



Appeal No. 128TACD2020

Between/

[NAME REDACTED]

Appellant

-v-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeals Commission by way of appeal against a decision of the Respondent refusing the Appellant's application for payment of €20,000 pursuant to section 477C of the Taxes Consolidation Act, 1997, as amended (hereinafter "**TCA1997**"), commonly known as the 'Help to Buy' scheme.
2. The Appellant's claim for Help to Buy relief was made pursuant to section 477C(3) on the 5th of July 2017 and was refused by the Respondent on the 8th of November 2017. The Appellant appealed against that refusal pursuant to section 477C(21), and it is that appeal against the Respondent's refusal of relief which now comes before me for determination.

B. Facts relevant to the Appeal

3. The appeal was heard by me on the 21st of August 2018. I heard evidence from the Appellant at the hearing, which I found to be truthful and accurate. I also received in evidence documents submitted by the Appellant in the course of the hearing, and further allowed the Appellant an opportunity to submit additional emails and correspondence subsequent to the hearing, which he duly did. The evidence of the Appellant was not challenged or controverted by the Respondent and it and the documents submitted can be summarised as set out below.
4. On or about the 15th of February 2017, **COMPANY A** Limited [**COMPANY NAME REDACTED**], a building contractor, entered into a contract, as Vendor, with **B** [**NAME REDACTED**], as Purchaser, for the sale of a plot of ground being part of Folio [**FOLIO NUMBER REDACTED**]. The consideration for the sale was €120,000. Special Condition 5.1 of the Contract provided that it was conditional upon the Vendor and the Purchaser entering into a Building Agreement for the erection of a dwellinghouse on the site in sale.
5. On the same date, **COMPANY A** Limited and **B** entered into a Building Agreement for the construction of a dwellinghouse for a consideration of €130,000. The land and the dwellinghouse to be constructed thereon are hereinafter collectively referred to as “**the Property**”.
6. **B** is not and was not at any time a “*qualifying contractor*” within the meaning of section 477C.
7. At some point in early 2017, the Appellant and his spouse decided to purchase the Property. Having read the Respondent’s guidelines on the Help to Buy scheme, they believed themselves eligible and decided to apply for relief pursuant to same.
8. In or about April 2017, the Appellant learned for the first time that **COMPANY A** Limited was not a “*qualifying contractor*” within the meaning of section 477C. However, the company subsequently registered itself as a qualifying contractor and it is common case that **COMPANY A** Limited was registered by the Respondent as a qualifying contractor prior to the Appellant making a claim pursuant to section 477C(3).



9. On the 19th of May 2017, the Appellant and his spouse received a loan offer from **[NAME OF FINANCIAL INSTITUTION REDACTED]** to enable them to purchase the Property.
10. On or about the 8th of June 2017, the Appellant and his spouse, as Purchasers, entered into a contract with **B** as Vendor, to purchase the Property, described therein as part of Folios **[FOLIO NUMBERS REDACTED]**, known or intended to be known as **[ADDRESS OF PROPERTY REDACTED]**, together with two car park spaces. The consideration payable under the contract was €400,000.
11. Special Condition 5 of the Contract provided as follows:-
*“The Vendor is selling in her capacity as beneficial owner of the Property under the Contract and the Building Agreement [defined as the Contract and the Building Agreement entered into between **COMPANY A** Limited and **B** on the 15th of February 2017]. The Purchaser shall not be entitled to call for the Vendor to become registered owner of the Property prior to closing. The Vendor solicitor will procure a Transfer from the developer and registered owner upon closing in the name of the Purchaser together with all appropriate declarations. **COMPANY A** Limited will provide all undertakings and declarations for the benefit of the Purchaser, or the Purchaser solicitor.”*
12. On the 30th of June 2017, the Appellant and his spouse made an application to the Respondent pursuant to section 477C(6). As the Appellant and his spouse satisfied the criteria for an application pursuant to section 477C(6), their application was approved and a Help to Buy access number was issued to them.
13. On the 5th of July 2017, the Appellant made a claim pursuant to section 477C(3). The Respondent issued him with a claim reference number. Under the provisions of the scheme, this number was to be supplied to the “*qualifying contractor*”, who would then verify the details of the claim, following which the appropriate payment would be made by the Respondent pursuant to section 477C(4).
14. On or about the 31st of July 2017, **COMPANY A** Limited (as Vendor), **B** (as Original Purchaser) and the Appellant and his spouse (as Sub-Purchasers) entered into a Deed of Transfer.



