



67TACD2020

BETWEEN/

AB LTD.

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

This is an appeal against an assessment to stamp duty dated 17 February 2016, in the sum of €x,xxx,xxx together with interest of €xxx,xxx. A credit was provided by the Respondent in respect of stamp duty previously paid of €xxx,xxx, leaving a balance on the assessment of €x,xxx,xxx.

The dispute between the parties relates to the availability of sub-sale relief in accordance with section 46 of the Stamp Duty Consolidation Act 1999, as amended ('SDCA') in respect of a deed of conveyance to the Appellant dated 29 March 2013.

The Respondent issued the notice of assessment, on the basis that the Appellant was not entitled to avail of sub-sale relief pursuant to section 46 SDCA 1999. The Appellant duly appealed.

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Background

On 23 March 2005, X and his wife, Y signed a manuscript agreement titled '*Property Transfer Agreement*' whereby X undertook to give his wife seventy percent of the profits accruing from the sale of his share in six specified properties. The agreement records that the thirty percent of profits retained, were estimated to cover tax and associated costs of sale.

On 1 July 2005, X entered into a contract for the purchase of a property referred to hereafter as known as 'The Property' for the purchase price of €nx,xxx,xxx. The vendors were E and F, executors of GH, deceased ('the deceased'). A ten percent deposit was paid.

By declaration of trust, dated 23 July 2005, X declared that his entire interest in the contract of 1 July 2005 was held by him in trust for his wife, Y, on foot of the property transfer agreement of 23 March 2005.

In July 2006, approximately seven months after the closing date as stipulated in the contract of 1 July 2005, the balance of the purchase monies was paid. The documents of title were furnished and possession passed. No conveyance was executed.

By written nominee agreement of 9 October, 2006, between the nominee company (hereafter 'Nominees Limited') of the one part and Y of the other part, Nominees Ltd. agreed to hold the property together with €25,000 on trust to retain it, but with power to deal with it, including, *inter alia*, to sell or convey it, in accordance with the prior written instructions of Y, as principal.

By contract of sale dated 28 March, 2013, the property was sold to AB Ltd., a foreign company, for the sum of €xx,xxx,xxx. The vendor on the contract was stated to be '*X as trustee for Y*'.

By deed of conveyance dated 29 March, 2013, made pursuant to the contracts of 1 July 2005, and 28 March, 2013, the original vendors (E and F) at the direction of the beneficial owner (Y) granted and conveyed the property to the sub-purchaser, AB Ltd. The beneficial owner together with the original trustee and the present trustee (Y, X and Nominees Limited respectively) further granted, conveyed and confirmed the property to AB Ltd.

On 12 May 2013, AB Ltd. made a self-assessed stamp duty return of €xxx,xxx calculated on the consideration of €xx million, *i.e.* the purchase monies payable on foot of the contract of



28 March 2013, on the basis that AB Ltd. was entitled to claim sub-sale relief in accordance with s.46(1) of the Stamp Duty Consolidation Act 1999.

The Respondent issued a notice of assessment on 17 February 2016, in the sum of €x,xxx,xxx less the €xxx,xxx already paid, on the basis that the Appellant was not entitled to avail of sub-sale relief pursuant to section 46 SDCA 1999.

Legislation

The relevant legislation is as follows;

- Section 1 SDCA 1999 – Interpretation
- Section 2 SDCA 1999 – Charging and stamping of instruments
- Section 7 SDCA 1999 – Instruments to be separately charged with duty in certain cases
- Section 46 SDCA 1999 – Directions as to sub-sales

Section 46 SDCA 1999 – Directions as to sub-sales

(1) Where—

(a) a person having contracted for the purchase of any property, but not having obtained a conveyance of that property, contracts to sell the same to any other person, and

(b) the property is in consequence conveyed immediately to the sub-purchaser,

then the conveyance shall be charged with ad valorem duty in respect of the consideration moving from the sub-purchaser.

Submissions *in brief*

The Appellant claimed an entitlement to sub-sale relief in accordance with section 46 SDCA 1999 as amended, in respect of the deed of conveyance dated 29 March 2013.



The Respondent submitted that the Appellant did not meet the conditions necessary to avail of sub-sale relief. The Respondent submitted that the deed of conveyance dated 29 March 2013 was the chargeable instrument and was chargeable to duty in respect of both of the considerations to which it related and that the Appellant was the accountable person in respect thereof.

The Appellant accepted that it was the accountable person in the event that section 46 sub-sale relief applied but submitted that it was not the accountable person in respect of duty arising in relation to the original contract dated 1 July 2005. The Appellant submitted that it was an accountable person only for its own purchase namely, the purchase by agreement for sale dated 28 March 2013 in the sum of €xx million.

EVIDENCE

Documentary evidence

The declaration of trust dated 23 July 2005, a handwritten document provided as follows;

'I, [X], of [address redacted] hereby confirm that the contract to purchase the property known as [The Property], [address redacted] from the Executors of Mr. [GH] and signed by Mr. [redacted] as my legal nominated attorney is a contract which I hereby confirm I hold in trust for my wife, [Y]. The contract is dated 1st July 2005. The entire interest in this contract is held by me on foot of our property settlement agreement of 23rd March 2005 established to ensure the financial independence of my wife and children for their future and to secure the repayments for my property investments. I renounce all claims to my or to my estate's behalf over or against this property or any amount of money derived from this sale should I die before the transfer is fully completed. I confirm that I will transfer [The Property] to her or to her nominee when called upon to do so.'

The declaration of trust was signed by X and Y and was witnessed by X's son, W.

Other documentation submitted in evidence included *inter alia*: the tender documentation for The Property, the contract for sale re The Property, the power of attorney of X, the nominee agreement with Nominees Limited, the contract of sale to AB Ltd., the deed of conveyance to AB Ltd., the escrow agreement between Y, AB Ltd. and [Law Firm 1], extracts



from the conveyancing file of [Law Firm 2], certification of incorporation of AB Ltd., the AB Ltd. loan agreement with Y and various solicitors' correspondences.

Relevant extracts are set out below.

Witness evidence

Evidence on behalf of the Appellant was provided by Witness X.

Witness X

X's evidence in relation to the handwritten declaration of trust dated 23 July 2005, was that he wrote the document and that it was written in his home with his wife, Y present and that the declaration was witnessed by his son, W and signed by both Y and by himself.

