



**07TACD2017**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to the question of the availability of an exemption in accordance with section 86 of the Capital Acquisitions Tax Act 2003 ('CATCA 2003') commonly referred to as '*dwelling-house exemption*'. The dwelling-house, the subject matter of the exemption claim, is located at **[ADDRESS REDACTED]** (hereafter 'the dwelling-house').
2. In January 20XX, the Appellant was the owner of a property at **[ADDRESS REDACTED]** a two-story duplex apartment unit (hereafter 'the apartment'). The parties to this appeal each accept that the Appellant disposed of this property by way of assignment, on 25 January 20XX. The parties disagree in relation to the date upon which the Appellant became beneficially entitled in possession, to the dwelling-house.
3. The matter at issue in the appeal relates to whether the Appellant was, at the date of the gift of the dwelling-house, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house in accordance with s.86(3)(b) CATCA 2003. The parties to this appeal differ in relation to the date of the gift of the dwelling-house.



4. The Respondent, in disallowing the claim for exemption, raised a notice of assessment to Capital Acquisitions Tax on **[DATE REDACTED]** 2014 in the sum of €**[AMOUNT REDACTED]** in respect of the period 1 September 20XX to 31 August 20XX.

### **Facts**

5. By deed dated **[DATE REDACTED]** 2004, the Appellant's father, established a trust (hereafter 'the trust'). The dwelling-house was acquired by the trust on **[DATE REDACTED]** 2005. The trustees were the parents of the Appellant (hereafter 'the trustees').
6. In January 20XX, the trustees gifted the dwelling-house to the Appellant. On 21 January 20XX, the trustees signed the deed of appointment and the deed of transfer in relation to the gift of the dwelling-house, in the presence of their solicitor, Ms. Z., who duly witnessed their signatures.
7. Subsequently, on 21 January 20XX, the deed of transfer was furnished to and signed by the Appellant and was witnessed by the Appellant's solicitor, Ms. Y. The deed of transfer was left undated at that meeting.
8. On 23 February 20XX, Ms. Z., solicitor for the trustees, wrote to Ms. Y., solicitor for the Appellant, indicating a completion date re the transaction of 26 January 20XX. On 26 January 20XX, Ms. Z. dated the deed of appointment 19 January 20XX, in error. A copy of the deed of appointment was enclosed under cover of this letter together with some other documentation.
9. Prior to submitting an e-stamping application to the Respondent, Ms. Y. dated the deed of transfer, 25 January 20XX, in error. The Appellant contended that it should have been dated 26 January 20XX while the Respondent contended there was no validity to the date of 26 January 20XX, the deed having been signed by all relevant parties on 21 January 20XX.
10. Subsequently, on 20 April 20XY, the trustees and the Appellant executed deeds of rectification. The deeds of rectification provided that the trustees and the Appellant agreed that the dwelling-house was appointed to the Appellant on 26 January 20XX



and that the dwelling-house was transferred to the Appellant on this date and that both deeds were to be dated 26 January 20XX.

11. On 26 September 20XY, the solicitors, Ms. Z. and Ms. Y. each swore affidavits in relation to the events surrounding the transfers.

## **Legislation**

### Section 2 CATCA 2003 - General interpretation

*“date of the gift” means the date of the happening of the event on which the donee, or any person in right of the donee or on that donee’s behalf, becomes beneficially entitled in possession to the benefit, and a reference to the time when a gift is taken is construed as a reference to the date of the gift;*

*“entitled in possession” means having a present right to the enjoyment of property as opposed to having a future such right, and without prejudice to the generality of the foregoing a person is also, for the purposes of this Act, deemed to be entitled in possession to an interest or share in a partnership, joint tenancy or estate of a deceased person, in which that person is a partner, joint tenant or beneficiary, as the case may be, but that person is not deemed to be entitled in possession to an interest in expectancy until an event happens whereby this interest ceases to be an interest in expectancy;*

