20TACD2021

BETWEEN/

[APPELLANT]

Appellants

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

[**1**] For [*redacted*], this is an appeal against a Notice of Amended Assessment to Capital Acquisitions Tax for the year ending 31 August 2014 dated 14 July 2017. The period of assessment is 1 September 2013 to 31 August 2014. The disponer is [*redacted*]. The assessment describes the date of inheritance as [*redacted*] and the valuation date as [*redacted*]. The taxable value of benefits is €2,107,918. The capital acquisitions tax due is €557,375.

[**2**] For [*redacted*], this is an appeal against a Notice of Amended Assessment to Capital Acquisitions Tax for the year ending 31 August 2014 dated 14 July 2017. The period of assessment is 1 September 2013 to 31 August 2014. The disponer is [*redacted*]. The assessment describes the date of inheritance as [*redacted*] and the valuation date as [*redacted*]. The taxable value of benefits is €2,107,918. The capital acquisitions tax due is €557,375.

Background

[**3**] The disponer, [*redacted*], is a child of [*redacted*] and [*redacted*] [hereinafter 'the Appellants']. [*redacted*] was born on [*redacted*]. [*redacted*] is the [*redacted*] of [*redacted*] children born to the Appellants. [*redacted*] sustained catastrophic injuries when he was knocked down by a car [*redacted*] on [*redacted*]. On [*redacted*], a Personal Injuries Summons was issued in the High Court against the driver of the car who caused the injuries to [*redacted*]. The title of the court action was '[*redacted*] *(A Minor) suing by his Mother and Next Friend,* [*redacted*] *and* [*redacted*]'. The court action was issued by [*redacted*] Solicitors. The summons refers to the Personal Injuries Assessment Board issuing an authorisation on [*redacted*] pursuant to section 17 of the Personal Injuries Assessment Board Act, 2003 and 2007 to bring the court action. The summons describes the following particulars of special damage:

Medical Expenses	Ongoing
Hospital charges	Ongoing
Experts Fees	Ongoing
Miscellaneous	Ongoing
PIAB Expenses	€50.00
Total Vouched Sums to date	€71,253.50

[**4**] The proceedings were set down for hearing in the High Court. [*redacted*] S.C. and [*redacted*] B.L. were engaged for the hearing. A schedule of damages was prepared in advance of the hearing and described the following:

General Damages (to date and into the future)		€450,000
Loss of Earnings (to date and into the future)		€1,067,220
Cost of Care (to date) (vouched)		€881,764.20
Family Costs		€349,975.76
-Costs of Care (past and present) (unvouched)	€128,920.38	
-Accompaniment costs [*redacted*] (unvouched)	€26,400	
-Accommodation (vouched)	€1,670.75	
-Additional expenses (unvouched)	€5,500	
-Mileage (past and present) (unvouched)	€124,734.63	
-Parking costs	€1,020	
-Baby-sitting/child care [*redacted*]	€21,500	
-Over and above meal costs	€10,230	
-Adapted Car (estimated)	€30,000	
Costs of Care (into the future)		€5,990,004
Costs of Medications/further procedures		€22,518
-Once off capital payment to [*redacted*]		€100,000
Accommodation/Adaptation (into the future)		€127,225
-Occupational therapist	€34,750	
-Podiatrist	€2,403	
-Holidays	€11,120	
-Gardening	€10,842	
-Home maintenance/decoration	€13,900	
-Parents payment towards care	€54,210	
-Car	€-	
Aids and Appliances (to date and into the future)		€165,354
-Wheelchair	€23,983	
-Bed facilities	€11,610	
-Mobile hoist	€6,081	
-Telescopic ramp	€676	
-Shower cradle	€5,838	
-Incontinence pads	€16,200	
-Velcro fastenings	€278	
-Shower	€4,500	
-Paediatric phoenix	€9,750	
-Sleep system	€4,200	
-Air cell mattress	€1,000	
-Tracking hoist bedroom	€12,600	
-Tracking hoist living room	€12,600	
-Tracking hoist shower room	€12,600	
-Mobile sensory station	€43,438	
Legal costs of ward of court application		€36,900
Life Expectancy (13.9 years)		
OVERALL ESTIMATE TOTAL		**€9,290,960.90**

[**5**] On [*redacted*], [*redacted*] approved a settlement reached between the parties and by consent made the following orders:

"*IT IS ORDERED AND ADJUDGED that the Plaintiff do recover against the Defendant the sum of €*[redacted] *and costs of Action to include reserved costs and the costs of Discovery when taxed and ascertained*
And IT IS ORDERED
1) that the Defendant do forthwith pay into Court to the credit of this Action the said sum of €[redacted]
2) that out of the money in Court the sum of €[redacted] *be paid to the Solicitor for the Plaintiff they having undertaken to expend that sum as follows: €*[redacted] *to discharge vouched care costs to date €100,000.00 lump sum capital payment to* [redacted] *and €300,000.00 to the parents of the minor Plaintiff in respect of past care and disbursements.*
3) that the balance of the said sum be placed in BIAM GRU Cash Fund pending the Wardship application."

[**6**] [*redacted*] died on [*redacted*]. [*redacted*] died intestate. Letters of Administration were granted to [*redacted*] in the estate of [*redacted*] on [*redacted*]. The net value of the estate was €[*redacted*]. As [*redacted*] died intestate, the estate was distributed between his parents in equal shares. [*redacted*] received €2,107,918 and [*redacted*] received €2,107,918.

[**7**] On 14 July 2017 separate Notices of Amended Assessment to Capital Acquisitions Tax for the year ending 31 August 2014 issued to the Appellants. The taxable value of benefits shown on each assessment is €2,107,918. The capital acquisitions tax is €557,375. The capital acquisitions tax paid on each assessment is €453,687.50. The balance payable on each assessment is €103,687.50. On 9 August 2017, separate Notices of Appeal were received by the Tax Appeals Commission for the Appellants.

Issue

[**8**] The point at issue in this appeal is whether the inheritance taken by the Appellants from [*redacted*] is exempt from capital acquisitions tax under section 79 of the Capital Acquisitions Tax Consolidation Act, 2003 because [*redacted*] took a non-exempt gift from his parents within the period of five years immediately prior to his death. The matter under consideration as being the non-exempt gift to [*redacted*] is a payment of €11,346.22 to [*redacted*] Solicitors on 4 February 2011 debited from an account in the name of [*redacted*].

[**9**] The Appellants submit that the payment of €11,346.22 is a gift from the Appellants to [*redacted*] within the meaning of section 5 of the Capital Acquisitions Tax Consolidation Act, 2003, in that [*redacted*] became beneficially entitled in possession to a benefit. The Appellants submit that the payment of €11,346.22 does not come within section 82 of the Capital Acquisitions Tax Consolidation Act, 2003, therefore, the payment remains a gift. Consequently, the requirements in section 79 of the Capital Acquisitions Tax Consolidation Act, 2003 are satisfied as the payment of €11,346.22 was a gift from the Appellants to [*redacted*], the gift was a non-exempt gift and the non-exempt gift was taken by [*redacted*] within the period of five years immediately prior to the date of death. Therefore, the inheritance taken by the Appellants from [*redacted*] is exempt from tax.

[**10**] The Revenue Commissioners submit that the payment of €11,346.22 was not a gift within the meaning of section 5 of the Capital Acquisitions Tax Consolidation Act, 2003 as [*redacted*] did not become beneficially entitled in possession to a benefit. If [*redacted*] did take a gift from the Appellants within the meaning of section 5, the payment comes within section 82 of the Capital Acquisitions Tax Consolidation Act, 2003, therefore, the payment is not a gift. Consequently, the requirements in section 79 of the Capital Acquisitions Tax Consolidation Act, 2003 are not satisfied as [*redacted*] did not take a non-exempt gift from his parents within the period of five years immediately prior to the date

of death. Therefore, the inheritance taken by the Appellants from [*redacted*] is chargeable to capital acquisitions tax.

Legislation

[**11**] Insofar as it is relevant, section 2 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

*"**2.** **General interpretation***

(1) *...*

'benefit' includes any estate, interest, income or right;

...

'disposition' includes –

(a) *any act or omission by a person as a result of which the value of that person's estate immediately after the act or omission is less than it would be but for the act or omission,*

(b) *any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations,*

(c) *the creation of a debt or other right enforceable against the disponer personally or against any estate or interest that disponer may have in property,*

(d) *the payment of money,*

(e) *the allotment of shares in a company,*

(f) *the grant or the creation of any benefit,*

(g) *the grant or the creation of any lease, mortgage, charge, licence, option, power, partnership or joint tenancy or other estate or interest in or over any property,*

(h) *the release, forfeiture, surrender or abandonment of any debt or benefit, or the failure to exercise a right, and, for the purpose of this paragraph, a debt or benefit is deemed to have been released when it has become*

unenforceable by action through lapse of time (except to the extent that it is recovered subsequent to its becoming so unenforceable),

(i) the exercise of a general power of appointment in favour of any person other than the holder of the power,

(j) a donatio mortis causa,

(k) a will or other testamentary disposition,

(l) an intestacy, whether total or partial,

(m) the payment of a share as a legal right under Part IX of the Succession Act 1965, to a deceased person's spouse or civil partner, or the making of provision for a widow, surviving civil partner or child of a deceased person under section 56 or section 117 of the Succession Act 1965, or an analogous share or provision paid or made on the death of a deceased person to or for the benefit of any person under the law of another territory, and

(n) a resolution passed by a company which is deemed by subsection (3) to be a disposition;

...

'entitled in possession' means having a present right to the enjoyment of property as opposed to having a future such right, and without prejudice to the generality of the foregoing a person is also, for the purposes of this Act, deemed to be entitled in possession to an interest or share in a partnership, joint tenancy or estate of a deceased person, in which that person is a partner, joint tenant or beneficiary, as the case may be, but that person is not deemed to be entitled in possession to an interest in expectancy until an event happens whereby this interest ceases to be an interest in expectancy;

...

'gift' means a gift which a person is by this Act deemed to take;

...

'property' includes rights and interests of any description;"

[**12**] Insofar as it is relevant, section 4 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

"***4. Charge of gift tax***

A capital acquisitions tax, to be called gift tax and to be computed in accordance with this Act, shall, subject to this Act and any regulations made under the Act, be charged, levied and paid on the taxable value of every taxable gift taken by a donee."

[**13**] Insofar as it is relevant, section 5 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

"***5. Gift deemed to be taken***

(1) For the purposes of this Act, a person is deemed to take a gift, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money's worth paid by such person.

…"

[**14**] Insofar as it is relevant, section 79 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

"***79. Exemption of certain inheritances taken by parents***

Notwithstanding any other provision of this Act, an inheritance taken by a person from a disponer is, where -

(a) that person is a parent of that disponer, and

(b) the date of the inheritance is the date of death of that disponer,

exempt from tax and is not taken into account in computing tax if that disponer took a non-exempt gift or inheritance from either or both of that disponer's parents within the period of 5 years immediately prior to the date of death of that disponer."

[**15**] Insofar as it is relevant, section 82 of the Capital Acquisitions Tax Consolidation Act, 2003 provides:

"***82. Exemption of certain receipts***

...

(2) Notwithstanding anything contained in this Act, the receipt in the lifetime of the disponer of money or money's worth –

(a) by –

(i) the spouse, civil partner, child or child of the civil partner or child of the disponer, or

(ii) a person in relation to whom the disponer stands in loco parentis,

for support, maintenance or education, or

(b) by a person who is in relation to the disponer a dependent relative under section 466 of the Taxes Consolidation Act 1997, for support or maintenance,

is not a gift or an inheritance, where the provision of such support, maintenance or education, or such support or maintenance –

(i) is such as would be part of the normal expenditure of a person in the circumstances of the disponer, and

(ii) is reasonable having regard to the financial circumstances of the disponer.

..."

Evidence

[*redacted*] (Mother)

[**16**] The witness gave evidence that [*redacted*] was knocked down by a car being driven by an unaccompanied learner driver as he stood on a [*redacted*] on [*redacted*]. The witness stated that the driver clipped [*redacted*] who was standing on the [*redacted*] and [*redacted*] fell backwards causing damage to his brain. The witness described the medical interventions immediately following the accident which included [*redacted*] being taken by ambulance to the [*redacted*] and then being transferred to [*redacted*] to undergo surgery for a brain injury. [*redacted*] developed multiple medical complications subsequent to the surgery and was transferred to [*redacted*] in [*redacted*]. In [*redacted*], [*redacted*] was brought to the family home for Christmas. In [*redacted*], [*redacted*] commenced rehabilitation in the [*redacted*] in [*redacted*]. The [*redacted*] operated services from Monday to Friday. As a consequence, the witness travelled to [*redacted*] with [*redacted*] and stayed with him during the week. Her husband would return to [*redacted*] to take care of their other son, [*redacted*], who had been diagnosed with autism, and to run their business. At this time, the witness was pregnant with her daughter, [*redacted*]. The witness gave evidence that she started bleeding and was rushed to the [*redacted*] in [*redacted*]. The witness was then required to remain at home until the birth. The witness returned to the [*redacted*] with [*redacted*] and stayed with [*redacted*] during the week. Her husband and [*redacted*] would travel to [*redacted*] at the weekends and the family would stay in a hotel near the [*redacted*].

