



Between

[REDACTED]

Appellants

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against the decision of the Revenue Commissioners (hereinafter the “Respondent”) not to grant a reduction in the value of a property conveyed pursuant to section 18(c) of the Stamp Duties Consolidation Act 1999 (hereinafter the “SDCA”).
2. The oral hearing took place before the Commissioner on 6th April 2022. The Appellants were represented by Mr [REDACTED] Solicitor at the oral hearing. Mr [REDACTED] and Ms [REDACTED] appeared on behalf of the Respondent.
3. The amount of tax at issue is €1,226.00.

Background

4. Mr [REDACTED] (hereinafter the “father”) and Mr [REDACTED] (hereinafter the “son”) are father and son respectively. On 13th April 2011 the father and his wife [REDACTED] (hereinafter the “mother”) transferred the ownership of their lands contained in Folio [REDACTED] to the son. The Deed of Transfer which was executed reserved rights of support and maintenance to the father and mother as follows:

"SECOND SCHEDULE

The right of said [REDACTED] to be supported and maintained on and out of the lands in the manner he has heretofore been accustomed to for the remainder of his life.

The right of said [REDACTED] to be supported and maintained on and out of the lands in the manner she has heretofore been accustomed to for the remainder of his [sic] life."

5. The valuation of the lands at the time of the Deed of Transfer was €408,600.00.
6. The amount of Stamp Duty to be paid on foot of the Deed of Transfer was based on the value of the lands transferred. The Appellants' solicitor was of the view that value of the lands transferred should, pursuant to section 18(c) of the SDCA, be reduced by 20% to reflect the fact that two separate burdens of maintenance and support had been reserved on the Deed of Transfer, on to the father and another to the mother.
7. The Appellants' solicitor attempted unsuccessfully to file a return of Stamp Duty on the transfer on this basis. The Respondent's system did not allow a 20% reduction in the value of the lands and instead only allowed for a 10% reduction in the value of the lands.
8. The Appellants' solicitor filed a Stamp Duty return on 13th May 2011 and the Stamp Certificate issued thereafter noted the chargeable consideration of the lands as being €367,740 which reflected a 10% reduction in the value of the lands. The amount of Stamp Duty paid was €11,032 being 3% of the reduced value of the lands of €367,740.
9. A Notice of Appeal was lodged by the Appellants appealing the Respondent's decision not to allow a reduction of 20% in the value of the lands to apply when calculating the Stamp Duty payable on the transfer.
10. The oral hearing to which this determination relates took place on 6th April 2022.
11. At the outset of the oral hearing both Parties' representatives agreed that the transition provisions of the Finance (Tax Appeals) Act 2015 as set out in section 27 of that Act apply to this appeal.

Legislation and Guidelines

12. The legislation relevant to this appeal is as follows:

Section 18 of the Stamp Duties Consolidation Act 1999

“For the purposes of sections 30 and 33(1), the value of property conveyed or transferred by an instrument chargeable with duty in accordance with either of those sections shall be determined without regard to—

(a) any power (whether or not contained in the instrument) on the exercise of which the property, or any part of or any interest in, the property, may be revested in the person from whom it was conveyed or transferred or in any person on his or her behalf,

(b) any annuity or other periodic payment reserved out of the property or any part of it, or any life or other interest so reserved, being an interest which is subject to forfeiture, or

(c) any right of residence, support, maintenance, or other right of a similar nature which the property is subject to or charged with, except where such rights are reserved in favour of the transferor or the spouse of the transferor and in any such case regard shall be had to such rights only to the extent that their value does not exceed 10 per cent of the unencumbered value of the property,

but if on a claim made to the Commissioners not later than 6 years after the making or execution of the instrument it is shown to their satisfaction that any such power as is mentioned in paragraph (a) has been exercised in relation to the property and the property or any property representing it has been reconveyed or retransferred in the whole or in part in consequence of that exercise, the Commissioners shall repay the stamp duty paid by virtue of this section, in a case where the whole of such property has been so reconveyed or retransferred, so far as it exceeds the stamp duty which would have been payable apart from this section and, in any other case, so far as it exceeds the stamp duty which would have been payable if the instrument had operated to convey or transfer only such property as is not so reconveyed or retransferred.”