### Section 5 CATCA 2003 - Gift deemed to be taken

*(1) For the purposes of this Act, a person is deemed to take a gift, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit ....., otherwise than for full consideration in money or money’s worth paid by such person.*

### Section 86 CATCA 2003 - Exemption relating to certain dwellings

*(1) In this section—*

*‘dwelling house’ means—*

*(a) a building or part (including an appropriate part within the meaning of section 5(5)) of a building which was used or was suitable for use as a dwelling, and*

*(b) the curtilage of the dwelling house up to an area (excluding the site of the dwelling house) of 0.4047 hectares, but if the area of that curtilage (excluding the site of the dwelling house) exceeds 0.4047 hectares, then the part which comes within this*



*definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling house;*

...

*(3) Subject to subsections (4), (5), (6) and (7), a dwelling-house comprised in a gift or inheritance which is taken by a done or successor who –*

*(a) has continuously occupied as that done or successor's only or main residence –*

*(i) that dwelling-house throughout the period of 3 years immediately preceding the date of the gift or the date of the inheritance, or*

*(ii) where that dwelling-house has directly or indirectly replaced other property, that dwelling house and that other property for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the gift or the date of the inheritance,*

*(b) is not, at the date of the gift or at the date of the inheritance, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house, and*

*(c) continues to occupy that dwelling-house as that done or successor's only or main residence throughout the relevant period*

*is exempt from tax in relation to that gift or inheritance, and the value of that dwelling-house is not to be taken into account in computing tax on any gift or inheritance taken by that person unless the exemption ceases to apply under subsection (6) or (7),*

...

*etc.*

## **Evidence**

12. Both the Appellant and the Respondent agreed that the Appellant, being the owner of the apartment, disposed of this property by way of assignment on 25 January 20XX. The parties disagreed on the date upon which, in January 20XX, the Appellant became beneficially entitled to the dwelling-house, with the Respondent contending it was 21 January 20XX thus invoking the provisions s.86(3)(b) CATCA 2003, and the Appellant contending it was 26 January 20XX.



Ms. V., tax accountant.

13. Ms. V. gave evidence that in 20XW, The Appellant's father and sister were clients of her firm and that she prepared the tax return in respect of this year. Also, on request, Ms. V. provided advice in relation to the operation of section 86 CATCA 2003, to the effect that, for the conditions of the exemption to be met, the recipient of the gift of a dwelling-house would be required *not* to retain an interest in another dwelling-house at the date of the gift. Ms. V. confirmed she was not involved in the preparation of the deeds in relation to the transfer of the dwelling-house to the Appellant.

Mr. W., solicitor.

14. Mr. W., a solicitor in Law Firm A and cousin of the Appellant, gave evidence that the Appellant's father instructed the firm to act and to prepare the necessary deeds in relation to the transfer of the dwelling-house to the Appellant. Mr. W. gave evidence that he understood that the Appellant would need to dispose of the apartment prior to receiving a gift of the dwelling-house from the trust. Mr. W. stated that he had no further involvement in the transaction as it was passed to the firm's property department.

Ms. X., solicitor.

15. Ms. X., solicitor and partner in the commercial property department of Law Firm A recounted her understanding of the transactions and of the instructions received from the Appellant's father, namely, that he wished to gift a dwelling-house from the trust to the Appellant and that the Appellant would be required to first dispose of the apartment. Ms. X. confirmed that she was not involved in the preparation of the deeds in relation to the transfer as this work was passed to her colleagues.

The Appellant.

16. In addition to some general information in relation to family and the transactions, the Appellant gave evidence that the wishes of his/her father was that the transactions



would be carried out in a tax efficient manner i.e. that the apartment would be disposed of prior to the Appellant receiving a gift of the dwelling house.