[**17**] The witness stated that [*redacted*] never got a chance for rehabilitation because the medical complications continued and were getting worse. The witness was informed by the [*redacted*] that [*redacted*] rehabilitation programme had come to an end. In [*redacted*], [*redacted*] returned to the [*redacted*]. At this time, [*redacted*] began attending [*redacted*] in [*redacted*], a school for children with disabilities. In [*redacted*], [*redacted*] was admitted to [*redacted*] in [*redacted*], who provide a range of services and supports for children with

disabilities. In [*redacted*], [*redacted*] began attending school in close proximity to [*redacted*]. [*redacted*] returned to [*redacted*] on multiple occasions for medical interventions.

[**18**] The witness stated that her husband consulted with [*redacted*], a solicitor in [*redacted*] Solicitors in [*redacted*], with the aim of seeking justice for [*redacted*]. The witness stated that her husband was advised by [*redacted*] that they did not have a case. The witness gave evidence that she and her husband consulted with [*redacted*] of [*redacted*] Solicitors in [*redacted*], a solicitor with whom her sister was doing consultancy work. The witness stated that [*redacted*] decided to take on the case and she engaged an engineer, [*redacted*], to produce a report.

[**19**] The witness stated that a criminal prosecution was being pursued in the District Court against the driver, [*redacted*]. The criminal prosecution was being progressed through the District Court in [*redacted*]. The witness stated that the focus of the engagement with [*redacted*] was the criminal prosecution. The witness gave evidence that she was disappointed that [*redacted*] did not attend the District Court in [*redacted*], when the criminal prosecution was listed for mention. The witness stated that a friend, [*redacted*], who is also a solicitor, mentioned the name of another solicitor, [*redacted*]. At the time, [*redacted*] was working in [*redacted*] Solicitors. The witness stated that it was another solicitor in [*redacted*], [*redacted*], who was involved in their case, as [*redacted*] was working in a different department. The witness gave evidence that she met with [*redacted*] in or around [*redacted*]. The criminal prosecution was heard in the District Court before Judge [*redacted*] in [*redacted*]. At the trial, the witness was represented by [*redacted*] B.L. who had been engaged by [*redacted*]. The witness was called to give evidence at the trial. The witness stated that due to a lack of evidence the prosecution was dismissed.

[**20**] Following the prosecution, the witness stated that she felt that [*redacted*] was not committed. A meeting was arranged with [*redacted*] and [*redacted*], another solicitor in [*redacted*]. The witness stated that progress with the civil case started when [*redacted*]

agreed to oversee the case. This was in [*redacted*]. The witness stated that [*redacted*] '*was the first person that sort of instilled confidence in us that, you know, we might have a case*'.

[**21**] The witness gave evidence that [*redacted*] telephoned her in [*redacted*] to advise that she was moving to a new firm of solicitors. The witness stated that '*when* [redacted] *told us she was moving I suppose it wasn't even, there was no question but that we were going to go with her*.' The witness gave evidence regarding a call she received from [*redacted*], the managing partner of [*redacted*], as '*I remember him ringing me and being, I suppose, quite rude to me on the phone and didn't seem to have, he basically told us that we had to pay a sum of money. He didn't want us to move the file initially and he was trying to convince me and I was saying, no, that* [redacted] *was the person we'd went to. We had our faith in her and that we wanted to move the file. So he then was quite rude to me. I don't think he had any idea of what, whether he had an idea or not he didn't seem to have any compassion for what we were going through, where* [redacted] *was, you know the uncertainty of everything because this was all a part of it as well. You know we never knew with* [redacted] *what the day was going to bring or I suppose we'd come to another crossroads in that we had now decided that we weren't going to resuscitate* [redacted], *but yet we still wanted to fight the case. So I remember having the conversation with him and him telling me that we had to pay the money to move the file*.'

[**22**] The witness was shown a letter from [*redacted*] dated 30 March 2015 which stated:

"*As requested in your voicemail, this is a note to acknowledge receipt of the amount of €11,346.22 on 7 February 2011, on foot of a letter written to* [redacted] *on 21 January 2011. This letter was in relation to recovering Disbursements paid by the firm in the case of* [redacted], *by the then Managing Partner of* [redacted], [redacted]."

The witness gave evidence that she had no recollection of a letter from [*redacted*] dated 21 January 2011.

[**23**] The witness was shown a bank statement from National Irish Bank in the name of her husband with a debit from the account on 4 February 2011 marked [*redacted*] in the sum of €11,346.22. The witness was shown a document headed 'Declaration of Ownership of Funds' dated 20 December 2017 signed by the witness and her husband which stated:

"*We,* [redacted] *of* [redacted] *and formerly of* [redacted] *hereby confirm that as at 4th February 2011 the funds held in the bank account of* [redacted]*, account number* [redacted]*, National Irish Bank* [redacted] *were jointly owned by* [redacted]*; notwithstanding that the account was in the sole name of* [redacted].

The monies represented the proceeds of the sale of family assets which were jointly owned by [redacted]."

The witness gave evidence that she and her husband do not have a joint bank account. The witness and her husband have separate bank accounts. The witness gave evidence that the funds held in the bank account of her husband were jointly owned by both of them, despite the account being in the sole name of her husband. The witness stated that she understood the family assets sold were a [*redacted*].

[**24**] The witness was shown a document headed 'Breakdown of €11,346.22' with the following:

	€
[*redacted*]	2,000.00
[*redacted*]	250.00
[*redacted*]	10.16
[*redacted*]	57.50
[*redacted*]	150.00
[*redacted*]	15.41
[*redacted*]	251.00
[*redacted*]	6.00
[*redacted*]	245.00
[*redacted*]	3,950.00
[*redacted*]	50.00
[*redacted*]	300.00
[*redacted*]	100.00
[*redacted*]	245.00
[*redacted*]	2,000.00
[*redacted*]	1,716.15
	11,346.22

The witness stated that, to her knowledge, there were no receipts to back up the breakdown of the €11,346.22. The witness did not know who prepared this document. The witness stated that the first time she saw the document was when her accountant, [*redacted*], showed it to her.

[**25**] The witness was shown a document headed 'Net Worth Statement – [*redacted*] – 4th February 2011' with the following:

"**ASSETS & LIABILITIES**

Asset Location (if applicable)	*Bank/Lender*	*Value (€)*	*Notes*	*Debt Drawn Balance*
[*redacted*]	Bank of Ireland	500,000	(1)	2,980,578
[*redacted*]	Bank of Ireland	100,000	(1)	562,163
[*redacted*]	Bank of Ireland	80,000	(1)	419,323
[*redacted*]	Bank of Ireland	100,000	(1)	351,692
[*redacted*]	Bank of Ireland	240,000	(1)	241,594
[*redacted*]	Bank of Ireland	50,000	(1)	170,335
[*redacted*]	Bank of Scotland			300,000
[*redacted*]	Bank of Ireland			5,279,508
SUBTOTAL		**1,070,000**		**10,305,193**

UNENCUMBERED ASSETS

Asset Location (if applicable)	*Value (€)*	*Notes*
[*redacted*]	547,495	(1)
[*redacted*] (PPR)	300,000	(1)
Holiday home at [*redacted*]	150,000	(1)
[*redacted*]	100,000	(1)
Land at [*redacted*]	20,000	(1)
Land at [*redacted*]	75,000	(1)
Pension Funds	300,000	(2)
SUBTOTAL	**1,492,495**	

NOTES

(1) – [*redacted*] estimate of market value of various properties as at 4/2/2011

(2) – [*redacted*] estimate of value of pension fund as at 4/2/2011

OVERALL NET WORTH

Total Value (€)	*Total Liability (€)*	*Net Value (€)*
2,562,495	**10,305,193**	**(7,742,698)**

We confirm that all of the particulars given by us in the above statement are a true and accurate reflection of our statement of net worth as at 4th February 2011."

The witness stated that this document was prepared by [*redacted*], who was their accountant for many years. The witness stated that she was employed by [*redacted*] at the time and that the assets were jointly owned with her husband. The witness stated that she had a bank account in her own name, however, similar to the bank account in her husband's name from which the payment was made to [*redacted*], any funds in her account were family funds. The witness stated that a receiver was appointed by Bank of Ireland over the assets of [*redacted*] in [*redacted*]. The witness gave evidence that a settlement was ultimately reached with Bank of Ireland for €1.5 million which came from the money received from [*redacted*].

[**26**] Under cross-examination, the witness stated that the view expressed by [*redacted*] did not put her and her husband off from pursuing a court action. The witness gave evidence that she could not recall signing terms and conditions of business with [*redacted*] but knew the position was that '*if we didn't win the case that... there would be no fees*'. The witness stated that [*redacted*] did not explain the position regarding costs which may be incurred during the litigation process. The witness stated that she and her husband had instructed [*redacted*] to engage an engineer, [*redacted*], to produce a report. The witness gave evidence that she did not see the report prepared by the engineer because they then moved to [*redacted*]. The witness stated that neither [*redacted*] nor [*redacted*] sought payment from her or her husband.

[**27**] The witness gave evidence that as regards the terms and conditions of business with [*redacted*], '[redacted] *said that they would take us on and if we won the case obviously they would, you know there would be, their money would come out of it, but if we lost the case there would be no fees*.' The witness gave evidence that there was no indication from [*redacted*] that payments may have to be made during the litigation process.

[**28**] As regards the telephone contact from [*redacted*] in [*redacted*] to say she was moving from [*redacted*] to [*redacted*], the witness gave the following evidence:

"*Q. What was your view on that?*

A. Oh, we were going to go with her, you know. There was no question that we wouldn't.

Q. Did you not have confidence as such that [redacted] *would continue the case without her?*

A. Well I suppose we hadn't had the -- like, as I said, the criminal case was pretty much, I won't say it was a disaster but for me it was. [redacted] *was the person that we just felt we had the confidence in her. We trusted her.*

Q. Yes.

A. We felt that she had a very, she had a good feel for the case and she was I suppose, I won't say personally because, you know, it was a professional relationship but we just had, we had faith in her.

Q. At that stage [redacted] *had done a good bit of work on the case, isn't that correct?*

A. Yes.

Q. Because I mean I can see from your breakdown of the disbursements that they had prepared or obtained a lot of different reports and all the kind of pieces that you would need for a case had been more or less put in place. It seems that the case was almost ready to commence. Was that the position as far as you knew?

A. I presume it was. I mean they had but, as I say, we had been, I think [redacted] *had kind of worked on it before she left. So I suppose our view was that it was progressing but it was because of* [redacted].

Q. But would it be fair to say that I mean the case could have been commenced by [redacted] *if you had left it with them but your preference was to follow* [redacted] *and go with the new firm she was in?*

A. Maybe it could but not, but that's not what we wanted, you know.

Q. Yes. Your preference was for [redacted] *and you felt that she had your best interests?*

A. Yes, yes. The only reason that like we had expressed, as I said [redacted] *was sick after having* [redacted] *there. Then we had that other, the other man and he, so it was always* [redacted] *who seemed to be the one that was making things progress*

as opposed to anyone else in [redacted], *so therefore we were going to go with* [redacted].

