



Between

50TACD2024

██████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal pursuant to section 159A(1A) of the Stamp Duties Consolidation Act 1999 (“SDCA 1999”) to the Tax Appeals Commission (“the Commission”) against the refusal by the Revenue Commissioners (“the Respondent”) to allow a claim made by ██████████ (“the Appellant”) for a repayment of stamp duty in the amount of €14,000. The request was refused on the ground that the request was made out of time.
2. The appeal proceeded by way of a hearing on 18 January 2024.

Background

3. On ██████████ 2016, lands described in ██████████ ██████████ were transferred to the Appellant (“the transfer”). The Appellant paid consideration of €700,000 for the transfer.
4. On ██████████ 2016, the Appellant paid stamp duty of €14,000 in respect of the transfer, being 2% of the consideration paid. The instrument was stamped on that date by the Respondent.

5. On [REDACTED] 2021, the High Court, by order, set aside the transfer.
6. On 16 June 2022, the Appellant, via its solicitor, sought a refund of the stamp duty paid on the transfer. On 26 October 2022, the Respondent refused the request, on the ground that it was made outside the four-year time limit prescribed by section 159A of the SDCA 1999.
7. On 28 November 2022, the Appellant appealed against the refusal to the Commission. The appeal proceeded by way of a remote hearing on 18 January 2024. The Appellant was represented by its solicitor and counsel, and the Respondent was represented by its officers.

Legislation and Guidelines

8. Section 159A(1) of the SDCA 1999, at the relevant time for the purposes of this appeal, stated that

“Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, no stamp duty shall be repaid to a person in respect of a valid claim (within the meaning of section 159B), unless that valid claim is made within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners, the date the statement of liability was delivered to the Commissioners, the date the operator-instruction referred to in section 69 was made or the date the person achieves the standard within the meaning of section 81AA(11)(a).”

Submissions

Appellant

9. In its written submissions, the Appellant stated *inter alia* that

“The limitation period provided for in s.159A is commenced by the happening of one of the alternative events identified in the section. The fundamental submission of the Appellant is that by operation of law, namely the High Court order of the [REDACTED] 2021, the transfer, the payment of stamp duty and the instrument stamped by [the Respondent] were legal nullities ab initio.

The effect of the Court’s order was to invalidate any and all rights of any parties concerned with the transfer and in particular to restore the status quo. In this appeal, the Appellant seeks restoration of the status quo in the form of restitution of the monies paid to the [Respondent].

The operation of the Court order, in common with the legal doctrine of “void ab initio”, had a retroactive effect on the interests of the parties concerned with the transfer, including the [Respondent].

[...]

The Appellant makes the secondary submission that s.159A makes provision for a limitation period in respect of expressly identified events, none of which pertain or can be said to pertain as a matter of legal reality where an order of the type made by the High Court has been made. It is submitted that the maxim “expressio unius est exclusio alterius” ought to be applied to the benefit of the Appellant.

[Section] 159A stipulates an exhaustive list of scenarios from which the limitation period can be said to commence. Where no such scenario applies, the limitation period is incapable of being commenced in a manner that is compliant with the statutory provisions. Applying the exclusion maxim, the Appeal Commissioners cannot insert any additional events that commence the limitation period. Where the limitation period is incapable of being commenced by reason of the happening of an event not provided for in statute, the limitation cannot be validly relied on by the [Respondent].”

10. In oral submissions, counsel for the Appellant reiterated the above. He stated that, if none of the events stipulated in section 159A occurred, then the limitation period of four years did not commence. The effect of the High Court’s order was that the transfer and stamping of the instrument by the Respondent were void *ab initio*, and legally had not occurred. Therefore, the limitation period was not operative and the Appellant was entitled to the refund sought.
11. In response to questions from the Commissioner, counsel stated that it was not his case that the High Court order mandated the Commissioner to direct the refund of the stamp duty. There was an obligation of fairness on the Commissioner pursuant to section 6 of the Finance (Tax Appeals) Act 2015, and this obligation should be applied to direct the refund. However, it was accepted that the Commissioner did not have any equitable jurisdiction.

Respondent

12. In its written submissions, the Respondent set out a chronology of the engagement of the parties, and stated that it believed that section 159A of the SDCA 1999 applied so that a refund could not be made outside of the four year time limit. In oral submissions, the Respondent’s officer submitted that the four-year period commenced when the

Respondent stamped the instrument on [REDACTED] 2016, and that therefore the request for a refund made on 16 June 2022 was out of time.

Material Facts

13. The material facts were not in dispute between the parties, and there was no oral evidence proffered at the hearing. Having read the documentation submitted by the parties, and having considered the submissions made, the Commissioner makes the following finding of material fact:

13.1. On [REDACTED] 2016, lands described in [REDACTED] [REDACTED] were transferred to the Appellant, for consideration of €700,000.