15. Recital C(1) of the Deed provided that:-

***"The Original Purchaser has contracted** for the erection of a Dwellinghouse on the Sold Land in accordance with the plans and specifications approved by the Planning Authority."* [emphasis added]

16. Recitals C(4), (5) and (6) further provided that:-

***"(4) The Vendor has agreed with the Original Purchaser** for the sale to the Original Purchaser for the sum of €120,000 of the Sold Land for an estate in fee simple in possession excepting and reserving unto the Vendor the Excepted Easements but otherwise free from encumbrances.*

***(5) The Original Purchaser has agreed with the Sub-Purchasers** for the sale to them of the Sold Land and the Dwellinghouse now erected on same for the sum of €400,000.*

(6) Upon the treaty of this sale it has been agreed by and between the Vendor, the Original Purchaser and the Sub-Purchasers that the Sub-Purchasers shall be granted the Granted Easements upon the conditions hereinafter expressed." [emphasis added]

17. The habendum of the Deed of Transfer then provided as follows:-

***"NOW THIS TRANSFER** made in pursuance of the said agreement and in consideration of the sum of €400,000 (four hundred thousand Euro) paid by the Sub-Purchasers as to €120,000 (one hundred and twenty thousand Euro) thereof to the Vendor by the direction of the Original Purchaser and as to €280,000 (two hundred and eighty thousand Euro) thereof to the Original Purchaser (the receipt and payment of which said sums of €120,000 (one hundred and twenty thousand Euro) the Vendor hereby acknowledges and €280,000 (two hundred and eighty thousand Euro) the Original Purchaser acknowledges [sic] the Vendor the registered owner by the direction of the Original Purchaser **HEREBY TRANSFERS** and the Original Purchaser as beneficial owner and as trustee **HEREBY TRANSFERS AND CONFIRMS** unto the Sub-Purchasers **ALL THAT AND THOSE** the Sold Land..."*

C. Relevant Legislation

18 . Section 477C was inserted in TCA1997 by section 9(1) of the Finance Act, 2016. The relevant subsections of section 477C provide as follows:-

“(2) In this section, a “qualifying contractor” means a person who applies to the Revenue Commissioners for registration as a qualifying contractor (pursuant to arrangements for such registration that are put in place by the Revenue Commissioners) and in respect of whom the Revenue Commissioners are satisfied is entitled to be so registered and—

(a) who—

(i) complies with the obligations referred to in section 530G or 530H, or

(ii) in the case of a contractor who is not a subcontractor to whom Chapter 2 of Part 18 applies, complies with the obligations referred to in subparagraph (i), other than the

(ii) obligations referred to in paragraphs (a) and (b) of subsection (1) of section 530G or 530H,

(b) who has been issued with a tax clearance certificate in accordance with section 1095 and such tax clearance certificate has not been rescinded under subsection (3A) of that section, and

(c) who provides to the Revenue Commissioners—

(i) details of qualifying residences which the contractor offers, or proposes to offer, for sale within the qualifying period,

(ii) details of any planning permission under the Planning and Development Acts 2000 to 2015 in respect of the qualifying residences referred to in subparagraph (i),

(iii) details of the freehold or leasehold estate or interest in the land on which the qualifying residences referred to in subparagraph (i) are constructed or to be constructed, and

(iv) any other relevant information that may be required by the Revenue Commissioners for the purposes of registration of a person as a qualifying contractor.

(3) *Where an individual has, in the qualifying period, either—*

(a) entered into a contract with a qualifying contractor for the purchase by that individual of a qualifying residence, that is not a self-build qualifying residence, or

*(b) drawn down the first tranche of a qualifying loan in respect of that individual's self-build qualifying residence,
that individual may make a claim for an appropriate payment.*

(4) *On the making of a claim by an individual referred to in subsection (3), a payment (in this section referred to as an “appropriate payment”) shall, subject to the provisions of this section, be made in accordance with subsection (16).*

...