Q. *So you made a decision at that stage you were going to*

A. [redacted].

Q. -- *instruct* [redacted] *now through* [redacted] *or you were going to instruct* [redacted] *now to take on the case.*

A. *Yes.*

Q. *Did you convey that decision? Who did you convey that decision to?*

A. *I would have, I'm not* -- *to* [redacted] *as far as I know and then she went to* [redacted]."

[**29**] As regards the telephone contact from [*redacted*] in January 2011, the witness gave the following evidence:

"*Q.* *He indicated that you had to pay money to* [redacted] *to move the file, that's what you say in your evidence.*

A. *Yes.*

Q. *Did he explain to you how much money was involved?*

A. *He explained, I think he had said the sum there.*

Q. *Over the phone?*

A. *Over the phone.*

Q. *Okay. Did you ask him what that was for or what it was about?*

A. *I didn't really. I just wanted the case moved. I just wanted to know, we just wanted to get out. He just said that he wouldn't release the files unless we paid the money.*

Q. *Okay. But I mean you must have had some suggestion of what the, I mean he just comes up with this sum of money but you must have had some idea of what it was for?*

A. *That it was for work that was done on the case. But he didn't, I mean I didn't look at a breakdown or anything like that, you know.*

Q. *But did you say to him, well you agreed to take the case on. It wasn't for* [redacted] *legal costs?*

A. *It wasn't for* [redacted] *legal costs. No, no.*

Q. *No, it wasn't, sure it wasn't? It wasn't for their fees?*

A. *Well at the time I don't know because as I say I was just, we were just desperate to get the case moved on. So --*

Q. *So where, you see the document that was prepared at page, behind Tab 2, the breakdown of the sum?*

A. *Yes.*

Q. *How did that come about? How do you know what all those items, how all those items relate to the 11,000?*

A. *Because they were prepared from, by* [redacted] *for us from, I presume they were, they're the breakdown of what the money was for.*

Q. *But you didn't know that at the time you paid it, did you?*

A. *No. As I said to you I was down, you know --*

Q. *No, I appreciate that.*

A. *And I know, I don't mean to be -- I remember having the phone call with the man. I remember him asking me for the money.*

Q. *Yes.*

A. *We just wanted the file released. I don't remember seeing this. That's all I can honestly, honestly answer you.*

Q. *No, that's, that's perfectly fine.*

A. *You know I don't remember seeing the breakdown of this.*

Q. *Is it fair to say you were kind of indifferent at that stage? He said we want 11,346. You didn't really care at that stage --*

A. *I just wanted* [redacted] *to --*

Q. *-- whether 218 it was for costs, even though he said he wasn't going to charge you legal fees or whatever. You just wanted the file moved, so you're going to pay the money?*

A. *Exactly. I just wanted the case to progress for* [redacted].

Q. *Yes. That was part of your, I'm asking you I suppose, was that part of your overall commitment that you made at the start to see justice for* [redacted]*?*

A. *Yes.*

Q. *And that you were going to pursue this?*

A. *Yes.*

Q. *And you would do whatever it took essentially?*

A. *Yes, absolutely*."

[**30**] The witness gave evidence that she had no recollection of receiving documents from [*redacted*] following the conversation with [*redacted*] in January 2011. The witness responded '*yes*' when asked whether the letter from [*redacted*] dated 30 March 2015 was the total of what the witness had from [*redacted*].

[**31**] The witness stated that the payment of €300,000 ordered by [*redacted*] for past care and disbursements was derived from the 'family costs' in the schedule of damages, although the 'family costs' were quantified at greater than €300,000 in the schedule of damages. The witness stated that the sum of €11,346.22 was not included in the schedule of damages. The witness gave the following evidence:

"*Q.* *So does, does that payment of disbursements not include the disbursements that you paid to* [redacted] *back in February 2011 because that's what you were paying* [redacted] *was to pay disbursements, isn't that correct?*

A. *Yes. Well it wasn't included in any of the schedules made by any of the, you know the one that was submitted, the schedule that was given, so.*

Q. *So it wasn't included?*

A. *No.*

...

A. *I'm not sure where, what -- but in all of it that sum that we paid out to* [redacted] *was never included in anything.*

Q. *Okay, and was that an oversight?*

A. *It must have been. It must have been. It was never mentioned to us afterwards.*

Q. *I mean if someone had asked you would you have included it as a disbursement that you paid out and that you sought to recoup at the end?*

A. *I don't know. I mean I suppose it wasn't put in there so I don't know would we have. You know probably is the answer, I don't know.*

...

A. *But it wasn't. I suppose on the day we paid the sum to get the file released to benefit* [redacted] *to move on with the case and then we, you know it was, it was never really mentioned again after that.*

Q. *Are you aware, did* [redacted] *have any,* [redacted] *you said took the file originally on a no foal no fee, what we call no foal no fee. In other words that if you lost you wouldn't have to pay, but if you succeeded I presume they would be entitled to some of their costs?*

A. *Yes.*

Q. *Did they have an arrangement then with* [redacted] *to recover their legal costs?*

A. *I'm not aware.*

Q. *How that was dealt with?*

A. *No.*

Q. *Did anyone ask you whether, for example when* [redacted] *moved, did she ask you whether she would be able to give an undertaking to* [redacted] *that their legal costs would be discharged at the end if the case was successful?*

A. *Honestly I can't, I don't know*."

[*redacted*] (Father)

[**32**] The witness gave evidence that he ran a very successful business with his wife for many years. The business was [*redacted*]. The business was [*redacted*] for [*redacted*] in the [*redacted*] industry. The witness managed the sales department and his wife managed the finance department. The business operated in [*redacted*] and had upward of [*redacted*]. The business had a turnover of €[*redacted*] million a year and a profit of €[*redacted*]

million a year. The witness stated that following the financial crisis in Ireland in 2008, a number of their customers were unable to pay and the financial position of their business spiralled out of control. The witness gave evidence that his health deteriorated and he underwent multiple surgeries. The witness stated that a receiver was appointed by Bank of Ireland over the assets of [*redacted*] in [*redacted*].

[**33**] The witness was shown a document headed 'Declaration of Ownership of Funds' dated 20 December 2017 signed by the witness and his wife. The witness stated that the monies in the National Irish Bank account represented the proceeds of the sale of family assets which were jointly owned by the witness and his wife. The witness stated that the funds in the National Irish Bank account of approximately €117,000 at 4 February 2011 was from the sale of a [*redacted*]. The witness stated that the document headed 'Net Worth Statement – [*redacted*] – 4th February 2011' was prepared by the accountant and the witness had no reason to believe the statement was not accurate. The witness stated that the difference between the sum of approximately €117,000 shown in the bank statement and the sum of €547,495 shown in the net worth statement was the proceeds of the sale of [*redacted*] which the witness lodged to the bank account.

[**34**] The witness was shown a document headed 'Form 11 Return Summary – For Year of Assessment 2011' which was described as received by ROS (revenue online service) on 14 November 2012 and included the following:

Irish Rental Income	
Number of properties let	6
Number of properties let by your Spouse	4
Gross Rent Receivable	47791
Gross Rent Receivable by your Spouse	26291
PAYE/BIK/Pensions	
Gross amount of Spouse's income from Irish employments […] subject to PAYE	8667
Gross amount of income […] subject to PAYE	9667
Total Liability	
Payable	543.48

The witness stated that the tax return declared joint gross income before capital allowances and allowable deductions of €92,416 and that the payment of €11,346.22 to [*redacted*] represented 12.28% of their joint gross income.

[**35**] The witness was shown the schedule of damages and gave the following evidence:

"*Q. I see. Then just in to the plaintiff's special damages, have you anything to add to that? You know behind Tab 8 the actual 11,000, not been mentioned, have you anything to add apart from what* [redacted] *said?*

A. No. Look, I suppose really [redacted] *was our champion in all of this to try and get justice and services for* [redacted]*. My big concern in all of this was my job in my household is to fund the house and keep the show on the road. My concern was that* [redacted] *needed 24-hour/seven-day-a-week care. While* [redacted] *was looking after, making sure that, you know, his name was preserved and that we got justice for him, we also needed a care plan and the care plan needed to be funded. I do apologise if that sounds coarse but I live in the real world and things have to be*

paid for and kids had to be looked after. So I believed that [redacted] *was the right person to champion our cause for the courts. When this amount of money was asked to be transferred over, we, we done it without thought, for* [redacted] *benefit*."

[**36**] Under cross-examination, the complete bank statement for the National Irish Bank account was produced which showed the following:

Entry date	Value Date		Credited + Debited -	Credit balance + Debit balance -
		Balance as at date of previous statement		141,591.07 +
01.02	01.02	[*redacted*]	73.40 -	141,517.67 +
01.02	01.02	[*redacted*]	140.00 -	141,377.67 +
01.02	01.02	[*redacted*]	2,380.00 -	138,997.67 +
02.02	02.02	[*redacted*]	10,000.00 -	128,997.67 +
04.02	04.02	[*redacted*]	11,346.22 -	117,651.45+
04.02	04.02	[*redacted*]	6.00-	117,645.45 +
04.02	04.02	[*redacted*]	430,000.00 +	547,645.45 +
04.02	04.02	[*redacted*]	150.00 -	547,495.45 +
07.02	07.02	[*redacted*]	600.00 -	546,895.45 +
07.02	07.02	[*redacted*]	600.00 -	546,295.45 +
08.02	08.02	[*redacted*]	2,000.00 -	544,295.45 +
08.02	08.02	[*redacted*]	7,264.00 -	537,031.45 +
10.02	10.02	[*redacted*]	60.00 -	536,971.45 +
10.02	10.02	[*redacted*]	800.00 -	536,171.45 +
10.02	10.02	[*redacted*]	5.00 -	536,166.45 +
10.02	10.02	[*redacted*]	12.50 -	536,153.95 +
11.02	11.02	[*redacted*]	693.72+	536,847.67 +
11.02	11.02	[*redacted*]	1,710.28 +	538,557.95 +
11.02	11.02	[*redacted*]	1,000.00 -	537,557.95 +
11.02	11.02	[*redacted*]	15,000.00 -	522,557.95 +
14.02	14.02	[*redacted*]	800.00 -	521,757.95 +
15.02	15.02	[*redacted*]	754.00 -	521,003.95 +
17.02	17.02	[*redacted*]	99,994.00 +	620,997.95 +

The bank statement enclosed with correspondence from the accountants to the Revenue Commissioners dated 13 November 2015 showed the entries up to [*redacted*] on 4 February 2011 and a balance of €117,645.45. The witness agreed that the payment of €11,346.22 to [*redacted*] was from a balance of €547,495 and not €117,645. The witness agreed that in the first eight days of February 2011 there were three occasions when amounts of approximately €10,000 were paid out of the account, one being the payment of €11,346.22 to [*redacted*].

[**37**] The witness gave evidence that the National Irish Bank account was '*the premium account because this was what I was using to pay bills such as some suppliers from the company*'. The witness stated that he had signed a document for Bank of Ireland which gave the bank a floating charge over all unencumbered assets and consequently the bank '*had recourse to all of the monies in this account*'. The witness stated that this document was signed when a representative for Bank of Ireland attended [*redacted*] while [*redacted*] was being ventilated in intensive care. The witness stated '*this was the pressure I was under. I was signing documents under duress just to survive and keep going. I had signed this full and floating charge that I wasn't aware of..*'. The witness gave evidence that he had to sign over ownership of the National Irish Bank account to the receiver as part of a settlement with Bank of Ireland.

[**38**] As regards the payment of €11,346.22 to [*redacted*] the witness gave the following evidence:

"*A.* *I'm assuming maybe* [redacted] *may have mentioned a figure but it wasn't really relevant at the time. You know I couldn't honestly say really.*

Q. *Yes. You don't recall in any case having any letter or email from* [redacted] *directly to you --*

A. *No.*

Q. *-- saying that this amount was due or had to be paid?*

A. *Not that I'm aware of.*

Q. *Did you think at all to question the amount or to question why it had to be paid?*

A. *Well we had to get the files released and they wouldn't release them without paying this money.*

Q. *But didn't you understand that your, your terms with* [redacted] *were that they would take the case on a no foal no fee basis.*

A. *Absolutely.*

Q. *So you didn't expect to have to pay any money?*

A. *No. Normally in a situation it would be added on, but they insisted that the money had to be paid.*

Q. *But did you not, did you ask or did you think to ask or did you challenge it at all and say, well hang on a second, we were told this would be on a no foal no fee, so why do we now have to pay?*

A. *This chap was insistent that this money had to be paid.*

...

A. *He wouldn't release the files if we didn't pay the money.*

Q. *So you wanted to progress the matter and your wife wanted to progress the matter.*

A. *Absolutely.*

Q. *Would you agree, I think she, the words she used or she said, she said you paid it pretty much without question.*

A. *Yes. We didn't go, we didn't forensically examine what the amounts were totalling. You get a bill from them. You know it was a professional fee.*

Q. *But did you get bill though or can you remember?*

A. *No, no, we just got a sum.*

Q. *Just a sum over the phone?*

A. *Yes.*

Q. *And you didn't interrogate it any further?*

A. *No.*

Q. *So you're pretty determined, both of you, to proceed with the action. You wanted it to move on. You were both pretty determined --*

A. *Absolutely, yes.*

Q. *-- to move on with the action.*

A. *Correct, yes.*

Q. *And you weren't going to let it be held up by a quibble about --*

A. *Well it was, it had hinged on this. You know we needed the files released and, you know, we wanted them released. We wanted to go ahead with the case.*

Q. *Did you have any indication from* [redacted] *that if the files that -- sorry, did you have any indication from* [redacted] *that they wouldn't proceed with the case even if you stuck with them? In other words if* [redacted] *went to* [redacted] *that they would somehow then abandon the case or stop the case?*

A. *That wasn't the, that wasn't the situation. We were comfortable dealing with* [redacted].

...