The declaration of trust provided; *'I, [X], ... hereby confirm that the contract to purchase the property known as [The Property], ... is a contract which I hereby confirm I hold in trust for my wife, [Y]. The contract is dated 1st July 2005.'*

While the declaration of trust is dated 23 July 2005, X stated that in his view, the declaration was confirmation of the fact that he signed the contract for The Property in trust for Y, from the effective date of that contract, being 1 July 2005.

X accepted, during cross-examination, that there was nothing on the face of the contract for sale in respect of The Property, to signify that he had purchased it in trust. He stated in direct evidence that the reason the words *'in trust'* did not appear in the contract for sale was because he was advised by his solicitor not to insert the words *'in trust'* into the contract.

The wording of the declaration of trust provided; *'I [X] of [address redacted] Hereby confirm that the contract to purchase the property known as [The Property]..... is a contract which I hereby confirm I hold in trust for my wife, [Y].... .'*

Senior Counsel for the Respondent put it to X that the declaration dated 23 July 2005, having been executed 23 days post the execution of the contract for sale in respect of The Property (in circumstances where that contract did not indicate that The Property was purchased in trust) did not indicate that it was intended to apply retrospectively. In particular, Senior



Counsel pointed to the fact that the operative part of the declaration was worded in the present tense namely; *'I hold in trust for my wife....'*

X stated that a declaration that one holds something in trust, does not mean that one has immediately commenced holding it is trust, rather he stated, it is a reference to holding it over a period of time. By analogy he referred to holding a degree or qualification.

Senior Counsel for the Respondent asked him why he did not use the words *'I hold and have at all times held'*. X responded that that was what the declaration inferred.

It was put to X that the construction that he placed on the declaration did not accord with the words recorded in the declaration and that the declaration was prospective in nature and not retrospective. X did not accept this.

During cross-examination, X accepted that the declaration of trust itself did not provide that X entered into the contract in trust for his wife. He also accepted that the declaration of trust did not record on its face that the contract was at all times held in trust by him for his wife.

ANALYSIS

General

Stamp duty is a tax on instruments. The instrument, the subject of this appeal is a conveyance dated 29 March 2013 which provides for two separate considerations of €nx,xxx,xxx (in relation to the contract dated 1 July 2005) and €xx,xxx,xxx (in relation to the contract dated 28 March 2013).

The Respondent stated that if there was a suggestion on the part of the Appellant that the Revenue Commissioners were endeavouring to tax two transactions or two contracts that this was untrue. The Respondent stated that what was being assessed to stamp duty was the duty payable on the conveyance on sale, which was the conveyance dated 29 March 2013, from the personal representatives of the deceased owner of the property *'The Property'* to the Appellant.

As section 46 is in the nature of a relieving provision, the Appellant is required to establish that it falls within the terms of the provision. In this regard the Respondent cited the dicta of



Kennedy C.J. in the Supreme Court case of *Revenue Commissioners v Doorley* (1995) ITR 19, at page 548 of the judgment as follows;

'I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. 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.'

On the authority of *Doorley* therefore, the Appellant must establish that it falls squarely within section 46 SDCA 1999.

Documentation

The contract of sale dated 1 July 2005

Clause 14 of the special conditions of sale (which replicates clause 16 of the tender document) in respect of 'The Property' provided:

'This agreement is personal to the Purchaser who shall not assign, mortgage, charge or otherwise deal with the benefit thereof in whole or in part (other to a related company within the meaning of section 4(5) of the Companies (Amendment) Act 1990 without the previous consent in writing of the Vendors. The Vendors shall not be required to deliver a Deed of Assurance in favour of any party other than the purchaser named in the contract.'



Special condition 5 provided; *'The purchase of the premises shall be completed and the balance of the purchase money paid by the Purchaser on xx December 2005 (the closing date).'*

It is clear from the special conditions that in entering into the contract, X bound himself to the special condition that the agreement was personal to him and that he would not deal with the contract without the previous consent in writing of the vendors. However, there is no evidence that the vendors were asked for, nor is there evidence that they provided their consent to the trust arrangement between X and his wife, Y.

The execution of this contract on 1 July 2005, predates the enactment of the Land and Conveyancing Law Reform Act 2009 and therefore, X, having paid a ten percent deposit under this contract, would, on the authority of *Tempany v Hynes* [1976] IR 101, have held a ten percent moiety in the beneficial interest in respect of this property. At that stage X did not hold a legal interest in the property. The title deeds were held by [Law Firm 2] solicitors on behalf of the personal representatives of the estate of the deceased.

The declaration of trust dated 23 July 2005

The declaration of trust dated 23 July 2005, a page long handwritten document signed by X and Y, purported to relate to a trust which commenced on 1 July 2005. However, as highlighted by Senior Counsel for the Respondent, the declaration of trust is drafted in the present tense, the operative words providing; *'I hereby confirm I hold in trust for my wife, [Y]'*

There was nothing on the face of the document that supported X's evidence that the declaration of trust was intended to be retrospective. The Respondent submitted that on the ordinary and natural meaning of the words, there could be no other meaning than that it was intended to be operative on a prospective basis, as and from 23 July 2005.

There is no note or memorandum of an intention that a trust should arise as and from 1 July 2005 (the date of execution of the contract). The only note or memorandum in existence evidencing the trust is the declaration of trust dated 23 July 2005 which supports the existence of the trust only as and from 23 July 2005. The effect of this declaration of trust is that X as and from 23 July 2005, was no more than a bare trustee or nominee in respect of the ten percent beneficial interest in The Property, and that he agreed to transfer The Property



to Y or to her nominee, when called upon to do so. Accordingly, as and from 23 July 2005, X divested himself of his beneficial interest in a one tenth moiety in respect of The Property.

A bare trust consists of a trustee holding property upon trust for a person beneficially entitled absolutely to the asset in the trust. The passive interests arising under a trust of this nature are noted at paragraph 10.01 of *Equity and the Law of Trusts in the Republic of Ireland* by Keane (2nd edition) in which it is observed that '*express trusts may be 'bare' trusts, where trustees are essentially passive recipients of the trust property without any management responsibilities.*' On executing the declaration of trust, X had no title, possession or powers and from that point on, Y was absolutely entitled to the beneficial interest in the one tenth moiety as against him. X retained no powers of management and no powers of sale in respect of The Property. Therefore, on execution of the declaration of trust on 23 July 2005, Y became absolutely entitled as against X in relation to the ten percent beneficial interest that passed to X under the contract for sale.