Section 30 of the Stamp Duties Consolidation Act 1999

*(1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the same stamp duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale.*

(2) Notwithstanding subsection (1), this section shall not apply to a conveyance or transfer operating as a voluntary disposition of property to a body of persons incorporated by a special Act, if that body is by its Act precluded from dividing any profit among its members and the property conveyed is to be held for the purposes of an open space or for the purposes of its preservation for the benefit of the nation.

(3) Notwithstanding anything in section 20, the Commissioners may be required to express their opinion under that section on any conveyance or transfer operating as a voluntary disposition *inter vivos*, and no such conveyance or transfer shall, notwithstanding section 127, be given in evidence, except in criminal proceedings or in civil proceedings by the Commissioners to recover stamp duty, or be available for any purpose unless it is stamped in accordance with subsection (4) or subsection (5) of section 20.

(4) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos*, and the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where marriage is the consideration, or part of the consideration, or where the Commissioners are of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.

(5) Subsections (1) to (4) shall not apply in relation to conveyances or transfers coming within any of the following classes (whether the circumstances by virtue of which the conveyance or transfer comes within any such class are or are not stated in the conveyance or transfer), that is, a conveyance or transfer—

- (a) made for nominal consideration for the purpose of securing the repayment of an advance or loan,
- (b) made for effectuating the appointment of a new trustee or the retirement of a trustee (whether the trust is expressed or implied),
- (c) under which no beneficial interest passes in the property conveyed or transferred,

(d) made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust whether expressed or implied, or

(e) which is a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property."

Submissions

Appellants' Submissions

13. At the oral hearing of the appeal the Commissioner heard submissions from the Appellants' solicitor.
14. It was submitted that the wording of section 18(c) of the SDCA is ambiguous and that in circumstances where the wording is ambiguous the meaning of the wording must fall in favour of the taxpayer.
15. The Appellants' solicitor stated that sometime in February 2011, prior to the execution of the Deed of Transfer, he spoke by telephone to a representative of the Respondent who told him that, pursuant to section 18(c) of the SDCA, it was possible for a 20% reduction to be applied to the value of the lands when calculating the amount of Stamp Duty to be paid. This was on the basis that two separate rights of support and maintenance had been reserved in the Deed of Transfer.
16. The Appellants' solicitor stated that on 18th March 2011 he attempted to file a Stamp Duty return on the transfer reflecting a 20% reduction in the value of the lands. He was unable to file the return and as a result he spoke to a representative of the Respondent who, having escalated the matter internally within the Respondent, informed him that it was not possible to apply a 20% reduction to the value of the transferred lands and that the maximum reduction which could be applied was 10% pursuant to section 18(c) of the SDCA.
17. It was submitted that the wording of section 18(c) of the SDCA allows for a reduction of 20% in the case where rights of support and maintenance in favour of both a transferor and his or her spouse are reserved in a Deed of Transfer. It was submitted that section 18(c) of the SDCA uses the word "or" and not "and / or" in the clause "*...except where such rights are reserved in favour of the transferor or the spouse of the transferor...*" (emphasis added).

18. In addition it was submitted that as a result of the word “or” this means that the word “*their*” in the final phrase of section 18(c) of the SDCA “*...only to the extent that their value does not exceed 10 percent of the unencumbered value of the property,*” (emphasis added) should be interpreted in the general sense of the word to mean either “his” or “hers” rather than in a plural sense meaning both the transferor and his / her spouse.
19. It was submitted that if the wording of section 18(c) of the SDCA had used the words “*and/or*” rather than simply “*or*” the deduction would be limited to 10% but that in circumstances where this is not the case two separate 10% deduction to the valuation of the lands can be applied making a total deduction to the value of the lands of 20%.

Respondent’s Submissions

20. The Respondent submitted that the wording of section 18(c) of the SDCA is unambiguous in limiting the reduction available on foot of a reservation of rights of support and maintenance to 10%.
21. The Respondent submitted that the wording of section 18(c) of the SDCA provides that the value of property transferred shall be determined without regard to any right of residence, support, maintenance or other right of a similar nature except where such rights are reserved in favour of the transferor or spouse of the transferor and that in any such case regard shall be had to such rights only to the extent that their value does not exceed 10 per cent of the unencumbered value of the property.
22. The Respondent submitted that the use of the words underlined above mean that the limitation of 10% set out in section 18(c) of the SDCA applies to the totality of the rights reserved and not to the rights reserved on an individual basis.
23. The Respondent further submitted that if the Appellants’ position is correct this would mean that it would be possible to reduce the value of lands transferred to zero in circumstances where 10 owners of a particular piece of land transferred their ownership whilst reserving rights of residence, support, maintenance or other right of a similar nature.
24. The Respondent submitted that it was unfortunate if the Appellants’ solicitor had on his initial query with the Respondent been given incorrect information as to the amount of reduction in value which was possible pursuant to section 18(c) of the SDCA. The Respondent further submitted that the systems in place on their online system meant

that it was not possible for an incorrect reduction in value of property pursuant to section 18(c) of the SDCA to be made by a taxpayer making a return.