A. *We wanted* [redacted] *to represent us for the case. We felt that* [redacted] *had a good handle of the case. She understood where we were coming from and that she understood the costings that we would incur as a result of the upkeep and maintenance of* [redacted], *you know* –

...

A. *-- for as long as he lived. We wanted her to represent* [redacted].

Q. *So is it fair to say that it was your preference, in terms of how you wanted the litigation, that she look after it rather than* [redacted]*?*

A. *It would be our preference, yes*."

[**39**] The witness gave evidence that he did not receive letters from any of the solicitors in relation to the costs that may be incurred in pursuing a court action. As regards whether [*redacted*] would take an undertaking from [*redacted*] rather than making the payment of €11,346.22, the witness gave the following evidence:

"*A.* *We did and I remember discussing it with* [redacted] *and she said that they weren't for an undertaking. We did ask for it and she advised me to pay it.*

Q. *So* [redacted] *weren't willing to provide an undertaking to* [redacted]*?*

A. *No, definitely not.*"

Submissions on behalf of the Appellants

[**40**] The submissions on behalf of the Appellants were presented by Senior Counsel and Junior Counsel. The Appellants submit that the inheritance taken by the Appellants from [*redacted*] is chargeable to capital acquisitions tax under section 9, however, the inheritance is exempt from tax under section 79. The wording of section 79 leads to an examination of 'gift'. Section 5 describes where a person is deemed to take a gift. Section 82 provides a carve-out where certain receipts are not a gift. The Appellants submit that if it is proven that there is a gift within the meaning of section 5, and section 82 does not apply, this satisfies the requirement in section 79 of a 'non-exempt gift'.

[**41**] The Appellants submit that the oral evidence supports the 'Declaration of Ownership of Funds' dated 20 December 2017 and, therefore, for the purpose of this appeal it is not relevant that the payment of €11,346.22 to [*redacted*] was debited from a bank account in the sole name of [*redacted*]. The Appellants submit that the oral evidence establishes that the payment of €11,346.22 was not included in the payment of €300,000 to the Appellants which was ordered by [*redacted*] in respect of past care and disbursements.

Section 5

[**42**] The Appellants submit that the payment of €11,346.22 by the Appellants to [*redacted*] is a gift within the meaning of section 5, in that, in consequence of this payment of money, [*redacted*] became beneficially entitled in possession to a benefit. The Appellants submit that [*redacted*] became beneficially entitled to legal representation from a solicitor, [*redacted*], which allowed an intended court action to continue. The benefit has been described as the release of the legal file of [*redacted*] which gave [*redacted*] the ability

to proceed with an intended court action to seek an award of damages for the personal injury caused to him by the accident on [*redacted*]. The benefit was not a future benefit of a potential award of damages. The Appellants submit that even though the Appellants made the payment of €11,346.22 to [*redacted*], it was [*redacted*] who had the benefit of the payment. As a consequence of the payment to [*redacted*], [*redacted*] had a present right to the present enjoyment of his legal file and had taken that interest in possession on the payment. The payment was made on his behalf, for his benefit and to enable him as the minor plaintiff to pursue his court action.

[**43**] The Appellants submit that [*redacted*] was the client in the 'solicitor and client' relationship with [*redacted*], which is supported by the fact that any award of damages from the court action belonged to [*redacted*]. The retainer was between [*redacted*] and [*redacted*]. The Appellants submit that the position at common law is that a contract with a minor is valid unless it is set aside; the contract is voidable at the instance of the minor, not void *ab initio*. The Appellants referred to a passage from Cheshire, Fifoot and Furmston's Law of Contract (Seventeenth Edition) which states (at page 542):

"*It is clear that if the contract does not fall within one of the three above categories it does not bind the minor but this does not mean that the contract is without legal effect. In principle it appears that the contract is binding on the other party though it is not clear what consideration the infant is providing for the transaction*."

The three categories being referred to in the passage were (i) contracts for necessaries (ii) beneficial contracts of service and (iii) voidable contracts. The Appellants submit that the contract between [*redacted*] and [*redacted*] was a contract with legal effect capable of surviving notwithstanding [*redacted*] minority. The Appellants referred to a passage from Chitty on Contract (Thirty-Third Edition) which states (at paragraph 9-051):

"***Ratification after full age*** *At common law, the general rule in this class of contract is that if, on attaining his majority, a minor ratifies a contract made by him during his*

minority, it will bind him although there may be no consideration for the new promise….Ratification after reaching majority may be express or implied from the former minor's conduct."

The class of contract being referred to above is a contract unenforceable against a minor unless ratified. The relevant section starts '*The largest class of minor's contracts are enforceable by the minor but are not binding upon him unless he expressly ratifies them upon coming of age*.'

[**44**] The Appellants submit that the 'next friend' is merely a conduit for a plaintiff while the plaintiff is a minor. In this regard, the Appellants referred to Order 15 Rule 16 and Rule 20 of the Rules of the Superior Courts which provides:

"*16. An may sue as plaintiff by his next friend in the manner heretofore in use, and may, in like manner, defend by his guardian appointed for that purpose. On the infant's attaining full age, the next friend or guardian may apply on affidavit to the Registrar in the Central Office for a certificate that the plaintiff or defendant lately an infant may proceed or defend in his own name*.

20. Before the name of any person shall be used in any cause or matter as next friend of any infant or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the proper office."

[**45**] The Appellants referred to a passage from Halsbury's Laws of England which states (at page 317):

"***667. Standing of next friend****. The next friend is an officer of the court appointed to look after the interests of the infant and has the conduct of the proceedings in his hands; but he is not actually a party to the proceedings and is not, as next friend, entitled to appear in them in person*."

The Appellants submit that this position on the standing of a next friend is not exclusive to Ireland and is a common law rule applying in other jurisdictions. The Appellants referred to judgments in the United States of America including a passage from the Court of Appeals of Tennessee (Nashville) in ***In re Estate of March -v- Levine*** (17 March 1999):

"*A 'next friend' is, in a sense, a volunteer who asserts a claim on behalf of a person under a legal disability… A next friend is someone who is capable of protecting the interests of the person under the legal disability, who will be liable for the costs, and against whom the court can make and enforce its orders… While a next friend is not a party to the action,… the role a next friend plays resembles that of a guardian…*"

The Appellants submit that the above demonstrates that while the nominal legal obligation may rest with the next friend ([*redacted*]), as a contractual convenience, the beneficial interest in the contract and the payment for the release of the legal file rests with [*redacted*].

[**46**] The Appellants submit that the court action in the High Court which was commenced on [*redacted*] further demonstrates that [*redacted*] was the 'plaintiff' in the court action. The Appellants referred to the wording in the Order of [*redacted*] on [*redacted*] wherein the 'minor plaintiff' is specifically referenced. The Appellants submit that any award of damages from the court action belonged to [*redacted*]. Therefore, it was for the minor plaintiff that the payment of costs was made by the Appellants on 4 February 2011. The Appellants were not making the payment of costs on their own account or for their own benefit. The Appellants did not commence the court action for their benefit and any award of damages from the court action would not be for their benefit. The Appellants made certain decisions because [*redacted*] lacked legal capacity, however, this did not mean that [*redacted*] did not have an interest or right deriving from the payment for the release of the legal file for an intended court action which would be issued in his name. The transfer of the legal file from [*redacted*] to [*redacted*] was a decision made by the Appellants in the best interests of [*redacted*].

[**47**] In support of the submission that the next friend has no interest in any award of damages from a court action, and, therefore, it follows the next friend has no interest in the payment of costs which support that action, the Appellants referred to a passage from Chitty on Contract (Thirty-Third Edition) which states (at paragraph 9-049):

"*And a minor can maintain an action for money had and received against an attorney for damages recovered by his next friend in an action brought on his behalf*."

[**48**] The Appellants submit that, contrary to the submission on behalf of the Revenue Commissioners, [*redacted*] did not incur a liability of €11,346.22 to [*redacted*] in her capacity as 'next friend' because at the time of the payment on 4 February 2011 the court action in the High Court had not been commenced, therefore [*redacted*] was not a 'next friend'. It was [*redacted*] who was responsible for the costs incurred by [*redacted*]. It was the legal file of [*redacted*] under which the liability for costs arose in February 2011. In any event, the Appellants submit that the liability of a next friend for costs only has application where costs are awarded against a next friend within the confines of the court action. This principle can be seen from the judgment of Lavery J. in ***Richard McHugh (an infant suing by his Father and Next Friend) Christopher McHugh -v- Phoenix Laundry Limited*** [1966] IR 60 wherein, having cited various authorities, he concludes that '*an infant plaintiff, suing by his next friend, as he must do, is not liable to the defendant for costs. If costs are given they must be given against the next friend*.' The Appellants submit that simply because a minor plaintiff is not liable to a successful defendant for costs does not have a bearing on a minor plaintiff bearing responsibility for his/her own costs.

[**49**] In construing 'beneficially entitled in possession' in section 5 the Appellants referred to ***Pearson -v- Inland Revenue Commissioners*** [1981] AC 753 wherein Viscount Dilhorne stated (at page 772):

"*In the light of these statements, it appears that in the 19th century the words 'an interest in possession' would have been interpreted as ordinarily meaning the possession of a right to the present enjoyment of something. The appellants in their case contend that: '... a beneficiary only has an interest in possession if his interest enables him to claim the whole or an ascertainable part of the net income, if any, of the property at the moment at which it is in the hands of the trustees'. The respondents in their case contend that 'the phrase 'interest in possession' simply denotes an interest which is not in reversion – a present right of present enjoyment'.*

So the parties agree that for there to be an interest in possession, there must be a present right to the present enjoyment of something, the revenue contending that it must be to the enjoyment of the whole or part of the net income of the settled property. It is not the case – and in argument the respondents did not contend that it was – that if it is established that the interest is not in remainder or reversion or contingent, it must be concluded that it is in possession. In the present case Fox J. [1980] Ch. 1, 8H, held that 'There must be a present right of present enjoyment'. This was endorsed by Buckley L.J. in the Court of Appeal at pp. 23F and 26F.

We were referred to a considerable number of statutes in which the expression 'interest in possession' is to be found. I did not find them of any assistance in relation to the meaning to be given to that phrase in the Finance Act 1975. It suffices to say that I saw nothing in them to indicate or suggest, and I see nothing in the Act itself to suggest, that the phrase should be given any other meaning than that of a present right of present enjoyment. In my opinion that is its meaning in the Finance Act 1975."

[**50**] The Appellants also referred to ***Gartside -v- Inland Revenue Commissioners*** [1968] 1 All ER 121 wherein Lord Reid stated (at page 128):

"*To have an interest in possession does not merely mean that you possess the interest. You also possess an interest in expectancy for you may be able to assign it and you can rely on*

it to prevent the trustees from dissipating the trust fund. 'In possession' must mean that your interest enables you to claim now whatever may be the subject of the interest."

[**51**] The Appellants submit that at all material times [*redacted*] was beneficially entitled in possession to the benefit gifted by the Appellants, being the payment of costs to [*redacted*] to release the legal file of [*redacted*], for the sole purpose of progressing the court action in which [*redacted*] would be the minor plaintiff and from which any award of damages would belong to [*redacted*]. The beneficial interest in the legal file and the court action rested with [*redacted*] on the payment of the costs on 4 February 2011. Consequently, the payment of €11,346.22 by the Appellants to [*redacted*] was a gift from the Appellants to [*redacted*] within the meaning of section 5, in that, in consequence of the payment of money [*redacted*] became beneficially entitled in possession to a benefit.

Section 82

[**52**] The Appellants submit that to come within section 82 it must be established that the payment of €11,346.22 by the Appellants to [*redacted*] was for support or maintenance (education not being relevant in this appeal) and (i) would be part of the normal expenditure of a person in the circumstances of the Appellants, and (ii) is reasonable having regard to the financial circumstances of the Appellants. If the requirements in section 82 are not satisfied, the payment of €11,346.22 is a gift within the meaning of section 5 and consequently a non-exempt gift for the purposes of section 79, meaning the inheritance taken by the Appellants from [*redacted*] is exempt from tax.

