



AC Ref: 16TACD2017

BETWEEN

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a decision made by the Respondent in determining that the Appellant was a person liable to account for Local Property Tax in respect of the liability date 1st November 2013.

Background

2. The Appellant sold the family home (the Property) by contract dated 30 October 2013. In 2014 the Respondent determined that the Appellant held an interest in the Property on the liability date 1st November 2013 and therefore accountable for Local Property Tax in the sum of €2,550. Without admitting liability, the Appellant paid the tax on 25th July 2014.
3. On 11th September 2014, following a formal determination by the Respondent confirming that the Appellant was the "*liable person*", the Appellant appealed that determination pursuant to Finance (Local Property Tax) Act 2012, section 34.

Legislation

Finance (Local Property Tax) Act 2012

4. Local Property Tax (LPT) is charged on the value of residential property situated in the State.



5. Definitions for the purposes of interpreting and applying the provisions of the Finance (Local Property Tax) Act 2012 are contained in section 2 to include, *inter alia*:

“liability date” means—

- (a) 1 May 2013, in respect of the year 2013,*
- (b) in respect of any other year, 1 November in the preceding year;*

“residential property” means any building or structure which is in use as, or is suitable for use as, a dwelling and includes any shed, outhouse, garage or other building or structure and any yard, garden or other land, appurtenant to or usually enjoyed with that building, save that so much of any such yard, garden or other land that exceeds one acre shall not be taken into account for the purposes of this definition;

“return” means a statement of particulars which is required to be prepared and delivered Under Part 7;

“return date” means—

- (a) 7 May 2013, in respect of the year 2013,*
- (b) in respect of any other year, 7 November in the preceding year, or*
- (c) the date specified in a notification issued under section 33 is the definition section*

6. Section 11(1) of that act describes the person liable to pay the tax as:

“a person who holds any estate, interest or right in a relevant residential property entitling the person to—

- (a) the immediate possession of such property for a period that may equal or exceed 20 years, or*
- (b) the receipt of rents or profits of such property for a period that may equal or exceed 20 years,*

shall, for the purposes of this Act, be a liable person in relation to that property.”

Land and Conveyancing Law Reform Act 2009

7. The Land and Conveyancing Law Reform Act 2009 came into force on 1st December 2009 with the stated objective of providing fundamental reform and modernisation of land law and conveyancing law and to simplify the law and the conveyancing process.



8. Section 52 of that act provides that the entire beneficial interest in the property being purchased passes to the purchaser on the making of “*an enforceable contract for the sale or other disposition of land.*” However, subsection 2 of that section imposes the following obligation and rights:

- (a) the obligation of the vendor to maintain the land so long as possession of it is retained, or*
- (b) the liability of the vendor for loss or damage under any contractual provision dealing with such risk, or*
- (c) the vendor’s right to rescind the contract for failure by the purchaser to complete or other breach of the contract, or*
- (d) any provision to the contrary in the contract.”*

Submissions

Appellant

9. The Appellant made the following submissions:

- (a) the proper interpretation of Finance (Local Property Tax) Act 2012, section 11 imposes the date of execution of the contract for sale as the appropriate date for the purposes of determining the “liable person”;*
- (b) there is nothing in the legislation referring to the date of stamping of the Deed of Transfer as the date of passing of an interest in property;*
- (c) there is ample precedent in respect of all other taxes that the date of execution of the contract is the relevant date for the passing of an interest in property;*
- (d) the date of stamping of the Deed is not under the control of any of the parties to the contract as it is dependent on the work load of the Stamping Office at any particular time. It is therefore an unreliable date for taxation purposes;*
- (e) the date of stamping of the contract is merely an administrative matter to give effect to the terms of the contract for sale;*
- (f) the date of contract is a date certain whereas the date of stamping of the contract is ambulatory;*
- (g) the Appellant and his family neither occupied nor had any right to occupy the property after 30th October 2013, and*
- (h) as a consequence, the Appellant did not hold any estate, interest or right in the Property and therefore he is entitled to a refund of Local Property Tax paid in the amount of €2,520.*