17. The Appellant confirmed that (s)he attended the offices of Law Firm A on 21 January 20XX and that (s)he signed the deed of transfer on that date. The Appellant accepted that the deed was later dated 25 January 20XX, in error. (S)he contended that the deed should have been dated 26 January 20XX on the basis that this would have been in line with advices received as to the order in which the transactions were to be carried out. Under cross-examination, the Appellant accepted that the transactions did not take place in the order advised.
18. The Appellant confirmed that the date inserted on the deed of appointment was 19 January 20XX and stated that (s)he had no involvement in the insertion of this date on the deed. The Appellant stated that that (s)he could not provide any explanation as to why the deed was dated 19 January 20XX. The Appellant contended that the date should be 26 January 20XX but under cross-examination by counsel for the Respondent, accepted that the date of 19 January 20XX should have been replaced by 21 January 20XX.

Ms. Y., solicitor.

19. Ms. Y. confirmed that in 20XX she was working for Law Firm A and was acting for the Appellant. She confirmed that she did not act for the trustees.
20. On 21 February 20XX, Ms. Y. confirmed that she wrote to Ms. Z. (solicitor for the trustees) asking *'Can you please confirm the date of the Deed of Transfer **from [THE TRUSTEES]** so that this can be inserted in the Deed of Transfer...'* On 23 February 20XX. Ms. Y. confirmed that Ms. Z. replied stating *'The completion date in relation to this matter was the 26 January 20XX'*. Copies of these letters were furnished in evidence.
21. Under cross-examination, counsel for the Respondent put to Ms. Y. that her letter of 21 February 20XX did not request clarification of the completion date but rather, clarification of the date to be inserted on the deed of transfer. Ms. Y. accepted this.



22. When asked by counsel for the Respondent whether Ms. Y. accepted that the reference to '*completion date*' was of no relevance, Ms. Y. responded that the objective was that the Appellant would dispose of the apartment and would subsequently receive a transfer of the dwelling-house and that the completion date would be contingent on that.
23. Counsel for the Respondent put to Ms. Y. that as the transaction in relation to the dwelling-house was a deed of appointment from a trust, it differed from a conveyance on sale (requiring contract, consideration and conveyance). Ms. Y. agreed.
24. As cross-examination continued, Ms. Y. confirmed that the deed of appointment and the deed of transfer were signed by all relevant parties on 21 January 20XX but contended that there was no intention to deliver the deed of transfer on 21 January 20XX. Counsel for the Respondent put to Ms. Y. that the deeds were delivered on 21 January 20XX, to which the witness replied '*... delivery comes down to an intention as well, and they weren't.*' Ms. Y. confirmed however that the deed of transfer was physically handed to her on 21 January 20XX, the Appellant having signed it and Ms. Y. having witnessed the Appellant's signature. Counsel for the Respondent stated '*I have to put it to you that the 21<sup>st</sup> of January would have been the appropriate date to put on those deeds*'. Ms. Y. did not accept this.

Ms. Z., solicitor.

25. Ms. Z. confirmed that in 20XX she was working for Law Firm A and was acting for the trustees in respect of the transfer of the dwelling-house.
26. She confirmed that she attended the home of the trustees on 21 January 20XX and that the trustees signed the deed of appointment and deed of transfer on this date. She confirmed that she was the attesting witness in relation to signature of these deeds by the trustees.
27. On 23 February 20XX Ms. Z. confirmed that she wrote to Ms. Y. stating '*The completion date in relation to this matter was the 26 January 20XX*'.
28. On 26 January 20XX, Ms. Z. wrote to Ms. Y. as follows;



*'Dear [Ms. Y.], I enclose the following documents; -*

- 1. Deed of Transfer executed by our clients*
- 2. Copy Deed of Appointment*
- 3. Executed and sworn Family Home Protection Act Declaration of **[THE TRUSTEES]***
- 4. Executed and sworn Section 72 Declaration of **[THE TRUSTEES]***
- 5. Executed and sworn Declaration of Solvency*
- 6. All original title documents as per the attached schedule.*

*Kindly acknowledge safe receipt.*

*Yours sincerely, etc.'*

29. Under cross-examination Ms. Z. was asked to explain reference in her affidavit, sworn September 20XY, to having dated the deed of appointment '*the 19 January 20XX (instead of 26 January 20XX)*' and to her letter of 23 February 20XX citing a completion date of 26 January 20XX. Ms. Z. did not provide a clear explanation as to the citation of the date of 26 January 20XX however she confirmed that both deeds were signed by the Trustees on 21 January 20XX.

