

DOES TUPE APPLY TO LANDLORDS AFTER THE ASSIGNMENT OF A PUB LEASE?

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A recent case in the Employment Appeal Tribunal (EAT) has stated that TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006) does not apply to the assignment of a lease unless the economic entity retains its identity.

In the case of Lom Management v Sweeney, Miss Sweeney brought a case in the Employment Tribunal of unfair dismissal on the basis that her employment should have transferred to the new Lessors. Miss Sweeney won her case at the Employment Tribunal who found that her employment should have transferred under TUPE. However, the EAT found against Miss Sweeney and confirmed that there should not have been a transfer under TUPE and, therefore, Lom Management Limited were entitled to dismiss her.

Miss Sweeney was employed by her parents who leased the pub. The premises were and are owned by a brewery. Miss Sweeney's parents assigned the lease to Lom Management Limited, who had been identified as potential assignees of the lease by the brewery. The transfer occurred whilst Miss Sweeney was on holiday. Upon her return she found that she no longer had a job at the pub. Miss Sweeney brought a claim for unfair dismissal on the basis that her employment should have transferred.

The Employment Tribunal found that it was a "classic" TUPE transfer as the lease had been assigned, and therefore, for the purposes of TUPE her employment should have transferred, and she was successful in her claim for automatic unfair dismissal.

However, upon consideration the EAT found that the Employment Tribunal had been incorrect in their decision. They found that the Tribunal made no findings as to whether there was an identifiable economic entity before the assignment of the lease and if so, what it was. Nor did the Tribunal consider whether there had been a transfer of any economic entity.

The EAT found that although a TUPE transfer could apply to an assignment of a lease, the Claimant would need to show that there was an economic entity (i.e. an organised grouping of persons and assets enabling or facilitating the exercise of an economic activity in pursuit of a specific objective) before the transfer which retained its identity afterwards.

To conclude, the Employment Appeal Tribunal did not consider that the assignment of a commercial lease will in itself cause TUPE to apply.

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