[**53**] The Appellants submit that the first question is whether the payment of €11,346.22 to [*redacted*] was a payment for the support or maintenance of [*redacted*]. This question is considered from the perspective of [*redacted*] and the circumstances pertaining to [*redacted*] in February 2011. As regards the meaning of 'support', the Appellants referred to the Oxford English Dictionary definition of 'support' as giving financial assistance and the Legal Dictionary by Farlex as '*all sources of living that enable a person to live in a*

degree of comfort suitable and befitting her station in life. Support encompasses housing, food, clothing, health, nursing and medical needs, along with adequate recreation expenses.' As regards the meaning of 'maintenance', the Appellants referred to the Murdoch's Dictionary of Law definition of 'maintenance' as '*the supply of necessaries*' which in turn is defined as '*goods and services supplied that are suitable to the individuals reasonable living requirements*'. The Appellants submit that 'support' and 'maintenance' must be given their ordinary and natural meaning in accordance with the principles of interpretation applying to taxing statutes. The Appellants referred to Determination 14TACD2018, a determination of the Appeal Commissioners on whether payments received by an adult child from his parents constituted support or maintenance within the meaning of section 82, wherein it was stated:

"*60. I agree with the parties that the approach to statutory interpretation, when directed to the public at large, is as set out in Kiernan and requires that I apply the ordinary meaning to the words "support" and "maintenance".*

61. As such the general application of the word "support" as applied in a financial context, is to provide assistance. Similarly, the statutory use of the word "maintenance" within section 82(2) of the CATCA 2003 connotes ongoing financial support. As such, both words involve some element of a requirement or need for upkeep. A payment received to "support" a person implies a need or requirement to meet living expenses or a similar expense. Correspondingly use of the word "maintenance" denotes a series of payments made for the purpose of upkeep or to meet living expenses. This interpretation gives the words their normal and natural meaning, and reflects the plain intention of the legislature.

...

66. The only interpretation capable of meeting those propositions is that a "support" payment is a payment received to meet living expenses or other necessities, and that a "maintenance" payment is a periodic payment to meet those requirements…"

The Appellants submit that a once-off payment of costs demanded by [*redacted*] could not be considered 'support' or 'maintenance' within the ordinary and natural meaning of those words.

[**54**] The Appellants submit that the second question, having regard to section 82(2)(i), is whether the provision of such support or maintenance '*is such as would be part of the normal expenditure of a person in the circumstances of the disponer*'. This question is considered from the perspective of the Appellants. As regards the meaning of 'normal expenditure', the Appellants referred to ***A-G for Northern Ireland -v- Heron*** [1959] TR 1, a decision of the Court of Appeal in Northern Ireland, wherein the court had to construe section 59(2) of the Finance (1909-10) Act, 1910 which exempted from estate duty gifts made by the deceased before his death which were both part of the normal expenditure of the deceased and were reasonable. The court stated:

"*To my mind the adjective in the subsection is used in a qualitative not quantitative sense. The adjective, therefore, seems to refer to type or kind, and not to size… Here the word denotes conformity to a standard… So in the phrase 'normal expenditure' the adjective, without further qualification, appears certainly to refer to the type, and not the amount, of expenditure*."

[**55**] The Appellants referred to ***Bennett -v- Inland Revenue Commissioners*** [1995] STC 54 wherein, having referred to the Oxford English Dictionary definition of '*normal as 'constituting, conforming to, not deviating or differing from, the common type or standard; regular, usual*', and having quoted ***A-G for Northern Ireland -v- Heron*** [1959] TR 1, Lightman J. stated (at page 58-59):

"*In my view, in the context of s 21 of the 1984 Act, the term 'normal expenditure' connotes expenditure which at the time it took place accorded with the settled pattern of expenditure adopted by the transferor*.

The existence of the settled pattern may be established in two ways. First, an examination of the expenditure by the transferor over a period of time may throw into relief a pattern, e.g. a payment each year of 10% of all income to charity or members of the individual's family or a payment of a fixed sum or a sum rising with inflation as a pension to a former employee. Second, the individual may be shown to have assumed a commitment, or adopted a firm resolution, regarding his future expenditure and thereafter complied with it. The commitment may be legal (e.g. a deed of covenant), religious (e.g. a vow to give all earnings beyond the sum needed for subsistence to those in need) or moral (e.g. to support aged parents or invalid relatives). The commitment or resolution need have none of these characteristics, but none the less be likewise effective as establishing a pattern, e.g. to pay the annual premiums on a life assurance qualifying policy gifted to a third party or to give a predetermined part of his income to his children.

For an expenditure to be 'normal' there is no fixed minimum period during which the expenditure shall have occurred. All that is necessary is that on the totality of evidence the pattern of actual or intended regular payments shall have been established and that the item in question conforms with that pattern. If the prior commitment or resolution can be shown, a single payment implementing the commitment or resolution may be sufficient. On the other hand, if no such commitment or resolution can be shown, a series of payments may be required before the existence of the necessary pattern will emerge. The pattern need not be immutable; it must, however, be established that the pattern was intended to remain in place for more than a nominal period and indeed for a sufficient period (barring unforeseen circumstances) in order for any payment fairly to be regarded as a regular feature of the transferor's annual expenditure. Thus a 'death bed' resolution to make periodic payments 'for life' and a payment made in accordance with such a determination will not suffice.

The amount of the expenditure need not be fixed in amount nor need the individual recipient be the same. As regards quantum, it is sufficient that a formula or standard has been adopted by application of which the payment (which may be of a fluctuating amount) can

be quantified e g 10% of any earnings whatever they may be or the costs of a sick or elderly dependant's residence at a nursing home. As regards the payees, it is sufficient that their general character or the qualification for the benefit is established, e g members of the family or needy friends."

[**56**] The Appellants referred to ***McDowall (Executors of McDowall, Deceased) -v- Inland Revenue Commissioners*** [2004] STC (SCD) 22 wherein the Special Commissioners stated (at page 33-34):

"*This leaves s 21(1)(a). In Bennett, (which was concerned only with s 21(1)(a)), trustees were instructed by the life tenant under the trust to distribute the trust income equally among her three sons insofar as it was surplus to her financial requirements. Delays occurred in determining the surplus available for distribution which limited the distributions made before the life tenant's death. The trust income varied from year to year as did the amounts distributed to the sons. Lightman J, sitting in the Chancery Division of the High Court, observed that there was no authority on the meaning of s 21. He considered that 'normal expenditure' connotes expenditure which at the time it took place accorded with the settled pattern of expenditure adopted by the transferor'.*

...

Both parties accepted the guidance given by Lightman J in Bennett. In our view, the pattern of payment of small gifts at birthdays and Christmas is readily distinguishable from the larger payments of £12,000 and can provide no support for establishing a pattern of payment of larger sums; nor do we consider the deceased's habit of making gifts, including those disguised as loans, on sporadic occasions of need can help the appellants. However, we consider that the evidence is just sufficient to enable us to conclude that Mr McNeill, as attorney, made a commitment regarding future expenditure, namely to distribute a substantial part of the excess of WCM's income over the amount required for his maintenance (making due allowance for unforeseen circumstances) equally among WCM's five children. The payments of £12,000 of each of the five children in 1997 demonstrated that the commitment was being implemented, and we are satisfied from his evidence that,

but for WCM's death, Mr McNeill would have continued to make similar, even if much smaller, payments. The payments in issue were particularly substantial because of the build up of excess income in previous years. The intention to make regular payments, as described and explained by Lightman J, has thus been established. The settled pattern referred to by Lightman J has been established by the prior commitment."

[**57**] The Appellants referred to a passage from Bohan and McCarthy in Capital Acquisitions Tax (Fourth Edition) which states (at page 405):

"*In the estate duty legislation, the conditions were attached to the deceased (disponer) and, accordingly, what could be regarded as 'normal' in his circumstances might not be normal in the similar circumstances of another person but would still be granted exemption. The test was subjective. Now exemption is only granted if the support, maintenance or education would be normal for a person who would stand in the circumstances of the disponer. If the payments for support, maintenance or education would not be normal in that context, the exemption will not be given. The test has to an extent become objective rather than subjective.*

No definition is given for 'normal' or 'reasonable', but for the purposes of estate duty the following were taken to be their meaning in practice.

- *'Normal' was taken to mean typical or habitual. If it is given any other meaning, the second part of the requirement is superfluous.*
- *'Reasonable' was taken to mean with regard to the financial means of the disponer. For example, a payment of capital would never have been regarded as reasonable whereas a payment of a proportion of the disponer's income would be regarded as reasonable.*

Both of these 'definitions' were cited with approval in AG for Northern Ireland v Heron [1959] TR1: 38 ATC 3(CA).

The disponer's circumstances, the occasion, the magnitude of the payment, the value of the money's worth and the period over which the payment is made, are all taken into consideration in considering whether the exemption applies. If the benefit satisfies all requirements, the exemption will be given."

[**58**] The Appellants submit that it is clear from the above authorities that a pattern of expenditure or a prior commitment to a series of payments is required to come within the meaning of 'normal expenditure'. The Appellants submit that there was no intention to make regular payments, no pattern of expenditure and no commitment to future expenditure. The payment was a once-off payment of costs. The Appellants submit that the evidence shows that [*redacted*] wished to retain the file and the only way [*redacted*] would allow the file to be transferred was on the payment of €11,346.22. The Appellants submit that while health related expenditure for a child may be 'normal' and 'necessary' for any parent, disbursements connected to a court action, being a matter of choice, are not necessary in that context. The Appellants submit that supporting a child with once-off payment of costs of a potentially speculative court action is not 'necessary or essential' when compared to something health related. The Appellants submit that since an accident of the nature that happened to [*redacted*] would never be considered 'normal', any expenditure associated with the accident, such as costs, could not be normal or regular.

[**59**] Based on the foregoing, and applying the ordinary and natural meaning to the words, the Appellants submit that the payment of costs by the Appellants for [*redacted*] could not be normal living expenses or necessaries. The Appellants submit that a settled pattern of expenditure would be habitual, repetitive and an intrinsic part of the everyday financial costs associated with providing for a child such as housing, food, clothing, health and education. A once-off payment of costs could not be considered repetitive or habitual. The payment could not be regarded as establishing a settled pattern of expenditure. The Appellants submit that a once-off payment of costs does not meet the requirement in section 82(2)(i) of being part of the normal expenditure of the Appellants.

[**60**] The Appellants submit that the third question, having regard to section 82(2)(ii), is whether the provision of such support, maintenance or education '*is reasonable having regard to the financial circumstances of the disponer*'. This question is considered from the perspective of the Appellants. The Appellants submit that the time of making the gift is the relevant time. The Appellants referred to ***Allied Irish Banks Plc -v- Gannon and Fair*** [2017] IECA 291 wherein Hogan J. remarked on the words 'having regard to all the circumstances' in section 11(2)(a) of the Courts of Justice Act, 1936 on the remittance or transfer of an action between the High Court and Circuit Court (at paragraph 22):

"*Section 11(2)(a) of the 1936 Act admittedly tempers the earlier provisions by providing that an action shall not be transferred if the High Court is satisfied that 'having regard to all the circumstances' it was reasonable that such proceedings were commenced in that court. In Stokes v Milford Co-Operative Creamery Ltd (1956) ILTR 67 Dixon J. stated that the sub-section meant that where there were some specific circumstances by reason of which the action should have been in the High Court, it should not be remitted: see Delany, The Courts Acts (Dublin, 2000) at 120.*"

The Appellants submit that the specific circumstance in section 82(2)(ii) is the financial circumstances of the Appellants at the time of making the gift. The Appellants submit that the evidence demonstrates that the Appellants had limited financial means at the time of the payment of €11,346.22 to [*redacted*] and the payment constituted very significant expenditure from limited resources. Consequently, the payment could not be 'reasonable' having regard to the financial circumstances of the Appellants.

[**61**] The Appellants submit that the requirements in section 82 are not satisfied. The payment of €11,346.22 by the Appellants to [*redacted*] is a gift within the meaning of section 5. The requirements in section 79 are satisfied, in that the payment of €11,346.22 by the Appellants to [*redacted*] is a non-exempt gift taken by [*redacted*] from his parents. Consequently, the inheritance taken by the Appellants from [*redacted*] is exempt from tax.

Submissions on behalf of the Revenue Commissioners

[**62**] The submissions on behalf of the Revenue Commissioners were presented by Senior Counsel and Junior Counsel.

Section 5

[**63**] The Revenue Commissioners submit that the key elements under section 5 are (i) what 'benefit' accrued to [*redacted*] or could have been taken by [*redacted*] by virtue of the payment of €11,346.22 by the Appellants to [*redacted*] and (ii) was there a benefit to which [*redacted*] became 'beneficially entitled in possession' on the payment of €11,346.22 by the Appellants to [*redacted*]. The Revenue Commissioners submit that the payment of €11,346.22 was not a gift within the meaning of section 5 as [*redacted*] did not become beneficially entitled in possession to a benefit. The payment of €11,346.22 by the Appellants to [*redacted*] was the payment of costs incurred by the Appellants in retaining the legal services of [*redacted*]. The fact that the Appellants retained the legal services to pursue a court action on behalf of [*redacted*] does not alter the position that it was the Appellants who incurred the costs and were responsible for discharging those costs. The payment of €11,346.22 was not a gift from the Appellants to [*redacted*].