### **Submissions**

30. The Appellant submitted that there was an error in the documentation in respect of the gift of the dwelling-house, which was corrected by deeds of rectification dated 20 April 20XY. The deeds of rectification provided that the deed of appointment and the deed of transfer should each have been dated 26 January 20XX. The Respondent submitted that the dates on which the deeds became operable was a matter to be established based on the facts and on the law and that it was unaffected by the deeds of rectification.
31. The Appellant contended that the trustees, the Appellant and their agents, intended that completion would not take place in respect of the gift of the dwelling-house until 26 January 20XX. The Respondent contended that the matter of completion was not relevant to the transactions in this case and that even if it could be said that completion took place on 26 January 20XX, the operative date of the deed of transfer in relation to the gift of the dwelling-house was 21 January 20XX.





32. The Appellant contended that his/her intention and that of the trustees was that the transfer of the dwelling-house would take place *after* the assignment of the apartment. The Respondent contended that the legal analysis should focus on what in fact occurred in terms of execution of the relevant deeds and that intention was irrelevant in this case.
33. The Appellant submitted that the import of the evidence of Ms. Y. was that although she received the deed of transfer on 21 January 20XX, receipt of the deed did not operate as a legal delivery of the deed to her because she understood the delivery date to be 26 January 20XX. In the alternative, the Appellant submitted that the deed was delivered in escrow. The Respondent's submission was that the deed of transfer was delivered on 21 January 20XX when it was executed by the Appellant and received by the Appellant's agent, Ms. Y. The Respondent contended there was no escrow because the deed of transfer was not delivered subject to the satisfaction of a condition, because the transactions (i.e. the gift of the dwelling-house and the assignment of the apartment) were not interlinked and because there was no reference to escrow, express or otherwise, in relation to the transactions.

### **Analysis and findings**

#### *Deeds of Rectification*

34. The Appellant submitted that there was an error in the documentation in respect of the gift of the dwelling-house which was corrected by way of the deeds of rectification dated 20 April 20XY.
35. In relation to the deed of appointment, the deed of rectification provided; '*By way of rectification of the Appointment, the parties hereto agree that the Premises were appointed to the Appointee on 26 January 20XX and the date of 19 January 20XX therein is hereby deleted and replaced by the date 26 January 20XX.*'
36. In relation to the deed of transfer, the deed of rectification provided; '*By way of rectification of the Transfer, the parties hereto agree that the Premises were transferred*



*to the Transferee on 26 January 20XX and the date of 25 January 20XX therein is hereby deleted and replaced by the date 26 January 20XX.'*

37. The Appellant relied on the deeds of rectification in support of his/her position that the Appellant did not receive a gift of the dwelling-house until 26 January 20XX.
38. The Respondent submitted that the dates on which the deeds of appointment and transfer became operable cannot be changed by deed of rectification. The Respondent submitted that a deed may be rectified where, through a mutual mistake in the recording of the transaction, an error occurred. In support of this position, the Respondent cited *Irish Life Assurance Co. Ltd v Dublin Land Securities Ltd* [1989] IR 253 at p.260 where Griffin J. stated: '*Rectification is concerned with defects in the recording, not in the making of an agreement*'. The Respondent did not accept that the deeds of rectification affected the transaction in the manner contended for by the Appellant, or at all.
39. Both parties accepted that the remedy of rectification is an equitable one which requires an equitable jurisdiction. The parties agreed that the Tax Appeals Commission does not retain such jurisdiction.
40. The analysis to be undertaken in this appeal requires an examination of the facts in terms of execution of the relevant deeds, in order to identify the operative dates of the deed of transfer and the deed of appointment in relation to the gift of the dwelling-house to the Appellant. In my view, the deeds of rectification, executed in April 20XY, have no bearing upon this analysis.

