



106TACD2021

BETWEEN

THE APPELLANT

Appellant

v

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This appeal concerns the application of stamp duty on a conveyance to the Appellant in relation to property of ■ hectares of agricultural land in ■, Co Limerick ("the Property"). The appeal is against the Revenue Commissioners ("the Respondent") and its refusal to accept the Appellant's assertion that the stamp duty was payable to a lower rate, as set out below.
2. The Appellant purchased the property from the estate of another individual. In addition to the agricultural land, the Appellant purchased further property but that is not the subject of this appeal. The sale of the Property took place at an auction. The details of the hectares in question are not relevant to this appeal and so it is not intended to set out in detail those facts. But the Commissioner has noted the details in the folio as contained in the contract for sale of the Property.
3. The Appellant is appealing the stamp duty paid on the conveyance of the Property. The Appellant paid stamp duty at 7.5 per cent rather than 6 per cent that previously applied before the Budget 2020 announcements on 8th October 2019. This was due to a change in the Finance Act as a result of the Budget 2020, which impacted negatively on the Appellant. The Appellant submitted an appeal to the Tax Appeals Commission ("the Commission") which was received on 18th August 2020. There is some correspondence in relation to the breadth of the Appellant's appeal and

whether she is entitled to appeal an expression of doubt. It does not serve the administration of justice for the Commission to become embroiled in technical arguments which do not take any party further. The Commission's role is to assess if there is a charge to tax and if so, has the correct charge been applied. This is what the Appellant is seeking in this appeal. Hence, the Commissioner will determine if stamp duty is to be charged and if so, at what rate.

4. Stamp duty tends to be one of the least popular taxes due to the nature of its application and the diminution of a purchaser in the usual warm emotion on a life changing purchase. Those emotions, whilst recognised by the Commissioner, cannot be part of the decision making process but the Commissioner does recognise them.
5. Section 34 of the Finance (Tax Appeals) Act 2015 inserted Part 40A to the Tax Consolidation Act 1997 ("TCA 1997"). Under section 949A of TCA 1997 (Part 40A), an 'appealable matter' means "*any matter in respect of which an appeal is authorised by the Acts*". The Acts includes the Stamp Duty Consolidation Act 1999, and the enactments amending or extending it. Hence, the Appellant is appealing the stamp duty payable under section 57 of the Finance Act 2019 which amended section 83D of the Stamp Duty Consolidations Act 1999.
6. On agreement of the parties, this appeal is determined without an oral hearing in accordance with section 949U of the TCA1997. The Commissioner has considered all the documentation provided by the parties and is grateful for the clarity provided by both parties and their representatives.

Facts

7. The Appellant purchased the Property from the estate of the previous owner. The price for the Property and hence the consideration was €330,000. The contract for the purchase of the Property was dated ■■■th September 2019. The Appellant's solicitors were in funds to close on 12th December 2019. The Property did not transfer until January 2020 and the Deed of Transfer is dated ■■■th January 2020.
8. Prior to the Finance Act 2019, the rate of stamp duty for non-residential property was 6 per cent. In 8th October 2019, an announcement was made in the 2020 Budget that the rate of stamp duty was going to increase from 6 per cent to 7.5 per cent. To ensure that the legislation did not have retrospective effect, transitional arrangements were put in place for those purchasers that had already signed a contract. The transitional arrangements were in effect that the completions had to take effect before 1st January 2020. The Appellant's transaction in relation to the Property completed a couple of weeks after 1st January 2020 on ■■■th **January** 2020.
9. The Appellant maintains that she was unable to complete the transaction due to a delay by the Respondent in issuing a GC50 certificate. This certificate did not issue until ■■■th January 2020. As such, stamp duty was paid at 7.5 per cent. The Appellant has appealed the rate of stamp duty of 7.5 per cent and considers that the rate that should have been paid is at the lower rate of 6 per cent. There is no dispute that stamp duty was payable. The Commission's role in this appeal is to

assess if there is a charge to tax and then if so, what rate is applicable. The Appellant was correct to appeal for the Commissioner to assess if stamp duty was payable at the higher rate.