Material Facts

25. The material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:

- i. The father and mother transferred the ownership of their lands contained in Folio [REDACTED] to the son. The Deed of Transfer which was executed reserved rights of support and maintenance to the father and mother;
- ii. The Deed of Transfer was an instrument chargeable with duty pursuant to section 30 of the SDCA;
- iii. The Stamp Duty return filed by the Appellants' solicitor was limited by the Respondent to a reduction in the value of the lands of 10%.

Analysis

26. It was submitted on behalf of the Appellants that the value of the lands transferred by the father and mother to the son in the Deed of Transfer executed on 13th April 2011 should be reduced by 20% on the basis that rights of support and maintenance were reserved to both the father and the mother separately. On the other hand it was submitted on behalf of the Respondent that section 18(c) limits the totality of the reduction of the value of the lands is limited to 10%.

27. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."

28. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter "Perrigo"), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72

and were reaffirmed recently in *Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60*. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

- (a) *If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*
- (b) *Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";*
- (c) *Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*
- (d) *Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*
- (e) *In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*
- (f) *Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*
- (g) *Although the issue did not arise in *Dunnes Stores v. The Revenue Commissioners*, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in *Revenue Commissioners v. Doorley [1933] I.R. 750* where Kennedy C.J. said at p. 766:*

"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary

canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except 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 possible”.

29. Section 18(c) provides as follows:

“For the purposes of sections 30 and 33(1), the value of property conveyed or transferred by an instrument chargeable with duty in accordance with either of those sections shall be determined without regard to—

...

(c) any right of residence, support, maintenance, or other right of a similar nature which the property is subject to or charged with, except where such rights are reserved in favour of the transferor or the spouse of the transferor and in any such case regard shall be had to such rights only to the extent that their value does not exceed 10 per cent of the unencumbered value of the property,

...”

30. The Commissioner has considered the wording of section 18(c) of the SDCA. The title of section 18 of the SDCA is “*Mode of valuing property.*” The body of section 18 of the SDCA provides that:

- the value of property conveyed or transferred by an instrument chargeable with duty in accordance with section 30 of the SDCA shall be determined without regard to any rights of residence, support, maintenance or rights of a similar nature which a property is subject or charged with except where such rights are reserved in favour of the transferor or the spouse of the transferor.

31. The Commissioner finds that the Deed of Transfer executed by the father and mother transferring the lands contained in folio [REDACTED] to the son on 13th April 2011:

- i. was an instrument chargeable with duty pursuant to section 30 of the SDCA; and
- ii. reserved rights of support and maintenance in favour of the transferors, that is to say the father and the mother.

32. Having accepted this the Commissioner now must consider the provision in section 18(c) of the SDCA which states:

“...and in any such case regard shall be had to such rights only to the extent that their value does not exceed 10 per cent of the unencumbered value of the property,”

33. The Appellants have submitted to the Commissioner that the wording of section 18(c) of the SDCA is ambiguous. The Commissioner does not agree with the Appellants' submission.

34. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words of the statutory provision contained in section 18(c) of the SDCA are plain and their meaning is self-evident. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of that section means that, when valuing a property for the purposes of the SDCA, regard shall be had to such rights of residence, support, maintenance or rights of a similar nature only to the extent that their value does not exceed 10% of the unencumbered value of the property being valued.

35. Having considered all of the above the Commissioner finds that for the purposes of valuing a property pursuant to section 18(c) of the SDCA, the maximum value which can be ascribed to rights of residence, support, maintenance or rights of a similar nature is 10%.

Determination

36. For the reasons set out above, the Commissioner determines that the Appellants have failed in their appeal and has not succeeded in showing that the relevant tax was not payable.

37. It is understandable that the Appellants might be disappointed with the outcome of this appeal. The Appellants were correct to check to see whether their legal rights were

correctly applied. The Commission commends both Parties for the manner in which they conducted the appeal.

38. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Clare O'Driscoll
Appeal Commissioner
12th April 2022