### *Completion*

41. The Appellant contended that the trustees, the Appellant and their agents, intended that completion would not take place in respect of the gift of the dwelling-house until 26 January 20XX.
42. The Respondent contended that the matter of completion of the transaction was not relevant on the basis that the transfer in this case arose from an appointment from a trust and did not involve a transfer of property via contract and conveyance.



43. In Murdock and Hunt's *Dictionary of Irish Law*, 6<sup>th</sup> ed., completion is described as follows:

*'Final stages in a contract for the sale of land which is effected by the delivery up by the vendor of a good title and of the actual possession or enjoyment thereof to the purchaser and by the purchaser in accepting such title, and paying the agreed purchase price.'*

44. Wylie and Woods on *Irish Conveyancing Law*, 3<sup>rd</sup> ed. at paragraph [18.09] state;

*'It is usual to date a conveyance of unregistered land with the date of actual completion, though it has long been established that insertion of a date is not strictly a necessary part of the deed. Furthermore, it is also clear that the date from which a deed operates, i.e, transfers the estate to be conveyed to the purchaser, is the date of delivery of the deed, which is not necessarily the closing date or date of completion.'*

45. On 23 February 20XX, Ms. Z., agent for the trustees, wrote to Ms. Y., agent for the Appellant, stating: *'The completion date in relation to this matter was the 26 January 20XX'*. On 26 January 20XX, Ms. Z. wrote to Ms. Y. enclosing several documents including a copy of the deed of appointment, executed by the trustees on 21 January 20XX.

46. An analysis of s.86 CATCA 2003 requires clarification of the date of the gift of the dwelling-house, the subject matter of the exemption claim. This analysis requires that the operative dates of the relevant deeds be ascertained. Even if it could be said that completion took place on 26 January 20XX, it does not follow that the deeds became operable only from this date. In my view, the completion date in this case is not relevant to ascertaining the date of the gift for the purposes of section 86 CATCA 2003.

#### *Intention of parties and order of execution of deeds*

47. The Appellant in evidence stated that the intention of the trustees, the Appellant and their agents was that the transfer of the dwelling-house would take place *after* the assignment of the apartment. The Appellant contended that the presence of this intention prevented delivery from taking place on 21 January 20XX in relation to the



gift of the dwelling-house. In support of this contention the Appellant relied on the case of *Watkins v Nash* (1875) LR 20 Eq 262 wherein, at page 266 it is stated;

*'But if upon the whole of the transaction it be clear that the delivery was not intended to be a delivery to the grantee at that time, but that it was to be something different, then you must not give effect to the delivery as being a complete delivery, that not being the intent of the persons who executed the instrument.'*

48. The Respondent sought to distinguish *Watkins* on the basis that it involved delivery of a deed upon a condition, in circumstances where the Respondent contended there was no condition of delivery in this appeal.

49. The Appellant also relied on the following passage from *Gartside v Silkstone and Dodworth Coal and Iron Company* (1882) 21 Ch D 762 where Fry J. at page 767 stated;

*'I think the law stands in this way, that when two deeds are executed on the same day, the Court must inquire which was in fact executed first, but that if there is anything in the deeds themselves to show an intention, either that they shall take effect pari passu or even that the later deed shall take effect in priority to the earlier, in that case the Court will presume that the deeds were executed in such order as to give effect to the manifest intention of the parties.'*

50. The Appellant cited a passage from *Norton on Deeds*, 2<sup>nd</sup> ed., page 88, to the effect that deeds will be presumed to have been executed in the order which will enable the intent of the parties to be carried into effect.