The nominee agreement dated 9 October 2006

On 9 October 2006, Y entered into a nominee agreement with Nominees Limited which appointed the Nominees Ltd. to hold, as her nominee, a sum of €25,000 together with her interest in The Property. The nominee was entitled to delegate, but that nomination, as prescribed by clause 11 of the nominee agreement, was to be by deed. Clause 14 permitted the appointment of new or additional nominees.

At this stage, the legal interest remained vested in the personal representatives of the deceased.

Clause 14 provided: *'The power to remove the nominee or to appoint new or additional Nominee shall be held by the Principal'.*

The Appellant did not make the case that the nominees delegated any of their powers in accordance with clause 11 nor did the Appellant make the case that Y had removed or appointed any other nominee.

As and from 9 October 2006, the date of the nominee agreement, X ceased to hold a bare trusteeship in relation to the property. As of that date X had no legal interest (as the legal



interest was vested in the personal representatives and vendors of the property), he had no equitable interest (as the entire equitable interest was held by Y) and he had no capacity as a trustee (because Y had appointed new trustees to hold the property, namely, Nominees Limited). In effect, the formal appointment of Nominees Limited as trustees ended the bare trusteeship of X. Provision was made in the nominee agreement in relation to the trusteeship of the property by Nominees Ltd. There were no unrestricted powers of management or sale conferred on them. The powers were limited in nature however, they were more extensive by far than the declaration of trust executed by X on 23 July 2005, as that declaration did not reserve any powers whatsoever to X.

Thus, from 9 October 2006, the Nominees Limited were bare trustees of the property, the beneficial or equitable interest of which was held by Y. Senior Counsel for the Respondent stated that this was a matter of public record, citing *Lehane (official assignee) v [Y]* a judgment of Costello J. Paragraph 47 of the judgment provides;

'At paragraph 53 of his grounding affidavit the Plaintiff quotes from an affidavit of the bankrupt [a reference to X] sworn on 12th October 2016 where he states that [The Property]:-

"... was held in trust by me for my wife [Y] until 9 October 2006 when [Nominees Ltd.] a nominee company controlled by the partners of [redacted] Solicitors, assumed the role of trustee."

Correspondence: September 2011- October 2011

As of October 2011, Nominees Limited had secured the agreement of the solicitors to the personal representatives (the vendors) that they would execute a conveyance at the request of Nominees Limited.

Correspondence from [Law Firm 3] (solicitors for Nominees Limited) dated 21 September 2011, to [Law Firm 2] (solicitors for the personal representatives and vendors) provides;

'My Client: [Nominees Limited]



...

Your Clients: [F] and [E] Personal Representatives of [GH] Deceased.

Premises: [The Property]

Dear [Redacted],

I refer to our telephone conversation this afternoon in relation to the above matter when I informed you that I had been instructed by my client to prepare a Tender Document for the sale of the above property. The Tender period expires on October 24th next.

I received the Title Documents from [Law Firm 4] yesterday and I note that the property was purchased by [X] by Contract dated 1st July, 2005 from your clients. It appears that the purchase money was discharged in full but a Conveyance to the Purchaser was never executed.

I am now requesting your confirmation that your clients will execute a Deed of Conveyance to a Purchaser from my client by way of Sub-Sale.

I intend to insert a condition in the Tender Document as follows:-

"The Vendor shall procure that a Deed of Assurance of the Subject Property shall be executed by the Personal Representatives of [GH] Deceased and the Vendor and delivered to the Purchaser on closing assuring the Subject Property to the Purchaser for an estate referred to in the Particulars and Tenure. No objection shall be made or requisition or enquiry raised or entertained in this regard."

The Subject Property referred to is, of course, the above property.

As I may be asked for Tender Documents in the immediate future I would greatly appreciate hearing from you as soon as possible.'

A holding letter from [Law Firm 2] provided that the personal representatives would take instructions. [Law Firm 2], on behalf of the personal representatives responded on 7 October 2011 as follows;



'Executors, [GH] Deceased

Your Client: [Nominees Limited]

Premises: [The Property]

Dear Sirs,

We refer to our recent correspondence in relation to the above and confirm that we have received our client's instructions on your request.

The Executors of the late [GH] will consent to the proposed sale of [The Property] by sub-sale and agree to the wording in the draft Tender Document strictly subject to the following conditions:

- 1. An immediate contribution towards the additional fees, VAT and outlay incurred since 30 June 2006 arising from the failure of the purchaser under the original Contract to take a Deed of Assurance of the Property. We measure the total of this contribution to be €12,000.00. The additional work includes protracted correspondence with [Law Firm 4], advice to and meetings with the Executors on the ongoing situation, meetings with the residuary beneficiaries and the instructing of Counsel on three separate occasions to obtain Opinions.*
- 2. An indemnity by your client to discharge our further fees, VAT and outlay to cover our work between now and the final completion of the transfer by the Executors of the legal estate in the property. We would hope to be able to agree these additional fees with you but, if necessary, same can be taxed in default of agreement.*
- 3. The approval by us, on behalf of the Executors, of the draft Deed of Assurance. In this respect, our clients insist that the Deed must recite the Contract dated 1 July 2005 between the executors and the purchaser, the consideration in that the Contract and relationship between the original purchaser and [Nominees Limited]. We assume that you have been furnished with the correspondence between this firm and [Law Firm 4] of 7 and 10 March 2006 which varied the terms of the original Contract.*
- 4. The indemnity by your client to our clients for any utilities or other payments in respect of the property.*

We await hearing from you.'



The response from [Law Firm 3] dated 11 October 2011 provided;

'Our Client: [Nominees Limited]

Premises: [The Property]

Dear Sirs,

We are obliged for your letter of the 7th inst.

We confirm that there is considerable interest in the above property and that our client will make the suggested contribution towards your additional fees, etc. and any further fees that may arise. We should be obliged if you would please let us have copies of the letters 7th and 10th March, 2006 referred to at paragraph 3 of your letter as we have not been furnished with same.'

On 12 October 2011, [Law Firm 2] responded;

'Your Client: [Nominees Limited]

Premises: [The Property]

Dear Sirs

We acknowledge receipt of your letter of 11 October and understand from this that your client is in agreement with all the conditions set out in our letter of 7 October.