Legislation

10. The applicable legislation is section 57 of the Finance Act 2019. Section 57(3) states as follows:-

57. (1) The Principal Act is amended—

(a) in section 83D—

(i) in subsections (2)(a) and (6)(a), by substituting “7.5 per cent” for “6 per cent”, and

(ii) in subsection (6)(a), by substituting “11/15” for “2/3”,

and

(b) in Schedule 1—

(i) in the Heading “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”, in paragraph (4), by substituting “7.5 per cent” for “6 per cent”, and

(ii) in the Heading “LEASE”, in paragraph (3)(b), by substituting “7.5 per cent” for “6 per cent”.

(2) Subsection (1)(a) shall not have effect as respects instruments executed on or after 9 October 2019 where paragraph (b) of subsection (3) applies to the instrument referred to in paragraph (a) of subsection 83D(2) of the Principal Act.

(3) Subsection (1)(b)—

(a) shall have effect as respects instruments executed on or after 9 October 2019, and

(b) shall not have effect as respects any instrument executed before 1 January 2020, where—

(i) the effect of the application of subsection (1)(b) would be to increase the duty otherwise chargeable on the instrument, and

(ii) the instrument contains a statement, in such form as the Revenue Commissioners may specify, certifying that the instrument was executed solely in pursuance of a binding contract entered into before 9 October 2019.

Submissions

Appellant

11. The Appellant submits that she exchanged on the Property on ■th September 2019 and the sale was intended to close in December 2019.
12. The Appellant submits that the closing of the sale of the Property was delayed due to the issuing of CG50 clearance by the Respondent and hence the Appellant was not able to avail of the transitional arrangements for the rate of stamp duty payable. The Appellant maintains that “*but for*” the delay in issuing the CG50 clearance certificate, she would have been able to avail of the lower rate of 6 per cent. Hence she has suffered a loss due to that delay.

Respondent

13. The Appellant completed the purchase of the Property on ■th January 2020. On 12th February 2020, the Appellant’s solicitor filed a Stamp Duty return in respect of the transfer and the stamp duty was paid at the rate of 7.5 per cent. An expression of doubt was indicated in the Stamp Duty Return.
14. The stamp duty rate applicable to non-residential property transactions increased from 6 per cent to 7.5 per cent for instruments executed on or after 9th October 2019. Section 57 of the Finance Act 2019 provided for transitional arrangements whereby the pre-Budget rate of 6 per cent applied to instruments executed on or after 9th October 2019 but before 1st January 2020, where certain conditions were satisfied. The Respondent maintains that the Appellant does not satisfy those conditions as the instrument of transfer was executed on ■th January 2020, outside the required timeframe to qualify for the transitional arrangements set out in section 57 Finance Act 2019.
15. The Respondent submits that the timeline in relation to the CG50 application related to the different names on the application as to the purchaser as opposed to the purchase documentation. The Respondent submits that the vendor of the Property submitted a CG50 application on 28th November 2019. The Appellant was named as the purchaser on the CG50 application but a different name was referred to as the purchaser in the Contract for Sale dated ■th September 2019.
16. The Respondent duly contacted the Appellant’s solicitors who confirmed that the other named party had attended an auction on behalf of the Appellant and bought the property for her. On 17th December 2019, the Respondent contacted the vendor’s solicitor to seek a new contract with the correct purchaser named, namely the Appellant. It was not until ■th January 2020 that the vendor’s solicitors sent in copies of two instruments executed on ■th January 2020 from the legal representatives of the deceased who owned the Property to the Appellant for the Property. The CG50 application was dealt with and the CG50 certificate was issued by the Respondent’s on ■th January 2020.