Respondent

10. On behalf of the Respondent, it was submitted that:



- (a) the Appellant entered into an agreement on 30th October for the sale of the Property;
- (b) the date of the execution of the instrument, the Deed of Assignment, was signed by the Appellant and the Purchaser on 7th November 2013;
- (c) the Respondent considers that the Appellant is the liable person in respect of the LPT liability for 2014 as the entitlement to immediate possession as required by section 11(1) (a) of the Finance (Local Property Tax) Act 2012 ceased on the 7th November 2013, the date of execution of the instrument, and as a consequence
- (d) the Appellant is the liable person for LPT purposes as he had immediate possession of the Property on the liability date of 1st November 2013.

Contract of Sale

11. The contract governing the sale of the property was executed on 30th October 2013 providing for a consideration of €1,400,000 less a deposit of €140,000 and a closing date of 4th November 2013. Special Condition 5 of that contract specified the following requirement:

“On completion, the Purchaser shall provide to the Vendor’s solicitor cleared funds in respect of the balance of the sale price. The Vendor shall be under no obligation to complete the sale until such time as cleared funds have been provided. In the event that the Purchaser wishes to furnish a bank draft, it must be furnished in good time to facilitate clearance.”

Analysis

12. The liability for LPT is calculated with reference to the “*liability date*”, on the person who:

“holds any estate, interest or right in a relevant residential property entitling the person to—

- (a) the immediate possession of such property for a period that may equal or exceed 20 years, or*
- (b) the receipt of rents or profits of such property for a period that may equal or exceed 20 years”*



13. It is therefore necessary to determine whether the Appellant, as at 1st November 2013, held an entitlement to the immediate possession of the Property and whether that entitlement was for “*a period that may equal or exceed 20 years*”.
14. The parties agreed that the Appellant disposed of his beneficial interest in the Property on the date of signing the contract pursuant to section 52 Land and Conveyancing Law Reform Act 2009. However, the transaction was not completed until 4th November 2013 at which stage the Appellant received the remaining consideration of €1,260,000.
15. In Murdoch and Hunt’s Dictionary of Irish Law, Sixth Edition, ‘completion’ is defined as the:

“[F]inal 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.”

Entitled to immediate possession

16. Notwithstanding that the purchaser was the beneficial owner of the Property on 1st November 2013, that person was not entitled to immediate possession of the Property until the transaction was completed, a date contractually specified as 4th November 2013. As such, on the liability date 1st November 2013, the Appellant was the only person “*entitled to the immediate possession*” of the Property.

Period that may equal or exceed 20 years

17. The statutory wording imposing the tax on the “*liable person*” is with reference, *inter alia*, to a person “*entitled to immediate possession*” of a residential property for a period “*that may equal or exceed 20 years*”. Therefore, the tax is not imposed on a person holding the beneficial interest in the property for a period of least 20 years but rather on the person entitled to immediate possession for period that may equal or exceed 20 years.
18. Therefore, while the Appellant was contractually obliged to divest himself of the entire interest in the Property, such an obligation did not extend to a situation where the purchaser, however unlikely, was unable to pay the outstanding monies. In such an event, the Appellant could rescind the contract and retain the beneficial interest in the Property.
19. Therefore, and notwithstanding that on the liability date of 1st November 2013 it was unlikely that the Appellant would be entitled to immediate possession of the Property





for a period that would equal or exceed 20 years, the charge to tax was, in accordance with the statutory wording, imposed on the possibility of such an entitlement.

Conclusion

20. I have therefore determined that the Appellant was the person liable to discharge the Local Property Tax on the 1st November 2013 in the sum of €2,550. As such, this appeal is therefore determined in accordance with TCA, section 949AK.

APPEAL COMMISSIONER

4th September 2017

No request was made to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.