For the avoidance of doubt, we wish to clarify that the Contract dated 1 July 2005 was not signed by the purchaser in trust but was signed beneficially by him by his duly appointed Attorney.

As requested, we enclose herewith copy correspondence passing between this firm and [Law Firm 4] between 7 and 10 March 2006.



Finally, in relation to your request for Certificates of Discharge from CAT, please note that these were not furnished by the Revenue Commissioners to us following the submission and finalisation of all CAT Returns on the estate.'

At hearing, the case made on behalf of the Appellant was that X was the proper party to the sub-sale contract and was the only party who could be the vendor under the sub-sale contract, being the only party who could require the personal representatives of the deceased to execute a conveyance and therefore assure the property in favour of the Appellant. However, the above correspondence evidences that as of October 2011, Nominees Limited had secured the agreement of the solicitors to the personal representatives (the vendor) that they would execute a conveyance at the request of Nominees Limited to convey and assure the property.

Tender documents 2011

In 2011, a tender process commenced but did not progress to completion. The tender documents were not issued by X in trust but were issued by Nominees Limited, as vendor. I note that the draft memorandum of agreement named Nominees Limited as the vendor.

AB Ltd. loan agreement 2013

The Appellant in these proceedings, AB Ltd., was incorporated as a foreign registered company on 21 February 2013.

The Respondent stated that it was a matter of public record arising from paragraph 57 of the judgment of Costello J. in *Lehane v [Y]* that the Appellant company was beneficially owned by X's son, W, and was held by him for his own benefit and for the benefit of his three siblings. Paragraph 57 of that judgment provides;

'It is also noteworthy that the Defendant [a reference to Y] revealed in her replying affidavit that [AB Ltd.] was not a third party [foreign] company with which she had no connection. She says she lent it the money to enable it to purchase [The Property] from her in 2013. According to her affidavit, the ultimate beneficial owner of [AB Ltd.] is [W], her stepson, and he holds the company for the benefit of himself and the three children



to the marriage of the defendant and the bankrupt. The defendant maintains, contrary to the assertions of the plaintiff, that neither she nor the bankrupt have had an interest in [The Property] since 2013. She says his statements in that regard are false or overstatements to a culpable degree.'

The AB Ltd. loan agreement names 'Y' as lender and 'AB Ltd.' as the borrower. It records in the recital:

'The Lender has advanced the Facility Amount to the Borrower and wishes to formally record the terms on which such monies have been advanced. The money was made available to the Borrower for the purposes specified at clause 2.1 below. The purpose of this Agreement is to record the terms on which the Lender has advanced the Facility (as hereinafter defined) to the Borrower.'

The loan agreement defined the facility amount as an amount of €xx,xxx,xxx.

Clause 2.1 of the loan agreement provided;

'2.1 The Lender agrees to make available to the Borrower a credit facility amount of [€xx,xxx,xxx] (the 'Facility') on the terms and conditions set out in this Agreement.

2.2 Subject to Clause 5.1, the Facility shall be repayable in full with one bullet repayment, to include all interest arising on the Facility, on the date falling 5 years from the date of this Agreement.

2.3 The purpose for which the Facility is advanced is to finance the purchase of the Property for the consideration of [€xx,xxx,xxx] and to pay the capitalised interest arising under this Agreement (together the 'Permitted Purpose'). The Borrower hereby acknowledges that the facility is repayable to the Lender in accordance with the terms of this Loan Agreement.

2.4 The Borrower shall strictly use and apply the Facility for the Permitted Purpose only. The entry by the Borrower into the Contract for Sale shall be a deemed drawdown of the Facility in the amount of [€xx,xxx,xxx]. For the avoidance of doubt any payment or purported payment of the consideration due under the Contract for Sale shall be a deemed repayment of the Facility.'



No money in fact changed hands, by way of loan or by means of payment of the purchase price as between Y and AB Ltd. or as between AB Ltd. and X.

The repayment clause, at clause 5 of the loan agreement provided;

'5.1 The Facility shall become repayable in one single repayment on the date falling 5 years from the date of this Agreement. The repayment date specified in this Clause 5.1 may be extended from time to time by agreement between the Lender and the Borrower.'

The 2013 Escrow Agreement

In 2013, the Escrow agreement between Y as lender, AB Ltd. as borrower and [Law Firm 1] as escrow agent provided that the title deeds were to be held by [Law Firm 1] as escrow agent by way of equitable security for the repayment of the loan.

The sub-sale agreement dated 28 March 2013

The sub-sale agreement dated 28 March 2013 is stated to be between X *'as trustee for [Y]'* described as *'Vendor'* and AB Ltd. as purchaser. This is stated to be the position notwithstanding the affidavit sworn by X in October 2016 in which he averred that he had been trustee for Y until 9 September 2006 when Nominees Ltd. assumed the role of trustee.

The document schedule to the sub-sale agreement contains *inter alia*, the declaration of trust dated 23 July 2005 and the nominee agreement with Nominees Limited dated 9 October 2006.

Senior Counsel for the Respondent stated that what was not present in that schedule was a deed of appointment of X as trustee or nominee of Y, under the Nominee Agreement.

On behalf of the Respondent it was submitted that X had no capacity to enter into the sub-sale contract on 28 March 2013. The Respondent submitted that X had no legal ownership of the property as the legal title remained vested in the personal representatives of the deceased and that X had no equitable or beneficial interest in the property because on his own evidence, that interest was held entirely by his wife, Y.



Thus, X ceased to be Y's trustee on the execution of the nominee agreement and this was acknowledged by him in an affidavit which he swore on 12 October 2016 and which was referred to and quoted from in the judgment in *Lehane v [Y]*.

The Appellant contended that X had to be a party to the sub-sale because he had a continuing contractual interest and because he was the only party who could compel the personal representatives to execute a conveyance and thereby assure the property. However, as is clear from the correspondence between [Law Firm 3] (solicitor for Nominees Ltd.) and [Law Firm 2] (solicitors for the personal representatives) set out above, the personal representatives had already agreed to execute a conveyance at the behest of Nominees Limited. In accordance with the Nominee Agreement, Nominees Ltd. were obliged to hold the title documents, not X. In short, I am satisfied that in 2013, X had no interest in the property and had no capacity to enter into a contract in respect of the property.