[**64**] The Revenue Commissioners referred to ***Almack -v- Moore*** [1878] Law Reports (Ireland) (II) 90 wherein Palles C.B. stated (at page 93):

"*An infant cannot appoint an attorney, and a suit by him must be prosecuted by guardian or next friend allowed by the Court. The attorney in such a suit is, therefore, necessarily the attorney not of the infant, but of the next friend, and without the authority of such next friend a rule to change the attorney cannot be regularly entered*."

[**65**] The Revenue Commissioners referred to ***White -v- Steele*** [1894] Scottish Law Reporter (XXXI) 542 which concerned an unsuccessful court action brought by a father on

behalf of an infant and whether the father was personally liable for the costs of the action. It was stated (at page 544):

"*I understand the ratio of the modern rule which makes costs in the general case follow the event is, that the rights of parties are to be taken to have been all along such as the ultimate decree declares them to be; and that, as Lord Jeffrey said in Kirkpatrick v Irvine, 10 D. 367 – 'If any party is put to expenses in vindicating his rights he is entitled to recover it from the person by whom it is created.' Now, the person who has caused the expense to the present defenders is William White; for it is he, and not the pupil or the pupil's estate, who has raised and followed forth this action. The fact that he has done so in the interests of another is not, in my opinion, a matter which affects his liability to third parties. A father who thinks that his child has been wronged may come into Court or he may not; neither his opponent nor anyone else can restrain him from doing so on the ground that the child has no money. If, as is the case here, he litigates and is found to be wrong, it makes no difference to his opponent that the costs have been incurred in an action in which the non-existent claim was ascribed to a child*."

[**66**] The Revenue Commissioners referred to ***Richard McHugh (an infant suing by his Father and Next Friend) Christopher McHugh -v- Phoenix Laundry Limited*** [1966] IR 60 wherein Lavery J. in the Supreme Court cited various authorities addressing the question of costs in a court action brought by an infant suing by his next friend including (at page 64-65):

"*The case of Newtown v London, Brighton and South Coast Railway Co states that the prochein amy of an infant plaintiff is non-suited, is liable for the costs of the action, and attachment lies against him for not paying them when demanded. Patterson J, at p 331, stated that 'with respect to the question of the liability of an infant plaintiff who sues by his next friend, and against whom a verdict has passed for the costs of the action, the cases cited only show that where he has been taken in execution for them, the Courts have declined to interfere to discharge him, saying they left him to his writ of error; but it has*

never been held that he, and not the prochein amy, was the party liable for them. On the contrary, those cases tend to show that he ought not to have been the party proceeded against, but that the prochein amy was the party liable. I find it laid down as a rule in all the books of practice, that the remedy for the recovery of costs is against the prochein amy, and not against the infant, and that the mode of proceeding is by attachment. Therefore, whether the infant is liable or not, it seems abundantly clear that the prochein amy is. What is the meaning of admitting an infant to conduct the suit by prochein amy, unless the prochein amy places himself in the character of a plaintiff, and so becomes liable as a plaintiff to be amerced in costs if he fails in the suit?

In Almack v Moore it is stated that the attorney acting for an infant plaintiff, suing by his next friend, is the attorney of the next friend, and a rule to change him cannot be entered without the authority of the next friend. Palles CB at p 93 said – 'An infant cannot appoint at attorney, and a suit by him must be prosecuted by guardian or next friend allowed by the Court. The attorney in such a suit is, therefore, necessarily the attorney not of the infant, but of the next friend, and without authority of such next friend a rule to change the attorney cannot be regularly entered."

Lavery J. concluded (at page 67):

"*The conclusion I reach is that an infant plaintiff, suing by his next friend, as he must do, is not liable to the defendant for costs. If costs are given they must be given against the next friend. The next friend may be given an indemnity out of the estate of the infant and is indeed prima facie entitled to such indemnity, but this is not a matter inter partes in the action.*

The position of an infant defendant appearing by a guardian ad litem is different and does not arise now for consideration. The distinction can be understood. An infant does not invoke the jurisdiction and the responsibility for doing so is the next friend's, who is at all stages of the proceedings dominus litis, though subject to the control of the Court."

[**67**] The decision in *McHugh* was followed in ***Mary Sheridan (an infant suing by her Father and Next Friend) Owen Sheridan -v- Eugene L McCartan*** [1968] IR 7 wherein the Supreme Court held that the costs awarded to the defendant in a court action brought by an infant suing by his next friend was ordered to be paid by the next friend. Ó'Dalaigh C.J. referred to the judgment of Lavery J. which had shown that it was an established proposition, as long ago as the year 1584, that a minor plaintiff is not liable to pay costs.

[**68**] The Revenue Commissioners submit that '*dominus litis*' is a Latin term which refers to the person in control of the suit, meaning the person who makes the decisions, who decides whether the suit proceeds or not, and ultimately who decides whether or not to compromise the suit. The jurisprudence confirms that the next friend is the person who engages the attorney and that the attorney acts for the next friend. The court action may be in the interests of the minor plaintiff, however, during the litigation process the attorney, and by inference the attorney's file, and the various steps taken by the attorney, are the property of the next friend. The next friend must bear the consequences of the costs of an unsuccessful court action because the next friend controls the suit as *dominus litis*. Even if the Appellants were not the next friend until the court action commenced in [*redacted*], the relationship between the Appellants and the solicitor was not radically different prior to the commencement of the court action.

[**69**] The Revenue Commissioners submits that the Appellants were the client in the 'solicitor and client' relationship with [*redacted*]. The Revenue Commissioners submit that the evidence shows that it was the Appellants that consulted a number of solicitors, retained the solicitors, gave instructions, secured authorisation from the Personal Injuries Assessment Board and decided to dispense with the various solicitors in order to progress the intended court action. There was no evidence of a retainer between [*redacted*] and [*redacted*]. The demand for payment was made by [*redacted*] to the Appellants, and not [*redacted*]. The evidence shows that it was the preference of the Appellants to have [*redacted*] as the solicitor. It was the Appellants who decided that [*redacted*] was their

solicitor of choice, which gave rise to the transfer of the legal file from [*redacted*] to [*redacted*]. It was not that the intended court action would not proceed if the legal file remained with [*redacted*]. The Revenue Commissioners submit that the legal file was the file of the Appellants, one of whom ultimately became the next friend. The litigation process belonged to the *dominus litis*, namely the Appellants.

[**70**] Section 2 defines 'benefit' as '*includes any estate, interest, income or right*'. The Revenue Commissioners submit that the definition of benefit is not confined to 'estate, interest, income or right', however, it should be of a similar kind. A person could derive a benefit from a payment made by one person to a third party even though the person who derived the benefit was not involved in the transaction. However, the benefit must be similar in kind to an 'estate, interest, income, or right' and which the person becomes beneficially entitled in possession. The Revenue Commissioners submit that the payment of €11,346.22 by the Appellants to [*redacted*] may have conferred an ephemeral advantage or contingent advantage on [*redacted*] to have continuing legal representation to progress a court action, which may or may not succeed. However, this does not constitute a benefit within the meaning of section 5 and which [*redacted*] became beneficially entitled in possession on 4 February 2011. Consequently, [*redacted*] did not become beneficially entitled to any benefit on the payment of €11,346.22 by the Appellants to [*redacted*].

Section 82

[**71**] The Revenue Commissioners submit that the matter under consideration in this appeal is whether the payment of €11,346.22 by the Appellants to [*redacted*] constituted 'support' within the meaning of section 82(2), as the Revenue Commissioners do not consider the payment was for maintenance or education. The words 'support' and 'maintenance' are not defined and must be given their ordinary and natural meaning. The following submissions made by the Revenue Commissioners in Determination 14TACD2018 were referred to:

"*47. It was therefore submitted that the ordinary meaning of "support" and "maintenance", involves some element of a requirement or need for upkeep. A payment received by a donee for "support" implied that the donee needed or required the payment to meet living expenses or a similar expense. A payment received for "maintenance" implied that it was part of a series of payments made for the purpose of upkeep or to meet living expenses. Both words, in their ordinary sense, and in the context of the 2003 Act, implied that the payment was made to help the donee meet living expenses, or meet a challenge or expense that had arisen; both words therefore implied an element of need. This interpretation gave the words their normal and natural meaning, and reflected the plain intention of the legislature*."

The Revenue Commissioners referred to dictionary definitions of 'support' and 'maintenance' to demonstrate the ordinary and natural meaning of the words. 'Support' is defined as '*give assistance to, especially financially*' (Oxford English Dictionary) and '*if you support someone, you provide them with money or the things that they need*' (Collins English Dictionary). 'Maintenance' is defined as '*the provision of financial support for a person's living expenses or the support so provided*' (Oxford English Dictionary) and '*money that someone gives regularly to another person to pay for the things that the person needs*' (Collins English Dictionary).

The Revenue Commissioners submit that 'support' has a wider meaning than 'maintenance'. Maintenance was directed more towards periodic payments to sustain a person's daily living needs or requirements. The Revenue Commissioners submit that if the payment of €11,346.22 by the Appellants to [*redacted*] is determined to be a gift, then, it follows, that the payment must constitute support of [*redacted*] by his parents. The Appellants gave evidence that the challenge being faced was securing a successful court action for [*redacted*] and the payment had to be made by the Appellants to meet that challenge.

[**72**] As regards section 82(2)(i), the Revenue Commissioners submit that in considering whether the payment was normal expenditure having regard to the circumstances of the Appellants, the circumstances were that the Appellants had embarked on litigation. This was the context in which to consider whether the payment of €11,346.22 by the Appellants to [*redacted*] was normal expenditure or not. The Revenue Commissioners referred to the judgment in ***Bennett -v- Inland Revenue Commissioners*** [1995] STC 54 and the second way of establishing the existence of a settled pattern given by Lightman J. (at page 58):

"*Second, the individual may be shown to have assumed a commitment, or adopted a firm resolution, regarding his future expenditure and thereafter complied with it. The commitment may be legal (e.g. a deed of covenant), religious (e.g. a vow to give all earnings beyond the sum needed for subsistence to those in need) or moral (e.g. to support aged parents or invalid relatives).*"

The Revenue Commissioners submit that the evidence shows that the Appellants had assumed a commitment and persisted throughout to pursue a court action for [*redacted*] even though they were rebuffed by the first firm of solicitors, were disappointed with the second firm of solicitors and then moved from one firm of solicitors to another firm of solicitors. This was the context in which the payment of €11,346.22 was made by the Appellants to [*redacted*]. The payment was required by [*redacted*] and made by the Appellants without hesitation given the commitment of the Appellants to pursue a court action for [*redacted*]. The Revenue Commissioners submit that the payment of €11,346.22 by the Appellants to [*redacted*] was normal expenditure in these circumstances.

[**73**] As regards section 82(2)(ii), the Revenue Commissioners submit that in considering whether the payment was reasonable having regard to the financial circumstances of the Appellants, it is the quality rather than the quantity of the payment that is considered. The financial circumstances of the Appellants were revealed in greater clarity during the cross-examination of [*redacted*] when the complete bank statement for the National Irish Bank account was produced. The Revenue Commissioners submit that the financial

circumstances of the Appellants can be gleaned from the National Irish Bank account notwithstanding the statements from the Appellants on their overall indebtedness. The Revenue Commissioners submit that the payment of €11,346.22 on 4 February 2011 from a balance of €547,495.45, rather than the previously stated balance of €117,645.45, shows that the payment was reasonable as the payment was a small proportion of the balance. The Revenue Commissioners submit that the evidence of [*redacted*] was that he had to sign over ownership of the National Irish Bank account to the receiver as part of a settlement with Bank of Ireland, however, this position arose following dealings with the receiver who was appointed in [*redacted*]. In February 2011, the Appellants did not know that the position over this bank account may change in the future. The Revenue Commissioners submit that the evidence of the Appellants was that the demand for payment from [*redacted*] was unexpected, however, the payment of €11,346.22 was made by the Appellants without hesitation and without question because the Appellants had €547,495.45 available to them. Furthermore, the complete bank statement shows payments between 1 and 2 February 2011 of €12,380 and payments on 8 February 2011 of €9,264. Therefore, the payment of €11,346.22 on 4 February 2011 does not stand out as a conspicuous amount that would be considered unreasonable having regard to the transactions on the account at the time. The Revenue Commissioners submit that the payment of €11,346.22 was reasonable having regard to the financial circumstances of the Appellants.