51. The Respondent submitted that this principle was not applicable because in this appeal, there were two separate and distinct transactions. The Respondent submitted that the principle cited by the Appellant should be read in the context of the following passage at page 87 of the text, namely; *'When documents are actually contemporaneous, that is, two deeds executed at the same moment, a very common case, or within so short an interval that having regard to the nature of the transaction the Court comes to the conclusion that the series of deeds represents a single transaction between the same parties, it is then that they are all treated as one deed; ...'*



52. In relation to the case law opened by the Appellant, relating to the order of execution of the deeds, namely; *Kilnoore Limited (in liquidation)* [2005] 3 All ER 730, *Michaels v Harley House (Marylebone) Ltd* [1997] 3 All ER 446 and *Warner v Ulysius International Trading Pty Ltd* [20XX] NSWSC 329, all of which cited *Gartside*, I am of the view that the case law is of limited assistance as I agree with the submission of the Respondent, that the transactions in this case comprise two separate and distinct transactions, which are not interlinked. The transactions involved different parties, each a different subject matter and they occurred on different dates even on the Appellant's submission.
53. Based on the evidence, it appears that the trustees wished for the transactions in this case to take place in a tax efficient manner. That wish or aspiration is not irrelevant to the legal analysis, however, the transactions must be examined in the context of what occurred as a matter of fact in the context of the execution of the deeds. It does not follow that the operative dates of the relevant deeds can be re-cast in light of what may have been intended by the trustees or what may have been anticipated by the Appellant.
54. Both the Appellant and the Respondent agreed that the Appellant assigned the apartment on 25 January 20XX. The deed of appointment which required only the signatures of the trustees to be validly executed, was executed on 21 January 20XX, by both trustees. A copy of this deed was furnished to the Appellant's agent, Ms. Y., on 26 January 20XX. The deed of transfer was signed by the trustees and by the Appellant, on 21 January 20XX. The Appellant accepted that the deed of transfer was received on 21 January 20XX.
55. The Appellant contended that the relevant matter for consideration was the date of delivery in respect of each of the deeds. The Appellant submitted that the deed of appointment was not delivered until 26 January 20XX, when it was furnished to Ms. Y. under cover of letter of even date and the deed of transfer, while signed by all relevant parties and received by Ms. Y. on 21 January 20XX, was not legally delivered on that date because the intention of the Appellant and the Trustees was that the deed would not be delivered until 26 January 20XX. The Respondent contended that the deed of transfer was delivered on 21 January 20XX.



56. The concept of delivery as explained by Maddox in *Land and Conveyancing Law Reform Act 2009; A Commentary*, at page 105, is as follows;

*'The purpose of delivery is to indicate that a deed is to become operative and there are many ways in which this may be indicated e.g. physically handing the deed over or simply conduct (such as the execution of the deed) by the individual which indicated he or she intended it to become immediately binding are sufficient. Delivery is generally ignored in legal practice and may be presumed from the conduct of the parties in execution the deed.'*

57. Wylie and Woods at paragraph [18.128] of *Irish Conveyancing Law*, describe delivery in the following terms;

*'The essential purpose of delivery is to indicate an intention that the deed should become operative, and it is clear that such an intention may be shown in a number of ways. One obvious way is to deliver the deed in the popular sense of the word, i.e. to hand it over physically to the appropriate person, eg, The other party to the transaction. But this is not necessary, for as Sullivan MR said again in Evans v Grey;*

*'It is clear.... that the mere fact of the grantor retaining a deed in his possession does not contradict the idea that the grantor intended the deed to be operative.'* Thus a statement made in reference to the deed, e.g., by pointing to it or holding it, so that it is delivered as the speaker's deed is sufficient, even if made unilaterally with no one else present. Furthermore, delivery may be presumed from the actions of the parties, e.g., their acts of signing and sealing the deed. Thus, Sullivan MR said in *Evans v Grey*:

*'When a man signs and seals a deed, and the attestation clause states that it was signed, sealed and delivered, the attestation clause is prima facie evidence that he delivered the deed. If there is nothing in the attestation clause about delivery, something must be proved to have been done; leaving the deed on the table for a few seconds of time would be a sufficient delivery.'*

58. In this case, Ms. Y., agent for the Appellant, confirmed in evidence that she physically received the deed of transfer on 21 January 20XX, in circumstances where both deeds (i.e. the deed of appointment and the deed of transfer) had been validly executed on 21 January 20XX. In addition, both the deed of appointment and the deed of transfer each specified that once they were signed, they were '*signed and delivered as a deed*'.