Senior Counsel for the Respondent submitted in particular, that X had no capacity to enter into a contract in circumstances where that contract could never be the subject of an order for specific performance. The Respondent submitted that that was material in the context of section 46(1)(b) SDCA 1999 on the basis that the sub-section provides that where a property is contracted to a sub-purchaser, it must be '*in consequence*' conveyed immediately to the sub-purchaser.

Senior Counsel for the Appellant submitted that the issue of the availability of specific performance as a remedy was irrelevant because X was at liberty to enter into the contract and if he was not in a position to complete the contract then he would be exposed to a claim in damages for breach of contract. Senior Counsel for the Respondent, addressing this submission, stated that there was no question of a claim for damages in this case as these transactions arose in the context of a family arrangement and the sub-sale was to the Appellant company, a company which was beneficially owned by X's son.

On behalf of the Respondent it was submitted that if all that was required by section 46(1) SDCA 1999 was to insert the name of a person into a sub-sale contract in order to avail of sub-sale relief, that the provision would be absent of any meaning. The Respondent stated that section 46(1) required that the conveyance must occur '*in consequence*' of the two contracts; the initial contract and the sub-sale contract.

X, although he was named as vendor in the sub-sale contract, had no means of completing the contract. He did not hold the beneficial interest, he was not a trustee in respect of the



beneficial interest and he did not hold the title documents. In truth, Nominees Ltd. was the proper vendor to the sub-sale contract.

As X had no beneficial interest when he entered into the contract with the sub-purchaser, it was not therefore a contract which could be governed by section 52 of the Land and Conveyancing Law Reform Act 2009. X had no beneficial interest in 2013 and therefore no beneficial interest could pass from X to the sub-purchaser on execution of that contract.

The deed of conveyance dated 29 March 2013

Senior Counsel for the Respondent stated that because X had been inserted as the vendor under the sub-sale contract, the solicitors for Nominees Ltd. [Law Firm 3] and for AB Ltd. [Law Firm 1] were required to then attempt to accommodate X within the deed of conveyance.

In the descriptions of the parties to the deed, X is described '*as Trustee for [Y]*' and as the '*Original Trustee*'. Nominees Limited are described as the '*Present Trustee*'. Y is described as the '*Beneficial Owner*' and AB Ltd. as the '*Sub-Purchaser*'.

Recital H in the recitals provides; '*The Original Trustee acting on behalf of the Beneficial Owner has agreed with the Sub-Purchaser for the sale to the Sub-Purchaser of the Premises for an estate in fee simple in possession free from encumbrances for the sum of [€xx,xxx.xxx]*'.

In contrast to recital H in the deed of conveyance where X is described as '*acting on behalf of*' or as a representative of Y, the sub-sale contract provided that X entered into the contract '*as trustee for [Y]*'.

Senior Counsel for the Respondent described recital H as a '*complete retraction*' of the trustee status of X as stated in the sub-sale contract for sale. On behalf of the Respondent it was submitted that for the purposes of section 46(1) SDCA 1999, a person could not be the purchaser in the original contract for sale and be a representative of the vendor (a different person) in the contract for sub-sale.

The operative part of the deed of conveyance provides as follows;

'NOW THIS INDENTURE WITNESSETH:



That in pursuance of the said respective agreements and in consideration of the sum of €[redacted] ... already paid by the Beneficial Owner to the Vendors (the receipt whereof the Vendors hereby acknowledge) and in consideration of the sum of [€xx,xxx,xxx] ... now paid by the Sub-Purchaser to the Beneficial Owner (the receipt whereof the Beneficial Owner hereby acknowledges) the Vendors as personal representatives of the Testator by the direction of the Beneficial Owner hereby GRANT AND CONVEY and the Beneficial Owner as beneficial owner hereby, GRANTS, CONVEYS AND CONFIRMS and the Original Trustee and the Present Trustee hereby GRANT, CONVEYS AND CONFIRM unto the Sub-Purchaser ALL THAT AND THOSE the Premises TO HOLD the same unto and to the use of the Sub-Purchaser in fee simple.'

[emphasis added]

The first observation is that the personal representatives granted and conveyed to the beneficial owner however, they did so *'by the direction of the Beneficial Owner'*. The Appellant in its submissions, contended that X retained a valuable right in relation to the main contract for sale, namely the right to call on the original vendors (the personal representatives) to convey and assure the property to the sub-purchaser. However, the operative part of the deed of conveyance provides that the personal representatives granted and conveyed *'by the direction of the Beneficial Owner'*.

The words contained in the operative part of the deed are consistent with the correspondence between [Law Firm 2] (solicitors for the vendor) and [Law Firm 3], (solicitors for Nominees Ltd.) set out above whereby [Law Firm 2] on behalf of the personal representatives agreed that they would convey the property directly to a sub-purchaser on foot of a sub-sale concluded by Nominees Ltd.

On 20 March 2013, [Law Firm 3] solicitors wrote to [Law Firm 2] and stated: *'I expect at long last to be sending you a deed in the immediate future. Are the Executors readily available?'* Their availability was confirmed and a draft deed was sent to [Law Firm 2] for approval.

A letter from [Law Firm 2] to [Law Firm 3] solicitors on 27 March 2013 provides;

'Dear [redacted] I acknowledge receipt of your recent email attaching Draft Deed of Conveyance. I comment on this Draft deed as follows; ...

....



In the Operative part, the vendors should not be described “as Beneficial Owners’ and instead should be described ‘as Personal Representatives of the Testator”.

....

Subject to the above points, I approve the draft Deed on behalf of the vendors.’

As is clear from this letter, the solicitor for the personal representatives, approved on behalf of the personal representatives, the words in the deed *i.e.* that they are granting, conveying and assuring the property to the sub-purchaser at the direction of the beneficial owner.

On 28 March 2013, [Law Firm 2] by e-mail, notified [Law Firm 3] solicitors that: *‘I confirm that your representative has just collected the Deed.’*

Thus, not only did the deed provide that the property would be conveyed at the direction of the beneficial owner (through Nominees Ltd.) but that is what in fact occurred.

