*possessory rights*” does not create an unacceptable loss of certainty [88].

*References in square brackets are to paragraphs in the judgment.*

### **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<https://supremecourt.uk/decided-cases/index.html>