[**74**] The Revenue Commissioners submit that the payment of €11,346.22 by the Appellants to [*redacted*] was for support of [*redacted*], was part of the normal expenditure of a person in the circumstances of the Appellants and was reasonable having regard to the financial circumstances of the Appellants. The Revenue Commissioners submit that the payment of €11,346.22 comes within section 82, therefore, the payment is not a gift.

Analysis and Findings

[**75**] The parties agree that the burden of proof rests on the Appellants to prove, on the balance of probabilities, that the capital acquisitions tax is not payable. The parties agree that the principles of interpretation applying are words to be given their ordinary and natural meaning.

[**76**] The legislative sequence in this appeal may be summarised as – inheritance tax of €1,114,750 is charged on the Appellants on the inheritance taken by the Appellants from [*redacted*] (section 9). The Appellants claim that the inheritance of €4,215,836 is exempt from inheritance tax because [*redacted*] took a non-exempt gift from the Appellants within the period of five years immediately prior to his death (section 79). The Appellants submit that a payment of €11,346.22 by the Appellants to [*redacted*] on 4 February 2011 was a gift from the Appellants to [*redacted*] (section 5). The Appellants submit that the payment of €11,346.22 by the Appellants to [*redacted*] was not the provision of support to [*redacted*] (section 82).

[**77**] As the Appellants are seeking to avail of an exemption from tax, the principle enunciated by the Supreme Court in ***Revenue Commissioners -v- Doorley*** [1933] IR 50 must be considered. It was stated by Kennedy C.J.:

"*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*."

The Appellants must prove that [*redacted*] took a non-exempt gift from the Appellants within the period of five years immediately prior to his death to avail of the exemption from inheritance tax under section 79.

[**78**] Section 2 defines a gift as '*a gift which a person is by this Act deemed to take*'. Section 2 defines the date of the gift as '*the date of the happening of the event on which the donee, or any person in right of the donee or on that donee's behalf, becomes beneficially entitled in possession to the benefit, and a reference to the time when a gift is taken is construed as a reference to the date of the gift*'. Section 5 provides that a person is deemed to take a gift, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit otherwise than for full consideration in money or money's worth paid by the person. If the definitions in section 2 are inserted in section 5 the section may read:

A person ([*redacted*]) is deemed to take a gift, where, under or in consequence of any disposition (*includes the payment of money*), a person ([*redacted*]) becomes beneficially entitled in possession (*having a present right to the enjoyment of property (includes rights and interests of any description) as opposed to having a future such right*), otherwise than on a death, to any benefit (*includes any estate, interest, income or right*) otherwise than for full consideration in money or money's worth paid by the person ([*redacted*]).

[**79**] The matter under consideration as being the non-exempt gift to [*redacted*] is a payment of €11,346.22 by the Appellants to [*redacted*] on 4 February 2011. The payment was made from a National Irish Bank account in the sole name of [*redacted*], however, the appeal proceeded on the basis that the payment was to be considered a gift to [*redacted*] from the Appellants.

[**80**] The submissions made by the parties on the status of the payment of €11,346.22 by the Appellants to [*redacted*] were framed by opposing positions on the person who was the client in the 'solicitor and client' relationship with [*redacted*] – the Appellants submit the

client is [*redacted*]; the Revenue Commissioners submit the client is the Appellants. The submissions were interwoven with an examination of the standing of a next friend and how this may have a bearing on the status of the payment of €11,346.22.

[**81**] A solicitor and client relationship exists where a person instructs a solicitor to provide legal services. The client enters into a contract for legal services with the solicitor. The solicitor is required to provide the client with information on the charges the client will incur in providing the legal services to the client. Section 68 of the Solicitors (Amendment) Act, 1994 provides:

"*(1) On the taking of instructions to provide legal services to a client, or as soon as is practicable thereafter, a solicitor shall provide the client with particulars in writing of—*

(a) the actual charges, or

(b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or

(c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made,

by that solicitor or his firm for the provision of such legal services and, where those legal services involve contentious business, with particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the charges which will be made by the solicitor of that client for those services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties)."

Charges include fees, outlays, disbursement and expenses. Section 68 was repealed and replaced by section 150 of the Legal Services Regulation Act, 2015, however, section 150 was only commenced on 7 October 2019. This legislation applies to all matters, both contentious and non-contentious. The Law Society of Ireland recommends that when a solicitor accepts instructions, the solicitor should also provide the client with terms and conditions of business.

[**82**] Contingency fee arrangements (referred to as 'no foal no fee' arrangements) are often used in personal injury litigation. This means that a solicitor will take instructions from the client to provide legal services on the understanding that if the litigation is unsuccessful, the solicitor will not charge a fee for their services. There is a difference between 'solicitor and client costs' and 'party and party costs', namely, solicitor and client costs are costs that a solicitor claims from his own client; party and party costs are costs which may be recovered by one party to the court action from another party. A client may change his solicitor whenever he/she wishes to do so, however, if the client decides to terminate the relationship with the solicitor, meaning the solicitor will no longer be representing the client in the litigation process, the contingency fee arrangement is also terminated and the solicitor is entitled to payment for work done to the date of termination. Following a termination, a solicitor has a professional duty to prepare a bill of costs as soon as reasonably possible. At common law, a solicitor may exercise a lien over the file of a client and refuse to return the file to a client where there are costs due to the solicitor from the client. A lien confers on the solicitor a right of retention of the property of the client until payment of the costs. The lien extends to any files, documents or other papers which came into the possession of the solicitor in the course of his/her engagement and in his/her capacity as solicitor. The lien crystallises on the termination of the instructions from the client. If a solicitor is asserting a lien, the solicitor accepts that he/she does not own the property over which the lien is exercised and therefore, on payment of the costs, the files, documents or other papers belong to the client.

[**83**] The Revenue Commissioners referred to ***Almack -v- Moore*** [1878] Law Reports (Ireland) (II) 90 to support the submission that it was the Appellants who engaged [*redacted*] and that [*redacted*] acted for the Appellants. The judgment of ***Almack -v- Moore*** [1878] 2 LR Ir 90 was referred to in the recent judgment of Ms. Justice Baker in ***A O'D -v- O'Leary and Others*** [2016] IEHC 555. These judicial review proceedings concerned whether a guardian *ad litem* appointed to represent the interests of a child in proceedings under the Child Care Act, 1991 was entitled to instruct a solicitor (and counsel) to act as an advocate for the guardian *ad litem* in the care proceedings and whether the guardian *ad litem* was to be construed as a party to the care proceedings. While the judgment centres on section 25 and section 26 of the Child Care Act, 1991, the analysis of Baker J. on the interpretation of those sections refers to general principles relating to minors. In broad terms, section 25 of the Child Care Act, 1991 provides that a child may become a party to care proceedings and that a court may appoint a solicitor to represent a child in those proceedings. Section 26 of the Child Care Act, 1991 provides for the appointment of a guardian *ad litem* if in the care proceedings the child to whom the proceedings relate is not a party. If a child becomes a party to care proceedings, the order appointing a guardian *ad litem* ceases to have effect. The processes by which the child engages with the care proceedings either under section 25 (party) or section 26 (guardian *ad litem*) are mutually exclusive. In relation to section 25, Baker J. stated:

"*42. Section 25(1) contains a procedural exception to the general rule that a child has litigation disability and may not be a party to proceedings his or her own right without the intervention of a person with a representative role, and a child may be joined to proceedings under the Act of 1991 without the intervention of the next friend.*

43. The child lacks legal capacity even if it is appointed a party to care proceedings, and may not lawfully incur a liability to pay costs, or enter into a contract to retain a solicitor. Section 25(2) does not provide that the child himself or herself may appoint a solicitor, and the sub-section does not remove the contractual disability of the child. It is

logical therefore, for this reason that the court may appoint a solicitor because the child cannot do so due to the disability caused by its minority.

44. For that reason, I am not persuaded that the power of the court to appoint a solicitor for a child who is a party to care proceedings must mean the guardian cannot engage a solicitor for the proceedings. The guardian may, and perhaps will be, appointed to a young child, who cannot for reasons of the understanding and age of that child be a party, or be afforded some of the rights of a party. The guardian will not suffer from the legal disability to which I refer, and has capacity to engage legal advice or representation."

Baker J. later concluded:

"*106. The power of the court to appoint a solicitor to represent the child in proceedings contained in s. 25 (2), is not found in s. 26. There is perhaps an obvious reason for this, and a guardian ad litem may make his or her own choice to appoint a solicitor or solicitor and counsel, whereas in the case of a child under the age of majority there are legal difficulties, not least of which would be the fact that a minor could not be legally responsible for the task of employing a solicitor, that might make it necessary for the Oireachtas to give the power to the court, rather than to the child, to decide whether legal representation is necessary.*

107. The legislation enables legal representation in a suitable case, in one case where the court, making the decision on behalf of a child who is a party, determines that legal representation is desirable, and in the other case where the guardian ad litem, himself or herself, an adult charged with representing the interests of the child, may make that decision."

[**84**] As regards a guardian *ad litem*, Baker J. stated:

"*64. The term "guardian ad litem" is found in the District Court Rules, and is a person through whom a minor may defend proceedings. Order 7, rule 2 of the District Court Rules 2014; S.I. No. 17 of 2014 provides that:*

> *"A minor may sue by his or her next friend, and may defend any proceedings by his or her guardian ad litem."*

65. The guardian ad litem represents the child in those proceedings.

66. The guardian ad litem may elect to have legal representation, and in Almack v. Moore [1878] 2 LR Ir 90, Palles C.B. having identified that the role of a next friend was similar to that of a guardian ad litem said as follows:

> *"...Until the court has actually determined that the infant is of age, the next friend is the dominus litis. That as such he is entitled to set aside a rule obtained, as the present has been by attorneys professedly, but without authority, acting for him, is too clear for argument".*

67. The person as dominus litis is a person to whom a suit belongs, the master or owner of a suit, the person with an interest in the decision of a case. In Murdoch's Irish Legal Companion (2016 ed.), he is defined as being "the person who is in charge of the suit and who has a direct interest in its outcome"."

[**85**] The next friend is the *dominus litis*, working to protect the interests of the minor in the court action, however, there are safeguards in place to ensure that the Court has the ultimate oversight. For example, section 3 of the Solicitors (Practice, Conduct and Discipline) Regulations 1990 (S.I. No. 99 of 1990) provides "*A solicitor instructed to make a personal injuries claim on behalf of a person who is not of full age shall not settle that person's claim without first issuing proceedings in the appropriate court and having the terms of such settlement approved by that court*." Order 22 Rule 10(1) of the Rules of the

Superior Courts provides "*In any cause or matter in which money or damages is or are claimed by or on behalf of an infant or a person of unsound mind suing either alone or in conjunction with other parties, no settlement or compromise or payment or acceptance of money paid into Court, either before or at or after trial, shall, as regards the claims of any such infant or person of unsound mind, be valid without the approval of the Court*." It is uncontroversial that any award of damages from a successful court action would belong to the minor and not the next friend. It is also uncontroversial that the costs of an unsuccessful court action would be borne by the next friend and not the minor. While the jurisprudence deals with the costs associated with an unsuccessful court action, which would generally be classified as the 'party and party costs', the arrangements regarding the 'solicitor and client costs' of an unsuccessful court action would have been negotiated between the solicitor and client when entering into the contract for legal services. In my view, the responsibility of the next friend for 'party and party costs' of an unsuccessful court action is indicative of the responsibility the next friend bears to the costs incurred in the litigation process.

[**86**] While the foregoing refers to the next friend, in my view, the standing of the person who embarks on litigation for a minor is not fundamentally divergent prior to being named a 'next friend', which may be illustrated when viewed in the context of the Personal Injuries Assessment Board. The Personal Injuries Assessment Board Act, 2003 defines 'claimant' as including a person who would be entitled to act as a next friend of a minor were a civil action to be pursued on behalf of the minor. The authorisation referred to in the Personal Injuries Summons dated [*redacted*] issued from the Personal Injuries Assessment Board on [*redacted*]. Therefore, a person who was entitled to act as the next friend of [*redacted*], presumably [*redacted*], was the claimant to the Personal Injuries Assessment Board. The Personal Injuries Assessment Board fee, which must have been incurred in or around [*redacted*] the authorisation was issued, was included in the Personal Injuries Summons issued in [*redacted*] and in the schedule prepared for this appeal as part of the costs paid to [*redacted*]. Therefore, the next friend included the fee incurred by the claimant in the

course of obtaining the authorisation from the Personal Injuries Assessment Board in the Personal Injuries Summons.