Section 46 SDCA 1999

Both parties to the appeal opened the case of *Fitch Lovell Ltd. v Inland Revenue Commissioners* (1962) 2 All ER 685. The facts of that case are not analogous to the appeal herein however, the approach taken in relation to the interpretation of section 58(4) of the Stamp Act 1891 (the equivalent UK provision to section 46 SDCA 1999) was considered and the principles enunciated by the Court are of general application. The case arose in the context of a company takeover by the appellant company where the consideration was a share swap, and the shares so acquired were ultimately transferred to a subsidiary of the acquiring appellant company. The specific issue which fell for determination was whether those arrangements amounted to one single transaction such that sub-sale relief was available. In the course of his judgment, Wilberforce J., stated that *prima facie* double tax, that is, tax on each consideration, is chargeable unless a case came within s.58(4) and, in that regard cited the speech of Lord Somerville in the House of Lords in *Escoigne Properties Ltd – v – Inland Revenue Commissioners* [1958] 1 All ER 406.

At page 689 of the judgment, Lord Wilberforce stated:



'This is a stamp duty appeal and I am concerned with a scheme for the avoidance of, or at any rate a substantial reduction of, the stamp duty payable on a take-over bid into which, to use the words of the appellant company's solicitors, a little ingenuity has been put. Ingenuity is, of course, not inconsistent with validity, and all I have to do is to consider whether the scheme which has been adopted has the result of bringing the taxpayer fairly within the provisions of the taxing statute, in this case the Stamp Act, 1891.'

Senior Counsel for the Respondent stated and emphasised that the Respondent was not making a submission that the Appellant in this appeal was involved in a scheme for the avoidance of stamp duty. The Respondent's submission was that section 46 SDCA 1999 simply did not apply to the stamping of the instrument in question, namely, the conveyance dated 29 March 2019, on the basis that the Appellant had not met and satisfied the conditions necessary for availing of the relief.

In *Fitch Lovell Ltd.*, Lord Wilberforce stated that a taxpayer may take advantage of section 58(4) of the Stamp Act 1891 (the UK equivalent provision) provided only that the requirements of the subsection are complied with. At page 690 of the report Lord Wilberforce stated;

'Now, it seems to me that there are two questions which arise for decision, and the first is this: Should the transaction be regarded as a conveyance to the appellant company, followed by a conveyance from the appellant company to the subsidiary company; or should it be regarded as one single transaction of conveyance straight from the vendor shareholders to the subsidiary company? If the first, and if an instrument which can be regarded as a conveyance on sale can be found, ad valorem duty is chargeable on the consideration payable in respect of the main sale, and that is an end of the matter. If, on the other hand, there is only one conveyance on sale, only one transaction carried out by one document, ie, from the original vendors to the sub-purchasers, then the question arises whether advantage can be taken of s 58(4) of the Stamp Act, 1891, which enables the instrument, provided the requirements of the subsection are complied with, to be stamped only on the consideration moving from the sub-purchaser. I approach then the first question, which is to consider whether there is here a conveyance on sale with respect to the main transaction from the IBS shareholders to the appellant company. It is, of course, quite true in stamp duty matters that what is to be stamped is documents, not transactions, but, when a court is confronted with a document, it is entitled and



indeed bound to inquire into the nature and intended purpose of the document before it.'

At page 696 of the judgment, Wilberforce J. continued;

'Taking those circumstances into consideration, it seems to me that, on the question whether transfers such as these did pass any, and what, title to the appellant company, I should come to the conclusion that a position was created and intended to be created such that the appellant company had the sale in their favour completed by the documents which were intended between them and the vendors to be the sale documents of completion of the sale, and consequently that the transfers, even though not completed, should be regarded as conveyances on sale within Sch 1 to the Stamp Act, 1891. If that conclusion is correct, then, as I have said, it is not necessary to consider the provisions of s 58(4). But, on the assumption that I am wrong and that there was no conveyance on sale to the appellant company, then the position must be that the shares were transferred direct by the vendor shareholders to the sub-purchasers, there having been two sales and two considerations: a sale to the appellant company for 30s 4d and a sale to the subsidiary company for 1d per IBS share. Prima facie in those circumstances, double tax, i.e., tax on each consideration, is chargeable unless the case comes within s 58(4) of the Stamp Act, 1891. On that I refer to the speech of Lord Somervell of Harrow in Escoigne Properties Ltd v Inland Revenue Comrs ([1958] 1 All ER 406 at p 412; [1958] AC 549 at p 563). Is then this case within s 58(4) of the Stamp Act, 1891? I observe in the first place, generally, that this seems to be a transaction of quite a different character from that which the subsection has in mind.

Lord Wilberforce then made the following statement of principle in relation to the operation of section 58(4) of the Stamp Act 1891;

'That subsection contemplates a contract by a vendor followed by a sub-contract by the purchaser and then, before any act other than that of signing the contract of sale has been done by the vendor and before any alteration in the character of the property, an act of conveyance in consequence of the sub-contract direct to the sub-purchaser, by-passing the purchaser.'

On the facts, the Court found that the subject matter of the contracts was not *'the same'* for the purposes of the subsection as the share capital of the acquired company had been altered



in the interim, and the ordinary shares when transferred to the subsidiary/sub-purchaser were subject to the rights of newly created preference shares.

Turning now to section 46(1) SDCA 1999, which provides as follows;

(1) Where—

(a) a person having contracted for the purchase of any property, but not having obtained a conveyance of that property, contracts to sell the same to any other person, and

(b) the property is in consequence conveyed immediately to the sub-purchaser,

then the conveyance shall be charged with ad valorem duty in respect of the consideration moving from the sub-purchaser.

Having considered the statutory wording contained in section 46(1) SDCA 1999 and the dicta of Lord Wilberforce in *Fitch Lovell*, I am satisfied that the following three conditions must be met by a taxpayer in order to avail of section 46 sub-sale relief;

1. **Identity** - the purchaser in the main contract and the vendor under the sub-sale contract must be the same person, not the same name, but the same person.
2. **In consequence** - the conveyance must have been in consequence of both the original contract and the sub-sale contract and must arise from contracts which are enforceable by means of specific performance.
3. **No intervening act** - There must be no act other than the signing of the sub-sale contract, between the main contract and the execution of the conveyance.

Identity

Having considered the statutory language contained in section 46(1) SDCA together with the authority of *Fitch Lovell*, it is clear that the purchaser under the main contract of sale and the vendor under the sub-contract of sale must be the same person - not the same name, but the same person. I am satisfied that the issue of capacity of the purchaser-vendor is an essential



consideration and that what is at issue is the capacity and status of the person and not simply their nominal identity.

On behalf of the Appellant it was argued that the purchaser-vendor was the same person on the basis that X purchased The Property in trust for Y in 2005 (as per his evidence) and that on the sub-sale contract he was named as vendor and trustee for Y.