59. The submission by the Appellant, that receipt by Ms. Y. of the executed deed of transfer did not operate as a legal delivery of the deed to her on the basis that she understood the delivery date to be 26 January 20XX, is a submission which falls to be considered in light of the established facts. Even if Ms. Y. understood that the deed was not to be delivered until 26 January 20XX, the deed was received by her on 21 January 20XX in circumstances where it had been signed by all relevant parties on that date and where the deed of appointment had been executed also on that date. I cannot accept the Appellant's submission that the intention of the parties to the transaction and/or the position as understood by their agents, was such as to prevent or preclude proper legal delivery of the deed in the circumstances in which it was received by Ms. Y. on 21 January 20XX. Thus I determine that the deed of transfer was delivered on 21 January 20XX and that both deeds (the deed of appointment and deed of transfer) became operative on 21 January 20XX.

60. The alternative submission of whether the deeds were delivered in escrow is considered below.

#### *Escrow and Delivery*

61. The Appellant submitted that although his/her agent, Ms. Y., received the deed of transfer on 21 January 20XX, this did not operate as a legal delivery of the document, as it was delivered in escrow.

62. The Respondent's submission was that there was no escrow because the transactions (the gift of the dwelling-house and the assignment of the apartment) were not interlinked, because the deed of transfer was not delivered subject to the satisfaction of any condition and because, *inter alia*, there was no reference to escrow, express or otherwise, in the transactions.

63. Counsel for the Appellant accepted the proposition that for there to be an escrow, there must be a condition to be fulfilled. Counsel submitted that the escrow condition was that the Appellant would dispose of the apartment prior to receiving the gift of the dwelling-house. Counsel added that there was no form of words in which intention for escrow needed to be expressed and that the absence of an express



reference to 'escrow' in the relevant documentation did not mean the deed was not delivered in escrow.

64. The position at law in relation to escrows is that once the escrow condition is fulfilled, the deed is regarded as executed from the date of delivery as an escrow, also known as the doctrine of relation back.

65. The Respondent, in contending that the existence of an escrow would be of no assistance to the Appellant's case, opened *Emmet and Farrant on Title*, paragraph 13.008, which provides;

*'Escrows – Where a document is delivered as an escrow, it does not take effect as a deed until the condition of its delivery is performed... On performance of the condition, however, the deed is regarded as having been executed and takes effect retrospectively as at the date of delivery as an escrow. ...'*

66. The Respondent also opened *Wylie on Irish Conveyancing Law*, paragraph [18.131] which provides;

*'If an escrow has been created, and the condition in question is subsequently fulfilled, the deed becomes operative from the date of its original delivery without any redelivery, it relates back so as to pass the title from that date retrospectively.'*

67. Therefore, once the condition of escrow is met, the doctrine of relation back applies so that the deed is regarded as having been executed and taking effect as at the date of delivery in escrow. In this case the Appellant contended that the escrow condition was that the Appellant would dispose of the apartment prior to receiving a gift of the dwelling-house. Applying the doctrine of relation back to this condition, the operative date of the deed would be the date of the delivery of the deed in escrow i.e. 21 January 20XX.

68. The Appellant did not accept a delivery date of 21 January 20XX and instead relied on the case of *Security Trust Company v Royal Bank of Canada* [1976] 1 All ER 381 as authority for the proposition that a deed is not taken to relate back to the date of its delivery for all purposes but only for such purposes as are necessary to give efficacy to the transaction. In my view *Security Trust Company v Royal Bank of Canada* can be





distinguished from the facts in this appeal on the basis that it turned on a particular set of facts which related to the construction of a debenture and the existence of escrows in the context of extensions for completion of relevant transactions. In that case, the Court held that the time for fulfilling the condition of escrow had lapsed and, as a result, the doctrine of relation back did not apply. No question of lapse arises in this appeal.