[**87**] Leaving aside that the Appellants were not the next friend in a court action when the payment of €11,346.22 was made to [*redacted*], I have considered whether [*redacted*] had the legal capacity to enter into a contractual relationship with [*redacted*]. The Appellants referred to extracts from Chapter 9 of Chitty on Contracts (Thirty Third Edition). At paragraph 9-006 it states:

"***Very young children*** *The cases at common law concerning the capacity of a minor to make contracts generally concern older children. However, it has been doubted whether a very young child has the mental capacity to enter a contract, even where the contract is of a type which would normally be held valid, though voidable at common law. In R. v Oldham Metropolitan BC Ex p. Garlick, Scott L.J. observed that:*

> *"If a minor is to enter into a contract with the limited efficacy that the law allows, the minor must at least be old enough to understand the nature of the transaction and, if the transaction involves obligations on the minor of a continuing nature, the nature of those obligations."*""

When [*redacted*] were instructed in [*redacted*], [*redacted*] was a very young child ([*redacted*] years of age). [*redacted*] had suffered catastrophic brain injuries in [*redacted*] and was going to be made a ward of court. Wardship is needed where a person lacks mental capacity to deal with his or her property. Therefore, the legal standing of [*redacted*] was a minor and a person who was going to be a ward of court. Based on the jurisprudence, and having regard to the facts pertaining to [*redacted*], in my view, [*redacted*] did not have the legal capacity to enter into a contractual relationship with [*redacted*].

[**88**] In all the circumstances, I am satisfied that the contract for legal services was between the Appellants and [*redacted*]. As the contract for legal services was between the

Appellants and [*redacted*], when the Appellants made the payment of €11,346.22 to [*redacted*] the legal file which belonged to the Appellants was returned to the Appellants. The payment of the costs by the Appellant to [*redacted*] allowed the Appellants to continue to pursue a course of action which they had embarked on when the legal services of [*redacted*] Solicitors and then [*redacted*] Solicitors were retained. This is the context in which to consider whether the payment of €11,346.22 by the Appellants to [*redacted*] was a gift from the Appellants to [*redacted*] within the meaning of section 5. In short, in consequence of the payment of money of €11,346.22 by the Appellants to [*redacted*] did [*redacted*] have a present right to the present enjoyment of property on 4 February 2011?

[**89**] In this appeal, the Appellants gave evidence that they understood the litigation was on a 'no foal no fee basis'. The Appellants did not recollect any communication from [*redacted*] Solicitors or [*redacted*] Solicitors providing them with information on the charges as required under section 68 of the Solicitors (Amendment) Act, 1994. No documents in the nature of a costs letter or a terms and condition of business letter from any solicitor instructed by the Appellants was produced. No bill of costs from [*redacted*] was produced. The Appellants did not recollect any communications from [*redacted*] in January 2011. The Appellants gave evidence that the contact from [*redacted*] was a telephone call from the managing partner demanding payment of €11,346.22. For the purposes of this appeal, an accountant for the Appellants prepared a schedule of the costs [document headed 'Breakdown of €11,346.22'] but there was no clarification on the source of the information used in preparing the schedule.

[**90**] It was the Appellants who instructed [*redacted*] on a contingency fee basis. The Appellants caused the costs to be incurred. The position of [*redacted*] was that before the payment of the costs the Appellants intended pursuing a court action by instructing [*redacted*] and after the payment of the costs the Appellant intended pursuing the court action by instructing [*redacted*]. The Appellants made the decision to change from [*redacted*] to [*redacted*]. The Appellants had a preference that a particular solicitor, [*redacted*], be instructed for the court action. The Appellants had a preference that a

particular counsel, [*redacted*] B.L., be engaged for the court action because he had represented [*redacted*] in the District Court prosecution, even though he was generally considered a criminal practitioner. The decision by the Appellants to change solicitor had the consequence of terminating the relationship with [*redacted*] and [*redacted*] were entitled to a payment of costs for work done. [*redacted*] were entitled to exercise a lien over the legal file if the costs remained unpaid. The Appellants could have been frustrated in their commitment to pursue a court action if the costs remained unpaid.

[**91**] The Appellants submit that [*redacted*] became beneficially entitled to legal representation from a solicitor, [*redacted*], which allowed an intended court action to continue. The benefit has been described as the release of the legal file of [*redacted*] which gave [*redacted*] the ability to proceed with an intended court action to seek an award of damages for the personal injury caused to him by the accident on [*redacted*]. The personal injuries were caused to [*redacted*], however, [*redacted*] could not bring a court action. [*redacted*], as a minor and a person who had suffered catastrophic brain injuries, did not have the legal capacity to enter into a contractual relationship with [*redacted*]. The contract for legal services was between the Appellants and [*redacted*]. The payment of €11,346.22 by the Appellants meant that the solicitors who had been retained by the Appellants released the legal file, which belonged to them. Undoubtedly the Appellants were acting in the interests of [*redacted*], however, in my view, this does not affect the position. In all the circumstances, I am not satisfied that the Appellants have discharged the burden of proving that [*redacted*] became beneficially entitled in possession to a benefit, within the meaning of section 5, in consequence of the payment of €11,346.22 by the Appellants to [*redacted*] on 4 February 2011.

[**92**] In these circumstances, the Notices of Amended Assessments dated 14 July 2017 stand and it is not necessary to deal with the submissions in relation to section 82. However, I will proceed to give my views on the merits of the submissions in relation to section 82.

[**93**] The first question to consider under section 82(2) is whether the payment of €11,346.22 by the Appellants to [*redacted*] was for 'support, maintenance or education'. The appeal proceeded as a consideration of whether the payment was for 'support' on the basis that 'maintenance or education' were not relevant. The Appellants referred to the definition of 'support' in the Oxford English Dictionary as giving financial assistance and to the Legal Dictionary by Farlex as '*all sources of living that enable a person to live in a degree of comfort suitable and befitting her station in life. Support encompasses housing, food, clothing, health, nursing and medical needs, along with adequate recreation expenses*.' The Appellants referred to Determination 14TACD2018 wherein the Appeal Commissioner concluded that 'support' was a payment received to meet living expenses or other necessities and implies a need or requirement for upkeep. The Revenue Commissioners referred to dictionary definitions of 'support' as '*give assistance to, especially financially*' (Oxford English Dictionary) and '*if you support someone, you provide them with money or the things that they need*' (Collins English Dictionary).

[**94**] The Appellants submit that 'support' is considered from the perspective of [*redacted*] and the circumstances pertaining to [*redacted*] in February 2011. The circumstances pertaining to [*redacted*] in February 2011 was that [*redacted*] was a very young minor child (not an adult child) who the Appellants, as parents, are obliged to maintain, a minor child who suffered catastrophic brain injuries and was going to be a ward of court, a minor child for whom his parents instructed solicitors to pursue a court action for which it was unknown whether the action would be successful - was the payment for support of [*redacted*] in those circumstances? If the Appellants are correct in the submission that [*redacted*] became entitled to legal representation from a solicitor, [*redacted*], to allow an intended court action to continue and would have the benefit of the release of the legal file giving [*redacted*] the ability to proceed with an intended court action to seek an award of damages for the personal injury caused to him by the accident on [*redacted*], then, in that context, the payment of €11,346.22 was for support of [*redacted*]. The thing that was needed was to release the legal file, which would happen on the payment of the costs to [*redacted*]. If, as submitted by the Appellants, '*it was absolutely essential*

that there was a continuance with the same solicitor [redacted] *and if another solicitor took up the case then the risk of an unsuccessful outcome would have increased*' then the Appellants gave support to [*redacted*] by making a payment of the costs to release a legal file over which [*redacted*] were exercising a lien as costs remained unpaid.

[**95**] The second question to consider under section 82(2) is whether the provision of the support '*is such as would be part of the normal expenditure of a person in the circumstances of the disponer*'. The words 'in the circumstances of the disponer' appear in section 82(2)(i) whereas the words 'the financial circumstances of the disponer' appear in section 82(2)(ii). Therefore, in construing 'in the circumstances of the disponer' in section 82(2)(i) the consideration is broader than 'the financial circumstances of the disponer'. As set out in ***A-G for Northern Ireland -v- Heron***, it is the type of expenditure, and not the amount of the expenditure, that is considered when construing 'normal expenditure'. However, it is not simply whether the expenditure would be 'normal expenditure', it must be considered whether the expenditure would be 'normal expenditure of a person in the circumstances of the disponer'. In this appeal, the circumstances of the Appellants were that they embarked on litigation for a minor child and had instructed solicitors from [*redacted*] onwards to pursue an intended court action. The occasion giving rise to the payment of €11,346.22 was the decision by the Appellants to change from [*redacted*] to [*redacted*]. Was the payment of €11,346.22 by the Appellants to [*redacted*] on 4 February 2011 part of the normal expenditure of a person in these circumstances? The Appellants gave evidence that the payment was demanded by [*redacted*] and paid without question. The Appellants gave evidence that they were informed of the amount of €11,346.22 in a telephone conversation with the managing partner of [*redacted*] but no bill of costs was received from [*redacted*]. The Appellants gave evidence that they understood the instruction with [*redacted*] was on a 'no foal no fee' basis, however, the Appellants did not interrogate the demand for payment of €11,346.22. The Appellants gave evidence that they had a preference for a particular solicitor, [*redacted*], and they were unwavering in their determination to have that solicitor as the legal representative in any court action. The Appellants made a commitment to pursue a court action, which was a commitment

regarding future expenditure as the commitment had the consequence that the Appellants would be responsible for the costs of an unsuccessful court action. The Appellants followed through on this commitment by issuing a Personal Injuries Summons on [*redacted*] and ultimately compromising the court action on [*redacted*]. I find that the payment of €11,346.22 was part of the normal expenditure of a person in the circumstances of the Appellants in February 2011.

[**96**] The third question to consider under section 82(2) is whether the provision of the support '*is reasonable having regard to the financial circumstances of the disponer*'. It is not simply whether the expenditure is 'reasonable', it must be considered whether the expenditure is reasonable having regard to the financial circumstances of the disponer. The parties submit that the financial circumstances of the Appellants are considered at the time of the payment in February 2011. The evidence tendered regarding the financial circumstances of the Appellants was a bank statement from National Irish Bank and a document headed 'Net Worth Statement' signed by the Appellants. The financial circumstances of the Appellants was revealed in greater clarity during the cross-examination of [*redacted*] when the complete bank statement for the National Irish Bank account was produced. This showed a balance of €547,495.45 as at 4 February 2011. It showed payments between 1 and 2 February 2011 of €12,380, payments on 8 February 2011 of €9,264 and a payment on 11 February of €15,000 as well as the payment on 4 February 2011 of €11,346.22 to [*redacted*]. The evidence of [*redacted*] was that a lodgement on 4 February 2011 of €430,000 was the proceeds of the sale of [*redacted*]. There were separate lodgements on 11 February 2011 of €693.72 and €1,710.28 from [*redacted*]. There was a further lodgement on 17 February 2011 of €99,994 also from the sale of [*redacted*]. According to the complete bank statement for the National Irish Bank (being only page 1 of 2) the balance at the end of the statement is €620,997.95. The document headed 'Net Worth Statement' was a statement prepared by an accountant and showed valuations estimated by [*redacted*]. No further documentary evidence was produced. [*redacted*] gave evidence that a receiver was appointed by Bank of Ireland over the assets of [*redacted*] in [*redacted*]. [*redacted*] gave evidence that he had to sign over

ownership of the National Irish Bank account to the receiver as part of a settlement with Bank of Ireland. However, based on the complete bank statement, the Appellants continued to undertake transactions in February 2011 on the basis that the balance on the account was available to them. The Appellants included the balance of €547,495 in the net worth statement as an unencumbered asset. I find that the payment of €11,346.22 was reasonable having regard to the financial circumstances of the Appellants in February 2011.

Determination

[**97**] In appeals before the Appeal Commissioners, the burden of proof rests on the Appellants who must prove, on the balance of probabilities, that the relevant tax is not payable. In the High Court judgment of ***Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners*** [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*". I find, on balance, the Appellants have not discharged the burden of proof. The Appellants have not brought themselves '*within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable*' to be entitled to avail of the exemption from tax under section 79.

[**98**] In respect of the appeal by [*redacted*] against the Notice of Amended Assessment to Capital Acquisitions Tax dated 14 July 2017 and the appeal by [*redacted*] against the Notice of Amended Assessment to Capital Acquisitions Tax dated 14 July 2017, and based on a review of the facts and a consideration of the evidence, materials and submissions of the parties, I determine that the assessments shall stand. This appeal is hereby determined in accordance with section 949AK of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY

APPEAL COMMISSIONER

27 NOVEMBER 2020