In X's own sworn affidavit of 12 October 2016, he averred to the fact that he had ceased to be trustee on the appointment of Nominees Ltd. and therefore, if X had any capacity as regards the sub-sale contract in March 2013, it was nothing more than a mere agency or nominee-ship but crucially, irrespective of the wording on the contract for sub-sale, he was not a trustee. Therefore, whether X entered into the 2005 contract on his own account or as trustee for Y is immaterial to the question of whether his capacity and status remained the same in the sub-sale contract because either way, it did not remain the same. One capacity bears no legal relation to the other. As a result, X cannot and does not meet the section 46(1) requirement that the purchaser on the original contract and the vendor under the sub-sale contract must be the same person.

In consequence

Section 46(1) provides; Where - (a) a person having contracted for the purchase of any property, but not having obtained a conveyance of that property, contracts to sell the same to any other person, and (b) the property is in consequence conveyed immediately to the sub-purchaser...

[emphasis added]

The property must be conveyed to the sub-purchaser "*in consequence*" of both the contract for sale and the contract for sub-sale.

The conveyance in a sub-sale claim must give effect to two contracts where the purchaser in the original contract for sale, is the vendor in the contract for sub-sale. However, as was clear from the wording of the deed of conveyance, a role had to be found for X in the conveyance so that he would become a significant party to the deed, in order that a claim for sub-sale relief might be made.



Senior Counsel for the Respondent stated that she did not in her submission criticise or take issue with the fact that this was a family arrangement however, on behalf of the Respondent it was submitted that had these transactions been arm's length transactions (i.e. had AB Ltd. Ltd. been an independent third party purchaser) and had X not completed the sale, AB Ltd. would have been unsuccessful in securing an order for specific performance against X, because the contract was unenforceable as against him.

The Respondent submitted that the sub-sale contract must arise from contracts which are enforceable by means of specific performance and that this was not the case in relation to the sub-sale contract. The reasons for this are as follows; firstly, X had no document that could have enabled him to bind Nominees Ltd. or Y to the contract. Secondly, X did not have possession of the title deeds (the title deeds were held by Nominees Ltd. and only the Nominees Ltd. could act under the nominee agreement on the direction of Y). Third, X could not compel the production of those title deeds as he had no power to do so. Finally, X's right to call on the original vendors to further assure the property by execution of the conveyance had been superseded entirely by the agreement of 2011 between [Law Firm 3] solicitors and [Law Firm 2] where it was agreed that [Law Firm 2] as solicitors for the personal representatives, would execute a conveyance on the direction of the Nominees Ltd., on foot of a contract for sub-sale by them.

Senior Counsel for the Respondent opened a passage from the *Irish Law of Specific Performance* by John Farrell (published 1994) at paragraph 9.57 on page 263 which provided;

'A purchaser whose vendor cannot make title because someone else who contracted to sell to that vendor can show that that contract is a nullity has no right to specific performance. The remedy cannot be ordered against a person who has already disposed of the title necessary to enable him to fulfil his contract or other obligation.'

The authority cited for that proposition was the case of *Moffat v Greene* [1906] IR 501 which was also opened.

I accept the submission of the Respondent that had specific performance been sought in relation to this contract between X as trustee for Y and AB Ltd., it would have failed on the basis that X had no capacity. He was not a trustee, he did not hold title deeds and he had no document which would bind the Nominees to the agreement.



Returning to the provisions then of section 46(1) SDCA 1999, in order for the sub-sale transactions to come within section 46(1), the conveyance must have been '*in consequence*' of two separate contracts. In this appeal, X had no title, legal or equitable to The Property as of the date of the 2013 sub-sale contract and therefore no capacity to conclude that contract. It follows therefrom that as the 2013 sub-sale contract was not capable of being enforced by a decree of specific performance, the deed of conveyance was not made '*in consequence*' of both the contract of sale and the sub-sale contract as required by the provisions of s.46(1) SDCA 1999.

Intervening Act

On the authority of *Fitch Lovell* and affording the words in section 46(1) their ordinary and natural meaning, there must be no act other than the signing of the sub-contract between the original contract and the execution of the conveyance.

Section 46(1) provides; Where - (a) a person having contracted for the purchase of any property, but not having obtained a conveyance of that property, contracts to sell the same to any other person, and (b) the property is in consequence conveyed immediately to the sub-purchaser...

Both parties were in agreement that the word '*immediately*' does not mean that the transaction must take place within a limited or short period of time but that the transaction must take place directly and I accept this submission. Further, it follows from the judgement of Wilberforce J. in *Fitch Lovell* that in order to qualify for sub-sale relief, there must be a seamless uninterrupted passage from the contract to the sub-contract. In other words, as formulated by Wilberforce J., what the subsection contemplates is that the conveyance must be executed "*before any other act*". The judgement does not define or address what might constitute such act. However, I accept the submission of the Respondent that the actions of X in executing the Declaration of Trust in favour of Y should properly be regarded as constituting such act. The legal consequence was that X divested himself of the only interest he held under the 2005 contract, namely his beneficial interest in a one tenth moiety in The Property. In effect, he deprived himself of capacity to enter into a legally enforceable sub-sale contract in relation to The Property, at any future date.

Once the declaration of trust was executed, X was at best a bare or nominal trustee for Y and subject to the direction of Y who became absolutely entitled to the beneficial interest as



against him. On the appointment of Nominees Ltd. by Y, any such residual bare trusteeship ceased to exist.

It follows that, as between the contract, sub-contract and conveyance, there was no seamless passage as required by section 46. Instead, the rights and obligations of X *qua* purchaser were fundamentally transformed from the party holding a beneficial interest to a party with no interest, legal or beneficial, in The Property. In fact, between the signing of the original contract and the signing of the sub-contract, the following acts took place;

1. The declaration of trust of 23 July 2005 was written and executed.
2. The appointment of Nominees Ltd. was formalised by written agreement (pursuant to which X ceased to be trustee on his own account based on his sworn affidavit dated 12 October 2016).
3. The agreement between Nominees Ltd. and the personal representatives (that the personal representatives would execute a conveyance on the instructions of the Nominees Ltd. and in respect of a sub-sale contract concluded by Nominees Ltd.).