Analysis and findings

17. In appeals before the Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the tax charged is incorrect. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at paragraph 22, Charleton J. stated: *'The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.'*
18. There is no dispute that stamp duty is payable in relation to the purchase of the Property. The Commissioner has examined the documentation and finds that stamp duty was payable in relation to the Property. The Commissioner finds that it is non-residential property and comes within that definition, being agricultural land. As such, the Commissioner finds that there is a charge to tax. The second element the Commissioner must consider is whether the correct tax has been charged, namely has the stamp duty has been charged at the correct rate.
19. When the Appellant decided to purchase the Property at auction the rate of stamp duty was 6 per cent. The Contract for Sale was signed by the Appellant's partner at the auction. Contracts for Sale at auction are different than the usual contracts through an estate agent. The Appellant chose not to attend the auction. The reason for such a decision is outside the scope of the Commission. But that decision was a factor in the difficulties experienced in the conveyance. The Appellant's letter to the Respondent dated 25th February 2020 confirms that the Contract for Sale was signed by the Appellant's partner in September 2019. In addition, the same letter confirmed that *"there was a delay in the issue of our client's loan cheque but we were in funds to close on 12th December, as can be verified from our ledger"*. The Commissioner notes the second challenge to the conveyance in relation to a delay in the loan cheque.
20. The Commissioner has also taken cognisance of the fact that the vendors applied for a CG50 clearance. This could not be granted due to the different names on the Contract for Sale and the Appellant. Revenue wrote to both the Vendor and the Appellant's solicitors on 17th December 2019. This was two weeks before 1st January 2020. For some reason it took ■ weeks for the Transfer document to be completed showing the Appellant as the new vendor. This was dated ■th January 2020. The Appellant has provided no explanation for why such a matter took ■ weeks when the Appellant was under notice that the transaction had to be completed by 1st January 2020 in order to avail of the transitional arrangements. In addition, the Appellant was on notice from at least middle of December 2019 that there was a difficulty in relation to the Contract for Sale and the requirement to have the name changed to have her as the purchaser. So, there was sufficient time to rectify this situation.
21. The Commissioner has also considered the explanation of the application for a CG50 certificate. This relates to a different tax and hence is not directly related to the rate of stamp duty. It is noted that the Transfer document was dated ■th January 2020 and the Respondent issued the CG50 certificate by the next day ■th January 2020. So, there was no delay by the Respondent in relation to the CG50 certificate, once the Respondent had received the requisite correct application demonstrating that the Appellant and not her partner had purchased the Property.

The Commissioner finds that the Respondent did not delay in issuing the CG50 certificate on receipt of the correct application and associated documents. In addition, the Commissioner finds that the application for CG50 is a separate matter and not related to the rate of the stamp duty. They may be related but they are separate matters.

22. The Commissioner concludes that the Appellant had due notice that the rate of stamp duty was changing from the date of the budget announcement on 8th October 2019. It was incumbent on her and her advisers to ensure that there were no delays in the completion and to ensure all documentation was correct. It is assumed her representative would be proficient and aware that Contracts for Sale should have been in the name of the Appellant and if not, this needed to be rectified. In addition, delays in seeking and establishing the funds that arose are outside the sphere of this appeal but did not assist the Appellant in ensuring that the sale completed prior to 1st January 2020. Finally, there is no delay on the Respondent's part in issuing the CG50 certificate once the documentation was in order and in any event this is a separate matter from the date of the transfer of the Property.
23. The Appellant was unfortunate, as others are, that there was a rate change in stamp duty just after she had purchased the Property. But the law allows for transitional arrangements to encourage and effect the transfer and closure of transactions made in these circumstances. Once on notice, the Appellant and her advisers should have made all endeavours to achieve that transactional transfer before the 1st January 2020.
24. The Commissioner finds that the transfer of the Property took place after 1st January 2020 and hence the applicable rate of stamp duty to be applied is 7.5 per cent. Therefore, the correct tax has been applied and paid.

Determination

25. The Commissioner finds that the Appellant paid the correct stamp duty at the correct rate at 7.5 per cent on the Property's value of €330,000. Hence, the appeal is not successful. The stamp duty charge stands. The Commissioner appreciates that this decision will be disappointing. The Commissioner hopes that the Property has added to the value of the Appellant's life and hence the additional stamp duty, whilst painful as all expenses and taxes can be, will pale in significance with time.
26. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the Taxes Consolidation Act 1997.



Marie-Claire Maney
Chairperson
Appeal Commissioner
14th June 2021