69. In addition, the Appellant submitted that the doctrine of relation back does not apply to registered land and thus does not apply in this case; *Foundling Hospital v Crane* [1911] 2 KB 367. I note the land in this case, comprising registered land, bears Folio number [REDACTED].
70. However, if there was an escrow and the doctrine of relation back was inapplicable on the basis that the land in question comprised registered land, then the deed of transfer would have become operable, *prima facie*, on the date of satisfaction of the escrow condition i.e. 25 January 20XX, unless the position at law is that the deed does not become operable in the absence of registration.
71. I note that Wylie on *Irish Land law*, 5<sup>th</sup> ed. at paragraph [23.45] states; ‘... a transfer [of registered land] does not itself vest the land in the transferee; at most he has an ‘equity’ to be registered. He must complete the transfer by having himself entered on the register as the new owner.’
72. As regards the position at law, it is common case that a person entitled to registered land by virtue of a transfer, may deal with the land by transferring, leasing or charging it, even though that person has not yet registered the land. If the absence of the doctrine of relation back means the deed of transfer became *prima facie* operable on 25 January 20XX, resulting in a transfer of the beneficial interest on that date, it would be necessary to enter into a consideration of whether the dwelling-house exemption would be available in circumstances where, on the same date (i.e. 25 January 20XX) the Appellant received a gift of one property and also disposed of another.
73. The condition of escrow contended for by the Appellant in this case was that the Appellant would dispose of the apartment prior to receiving a transfer of the dwelling-house. While, on the evidence it appears that there was a wish that the



transactions would be carried out in this order, that does not in my view, amount to a condition giving rise to an escrow.

74. I determine that no escrow was present in this case and thus it is not necessary to enter into a same-date analysis for the purposes of s.86(3)(b) CATCA2003.

*Beneficially entitled*

75. The application of section 86 CATCA 2003 requires clarification as to the date of the gift i.e. the date upon which the Appellant became beneficially entitled in possession to the dwelling-house, the subject matter of the gift. This question necessitates identification of the operative dates of the relevant deeds i.e. the deed of appointment and deed of transfer.

76. For the reasons set out above I have determined that both the deed of appointment and the deed of transfer became operative on 21 January 20XX. It follows therefore that the Appellant became beneficially entitled to the dwelling-house on this date.

77. Section 86(3)(b) CATCA 2003 requires consideration of the question of whether the Appellant '*is .... at the date of the gift ... beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house*'

78. I have determined that the Appellant became beneficially entitled to the dwelling house on 21 January 20XX however, on that date, the Appellant remained the lawful owner of another property, the apartment, which was not assigned by the Appellant until 25 January 20XX.

79. Thus, on the date of the gift of the dwelling-house namely, 21 January 20XX, the Appellant retained a beneficial interest in the apartment and therefore did not satisfy the conditions for availing of the exemption because he was, on that date '*beneficially entitled to [an] other dwelling-house or to [an] interest in another dwelling house*' in accordance with the provisions of s.86(3)(b) CATCA 2003.



## Conclusion

80. I determine that the deeds in relation to the gift of the dwelling-house were executed and delivered on 21 January 20XX and thus they became operable on and from that date. It follows that the Appellant became beneficially entitled to the dwelling-house on 21 January 20XX.

81. As at 21 January 20XX, the Appellant retained a beneficial interest in the apartment and thus the Appellant did not satisfy the conditions for availing of dwelling-house exemption in relation to the gift of the dwelling-house because the Appellant was, on that date *'beneficially entitled to [an] other dwelling-house or to [an] interest in another dwelling house'* in accordance with the provisions of s.86(3)(b) CATCA 2003. Accordingly, I determine that the assessment raised on 5 March 2014 in respect of the period 1 September 2010 to 31 August 20XX shall stand.

This appeal is hereby determined in accordance with section 949AK TCA 1997.

**APPEAL COMMISSIONER**

**June 2016**