(6) *(a) Prior to submitting a claim under subsection (3), an individual shall make an application to the Revenue Commissioners which shall include—
(i) an indication that he or she intends to make a claim under this section,
(ii) his or her name and PPS number, and
(iii) confirmation by the individual, where such is the case, that the conditions specified in paragraph (b) have been met.*

*(b) The conditions referred to in paragraph (a)(iii) are that—
(i) he or she is a first-time purchaser,
(ii) where the individual is a chargeable person within the meaning of Part 41A or, as appropriate, Part 41 for a tax year within the 4 tax years immediately preceding the year in which the application is made, he or she has complied with the requirements of that Part or, as appropriate, those Parts and has paid the amount of income tax payable and of universal social charge (within the meaning of Part 18D) which he or she is liable to pay, in respect of each such tax year,
(iii) where the individual is not a chargeable person within the meaning of Part 41A or, as appropriate, Part 41 for a relevant tax year, he or she has made a return of income, in such form as the Revenue Commissioners may require, and has paid the amount of income tax payable and of universal social charge which he or she is liable to pay, in respect of each such relevant tax year, and
(iv) in the case of an individual to which subparagraph (ii) refers, he or she has been issued with a tax clearance certificate in*

accordance with section 1095 and such tax clearance certificate has not been rescinded under subsection (3A) of that section.

(c) Where section 1017 or 1031C applied in respect of a tax year, the individual who must meet the conditions referred to in subparagraphs (ii) and (iii) of paragraph (b) shall be the person assessed to tax under section 1017 or the nominated civil partner within the meaning of section 1031A.

...

(12) *(a) On making a claim under subsection (3), where the qualifying residence is other than a self-build qualifying residence, the claimant shall provide to the Revenue Commissioners—*

- (i) his or her name and PPS number,*
- (ii) the address of the qualifying residence,*
- (iii) the purchase value of the qualifying residence,*
- (iv) details of the qualifying lender,*
- (v) confirmation that a qualifying loan has been entered into,*
- (vi) the qualifying loan application number or reference number used by the qualifying lender,*
- (vii) the amount of the qualifying loan,*
- (viii) evidence of the qualifying loan entered into,*
- (ix) evidence of the contract entered into with a qualifying contractor,*
- (x) the amount of deposit payable by the claimant to the qualifying contractor,*
- (xi) the amount, if any, of deposit paid by the claimant to the qualifying contractor,*
- (xii) confirmation that, on its completion, the qualifying residence will be occupied by the claimant as his or her only or main residence, and*
- (xiii) in the case of a claimant referred to in subsection (16)(a)(i), details of the claimant's bank account to which the appropriate*



payment shall, subject to the qualifying contractor having satisfied the requirements of subsection (13), be made.

(b) A claimant shall satisfy himself or herself that the contractor is a qualifying contractor.

...

(21) *An individual aggrieved by a decision by the Revenue Commissioners to refuse a claim under this section may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days of the notice of that decision."*

D. Submissions of the Parties

19. The Appellant, in his written Statement of Case and in oral submissions made at the hearing, submits that when the purchase of the Property was completed, the closing documents included declarations and an indemnity directly from **COMPANY A** Limited made out for his benefit and that of his spouse. He points out that **B** never completed the purchase as she did not enter into a Deed of Transfer or Assurance with **COMPANY A** Limited, nor did she make any Stamp Duty return, nor was she ever registered as owner of the Property. He further highlights that the dwellinghouse was not completed until after he and his spouse had entered into the Contract dated the 8th of June 2017, and that thereafter he and his spouse dealt directly with **COMPANY A** Limited in relation to snagging issues. The Appellant contends that all of this demonstrates that he purchased the Property from **COMPANY A** Limited, and not from **B**.

20. The Appellant further points out that section 477C was designed as an incentive for first-time buyers. He argues that despite the contract between **B** and **COMPANY A** Limited, **B** did not complete the purchase and it is in the spirit of the Help to Buy scheme that he and his spouse should be considered to have entered into a contract with a qualifying contractor.