13.2. On [REDACTED] 2016, the Appellant paid stamp duty of €14,000, and the instrument was stamped by the Respondent.

13.3. On [REDACTED] 2021, the High Court ([REDACTED] ordered *inter alia* that “*the transfer dated the [REDACTED] [REDACTED] 2016 of the lands described in [REDACTED] [REDACTED] ...be and hereby is set aside.*” The court made no direction or order in respect of the stamp duty paid by the Appellant to the Respondent.

13.4. On 16 June 2022, the Appellant sought a refund of the stamp duty from the Respondent. On 26 October 2022, the Respondent refused the Appellant’s request for a refund.

Analysis

14. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse its claim for a refund of stamp duty. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*”

15. This appeal concerns a net question of law, namely whether the effect of the High Court order of [REDACTED] 2021 setting aside the transfer of land to the Appellant is that section 159A of the SDCA 1999 does not apply to preclude a refund of the stamp duty paid on [REDACTED] [REDACTED] 2016. The Appellant contends that the court’s order means that the transfer and subsequent payment of stamp duty and stamping of the instrument are void *ab initio* and therefore none of the events stipulated in section 159A that start the four year time period to request a refund ever occurred.

16. Section 159A(1) of the SDCA 1999, insofar as is relevant and as per the date the request for a refund was made, stated that

“no stamp duty shall be repaid to a person in respect of a valid claim ... unless that valid claim is made within the period of 4 years from ... the date the instrument was stamped by the Commissioners...”

17. It can be seen, therefore, that it is a statutory requirement that a claim for repayment of stamp duty must be made within four years from (*inter alia*) the date the instrument was stamped by the Respondent. In this case, it is not in dispute that the Appellant’s claim was made more than four years after the instrument was stamped.

18. The Appellant claims that the effect of the High Court order is that the transfer and subsequent payment of stamp duty and stamping of the instrument never legally occurred, and therefore the time limit prescribed by section 159A never began to run. However, the Commissioner notes that the High Court’s order states that *“the transfer dated the [REDACTED] [REDACTED] 2016 of the lands described in [REDACTED] ...be and hereby is set aside.”* There is no reference in the order to the payment of stamp duty by the Appellant, and there is no direction or order regarding the payment of same or the stamping of the instrument by the Respondent.

19. The Commissioner does not agree with the Appellant that the necessary effect of the High Court order is that the payment of stamp duty and stamping of the instrument are also void *ab initio*. While he accepts that the payment of stamp duty and stamping of the instrument followed on from the transfer, he considers that the transfer of the land and the stamping of the instrument were separate and distinct events. They are governed by different legislative provisions (i.e. the Registration of Title Act 1964 and the SDCA 1999) and they occurred on different dates (i.e. [REDACTED] 2016 and [REDACTED] 2016).

20. Section 159A does not state that the four year period runs from the date of the transfer, but from the date of the stamping of the instrument. While the High Court set aside the transfer, it did not state that it was setting aside the stamping of the instrument. The Commissioner does not consider that it would be permissible for him to presume that the court also intended to set aside the stamping of the instrument when it did not make any order or direction to that effect. Therefore, the Commissioner concludes that the court did not void the stamping of the instrument. Consequently, the Commissioner finds that the four year period commenced on [REDACTED] 2016, and the Appellant’s claim for a refund was made out of time.

21. The Commissioner has considerable sympathy for the Appellant, as he does not disagree that it appears unfair that it is not entitled to a refund in circumstances where the transfer has been set aside. However, the Commission is a creature of statute, and the Commissioner is obliged to interpret and apply the legislation as it is written. The SDCA 1999 does not create an exception to the four-year rule in the sort of circumstances under consideration in this appeal.
22. It was accepted by counsel for the Appellant in the hearing that the Commission does not have an equitable jurisdiction, but he contended that section 6 of the Finance (Tax Appeals) Act 2015 obliges the Commissioner to act fairly, and that consequently there is a residual power to direct the refund. However, the Commissioner is satisfied that section 6(4) concerns procedural fairness, and does not create any sort of quasi-equitable competence. This can be seen from the wording, which states that “*The Commissioners shall perform their functions in a manner that has regard to the need for proceedings before the Commissioners... to be accessible and fair...*” (emphasis added).
23. In conclusion, the Commissioner finds that the Appellant has not demonstrated that the Respondent was incorrect to refuse its claim for a refund of stamp duty, and the appeal is unsuccessful.

Determination

24. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner determines that the Appellant is not entitled to a repayment of stamp duty in the amount of €14,000, and the Respondent’s decision to refuse the claim stands.
25. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

26. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication

and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

27. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Simon Noone
Appeal Commissioner
26 January 2024