Even if this Commission accepted X's evidence that the trust was in existence since 1 July 2005 and that he purchased The Property in trust for Y on 1 July 2005, only the first intervening step would fall away. The appointment of Nominees Ltd. replacing X as trustee together with the agreement between Nominees Ltd. and the solicitors for the personal representatives that they would assure the property on a sub-sale concluded by Nominees Ltd., remain. I am satisfied that those two steps deprive the transactions of the immediacy required by section 46(1) SDCA 1999 and that the Appellant is thereby unable to bring itself within the terms of the sub-sale relief provision. I am satisfied that the intervening steps taken deprive the Appellant of an entitlement to avail of the relief in accordance with the provisions of section 46 SDCA 1999.

Then, to address the question of whether the declaration of trust was in operation on and from 1 July 2005, I am not satisfied that sufficient evidence was adduced in support of the existence of such a trust between X and his wife from 1 July 2005. I make this finding for the following reasons;

- X did not tender for The Property '*in trust*' in 2005
- The contract dated 1 July 2005 does not purport to have been purchased '*in trust*' by X



- The declaration of trust executed on 23 July 2005 and the terms of that trust as drafted were not retrospective
- There was no other document or note in writing to evidence the existence of the trust as at 1 July 2005 and/or to evidence the purchase of The Property in trust as at 1 July 2005.
- There was no corroborating oral evidence as regards the existence of the trust from 1 July 2005.

In conclusion under this sub-head of analysis, I accept that the effect of the intervening acts set out at 1-3 above which indisputably altered the interest of X between the date of the contract for sale and the contract for sub-sale, constituted an intervening act not within the contemplation of s.46(1) and that these intervening acts render relief in accordance with section 46(1) SDCA 1999 unavailable to the Appellant.

The Accountable person

Pursuant to the deed of conveyance, the only party to whom any interest was granted or conveyed was AB Ltd. The Respondent claimed that in accordance with section 1 SDCA 1999, the accountable person was the Appellant, AB Ltd.

Section 1 SDCA 1999 titled '*Interpretation*' provides;

(1) In this Act, unless the context otherwise requires –

'accountable person' means –

(a) The person referred to in column (2) of the Table to this definition in respect of the corresponding instruments set out in column (1) of that Table by reference to the appropriate heading in Schedule 1.

....

Schedule 1



<i>CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance</i>	<i>The purchaser or transferee.</i>
---	-------------------------------------

In accordance with section 1, AB Ltd. is the accountable person in respect of the deed of conveyance.

The Appellant contended that section 7 SDCA 1999 titled '*Instruments to be separately charged with duty in certain cases*' was the appropriate section. Section 7 provides;

'Except where express provision to the contrary is made by this or any other Act –

- (a) An instrument containing or relating to several distinct matters shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters;*
- (b) An instrument made for any consideration in respect of which it is chargeable with ad valorem duty, and also for any further or other valuable consideration or considerations, shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.*

The Respondent submitted that section 7 relates to the computation of the charge to duty but does not assist in clarifying the identity of the accountable person as the accountable person is already prescribed by section 1.

Senior Counsel for the Appellant submitted that section 45(4) might apply however, this subsection applies '*Where there are several instruments of conveyance*' which is not the case in this appeal as there is only one instrument of conveyance.

Senior Counsel for the Respondent submitted that if the Appellant were correct in its contention that both AB Ltd. and X were the accountable persons, joint and several liability would apply in accordance with section 2(4) SDCA which provides;

'Where any instrument chargeable with stamp duty is not stamped or is insufficiently stamped –

- (a) The accountable person shall be liable, and*



(b) Where there is more than one such accountable person they shall be liable jointly and severally,...

However, other than the provisions of sections 7 and 45(4) as set out above, no other basis has been advanced in support of the proposition that X is the accountable person. I am not satisfied that sections 7 or 45(4) apply to render X the accountable person. Section 2(4) applies only where there is '*more than one such accountable person*' however, no more than one accountable person has been identified. Therefore, I conclude in accordance with section 1 SDCA 1999, that AB Ltd. is the accountable person in respect of the conveyance on sale dated 29 March 2013.

Conclusion

As set out above, I am not satisfied that sufficient evidence was adduced in support of the existence of a trust between X and his wife from 1 July 2005 in relation to the purchase of The Property. I make this finding for the following reasons;

- X did not tender for The Property '*in trust*' in 2005
- The contract dated 1 July 2005 does not purport to have been purchased '*in trust*' by X
- The declaration of trust executed on 23 July 2005 and the terms of that trust as drafted were not retrospective
- There was no other document or note in writing to evidence the existence of the trust as at 1 July 2005 and/or to evidence the purchase of The Property in trust as at 1 July 2005.
- There was no corroborating oral evidence as regards the existence of the trust from 1 July 2005.

The legal consequence of the declaration of trust dated 23 July 2005 was that X divested himself of the only interest he held under the 2005 contract, namely his beneficial interest in a one tenth moiety, and he ceased thereafter to enjoy any propriety rights in relation to The Property. From 23 July 2005 his capacity was that of bare trustee for Y.



X ceased to be Y's trustee on the execution of the Nominee Agreement and this was acknowledged by him in an affidavit which he swore on 12 October 2016 and which was referred to and quoted from in *Lehane v [Y]*.

I am satisfied that in 2013, X had no interest in the property and had no capacity to enter into a contract for sub-sale in respect of the property.

The operation of section 46(1) SDCA does not accommodate the insertion of the name of the purchaser under the original contract into the sub-sale contract in circumstances where that purchaser no longer has capacity as vendor in respect of the sub-sale contract.

The joinder of a person in a contract for sub-sale in circumstances where that person's involvement is unnecessary or gratuitous, does not succeed in enabling a claim for sub-sale relief in accordance with section 46(1) SDCA 1999.

Determination

I determine that the conditions necessary to avail of sub-sale relief in accordance with section 46 of the Stamp Duty Consolidation Act, 1999 ('SDCA') in respect of the deed of conveyance dated 29 March 2013, have not been met and that the Appellant is thereby unable to avail of sub-sale relief.

I determine that the Appellant is the accountable person in respect of the conveyance on sale dated 29 March 2013, in accordance with section 1 SDCA 1999.

I determine that the assessment dated 17 February 2016 containing a balance of €x,xxx,xxx shall stand.

COMMISSIONER LORNA GALLAGHER

23rd day of December 2019





The Tax Appeals Commission has been requested 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.