21. The Appellant further submits that **COMPANY A** Limited was a qualifying contractor by the time that the contract was completed. The ultimate Deed of

Transfer was between **COMPANY A Limited, B** and the Appellant and his spouse. He submits that it is clear from the course of dealings between the parties that it was at all stages the intention of the parties that the Appellant and his spouse would apply for Help to Buy relief and that **COMPANY A Limited** would facilitate them in this regard. The Appellant further submits that the Respondent would not suffer any detriment by the granting of the relief, and that the Respondent ought to be mindful of the scheme and purpose of the Help to Buy incentive, in so far as the Appellant and his spouse were first-time buyers of a newly built house.

22. Subsequent to the hearing, the Appellant submitted certain email correspondence exchanged between the solicitors for **COMPANY A Limited**, for **B** and for the Appellant and his spouse which he submitted showed that all three firms “*were engaged in a common purpose around the time of closing.*”

23. The Respondent argues that **COMPANY A Limited’s** only contract was with **B**, who had in turn entered into a separate contract with the Appellant and his spouse to sell them the Property. The Respondent submits that **COMPANY A Limited** was fully aware of and compliant with the transaction taking place in this manner. The Respondent accordingly submits that, as **B** is not a qualifying contractor within the meaning of section 477C, the Appellant does not meet the requirements of section 477C(3) and is therefore not entitled to payment under the scheme.

E. Analysis and findings

24. There was little, if any, dispute between the parties on the facts giving rise to the matter in issue in this appeal. The findings of material fact I have reached on the evidence before me are those detailed in paragraphs 4 to 17 inclusive *supra*.

25. I note and agree with the findings reached by the Tax Appeals Commission in **Determination 01TACD2018**, which also concerned an appeal against a refusal to make payment under the Help to Buy scheme, and in particular the following paragraphs:-

“9. *As is well established, the interpretative approach to be applied to the interpretation of taxation statutes is a literal one as supported by the*



long history of jurisprudence in relation to same and based on authorities including inter alia, Revenue Commissioners v Doorley [1933] IR 750, Inspector of Taxes v Kiernan [1982] ILRM 13, Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KB 64 and Texaco (Ireland) Ltd v Murphy [1991] 2 IR 449.

10. In particular, in relation to exemption legislation, Kennedy C.J. in the Supreme Court authority of Revenue Commissioners v Doorley [1933] IR 50, stated; 'As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.'

11. In short this means that the Appellant, to succeed in her appeal, is obliged to bring herself squarely within the terms of the relief/exemption if she is to be entitled to avail of same."

26. I understand and accept the arguments put forward by the Appellant to the effect that **B** never completed her contract with **COMPANY A** Limited; that **COMPANY A** Limited was aware of and assented to **B** entering into a sub-contract for the sale of the Property to the Appellant and his spouse; and that all three parties operated in concert to give effect to the transfer of the completed Property into the ownership of the Appellant and his spouse. I also understand the Appellant's view that he and his spouse are being denied relief under the Help to Buy scheme on a mere technicality, and that it is illogical, unfair and contrary to the spirit of the scheme to be denied relief on this basis.

27. However, the key statutory provision in this appeal is subsection 477C(3), which contains a clear and unambiguous requirement in subparagraph (a) that an individual have "*entered into a contract with a qualifying contractor*" as a precondition to a payment being made pursuant to subsection 477C(4).

28. I am satisfied and find as a material fact that the Appellant and his spouse never entered into a contract with **COMPANY A** Limited. That company only ever contracted with **B**, and the Appellant and his spouse only ever had a contract with **B**. The fact that all three parties subsequently executed a Deed of Transfer to complete the two contracts does not alter the position in law that both contracts were individual and separate.

29. Accordingly, I find that the Appellant and his spouse did not at any time enter into a contract with a qualifying contractor as required by section 477C(3), and they therefore do not meet the eligibility criteria necessary to establish an entitlement to payment pursuant to section 477C(4).

F. Conclusion

30. For the reasons outlined above, I find that the Appellant and his spouse are not entitled to a payment pursuant to the Help to Buy scheme contained in section 477C of the Taxes Consolidation Act, 1997, as amended, and the decision by the Respondent to refuse the Appellant's claim for payment under that section was correct.

31. I therefore refuse the Appellant's appeal in accordance with section 949AL.

**MARK O'MAHONY
APPEAL COMMISSIONER
26 March 2020**

