



Between:

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against a Notice of Assessment of Stamp Duty issued by the Revenue Commissioners (hereinafter the "Respondent") on 27 June 2008.
2. The amount of tax in dispute in this appeal is €43,946.

Background

3. Mr [REDACTED] (hereinafter the "Appellant") is a taxpayer who in [REDACTED] 2006 purchased property consisting of five plots of registered and unregistered land in [REDACTED] (hereinafter the "Property") together with his father as tenants in common.
4. The Property was the subject of a mortgage in favour of [REDACTED] (hereinafter the "Bank") which was entered to by the Appellant and his father on [REDACTED] 2006 under which both the Appellant and his father were jointly and severally liable for the indebtedness created by the drawdown of the mortgage.
5. On [REDACTED] 2008 the Appellant's father as "Donor" executed a Deed of Transfer in favour of the Appellant whereby he transferred an undivided one quarter share of the Property to the Appellant as "Donee". The Bank was also party to the Deed of Transfer as "Third Party". The effect of the Deed of Transfer was that the Appellant held a three-quarter share of the Property and the Appellant's father held a one-quarter share of the Property.
6. At the date of execution of the Deed of Transfer on [REDACTED] 2008 the balance of the mortgage on the Property was €4,953,179.98. In addition, on that date the Property was valued at €6,000,000.
7. As was then the practice, the Appellant's Solicitor submitted an application to the Respondent in connection with the Stamp Duty and on [REDACTED] 2008 the Respondent wrote to the Appellant indicating that it required further information prior to finalising an adjudication on the application. On [REDACTED] 2008 the Respondent wrote to the Appellant indicating that it had adjudicated the Stamp Duty on the deed of Transfer as being €55,723.
8. On [REDACTED] 2008 the Appellant wrote to the Respondent setting out that, in the Appellant's opinion, an amount of €11,777 in Stamp Duty was due on the Deed of Transfer.

9. The basis of the Appellant's calculation was that section 30 of the Stamp Duties Consolidation Act 1999 (hereinafter the "SDCA1999") applied to the transaction and the following calculation was carried out:

Property value	€6,000,000
Less mortgage debt	€4,953,180
Equity of redemption	€1,046,820
25% share	€ 261,705

10. It was the Appellant's position that the transaction qualified for consanguinity relief and that a Stamp Duty rate of 4.5% on the 25% share of €261,705, being €11,777 therefore applied.
11. On [REDACTED] 2008 the Respondent set out the basis of its adjudication of the Stamp Duty payable on the Deed of Transfer as being €55,723, stating that it considered that the provisions of section 41 of the SDCA applied to the Deed of Transfer.
12. The Appellant did not agree with the Respondent's calculation and correspondence in relation to the basis of the Stamp Duty calculation took place between the Parties. On [REDACTED] [REDACTED] 2008 the Respondent issued a second Notice of Assessment of Stamp Duty in the amount of €55,723 and on [REDACTED] 2008 the Respondent confirmed that it was of the opinion that section 41 of the SDCA1999 was the applicable provision for the calculation of Stamp Duty on the Deed of Transfer.
13. The Appellant has appealed the Notice of Assessment of Stamp Duty issued on 27 June 2008.
14. At the oral hearing of this appeal the Parties agreed that this appeal may be determined by the Commissioner pursuant to the provisions of section 21 of the SDCA1999 and therefore the provisions of Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997").

Legislation and Guidelines

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

Section 30 of the SDCA1997 (as in force on 31 January 2008)

“30. Voluntary dispositions inter vivos chargeable as conveyances or transfers on sale.

(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.”

Section 41 of the SDCA1997 (as in force on 31 January 2008)

“41. How conveyance in consideration of debt, etc., to be charged.

Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to such person, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance on the property or not, the debt, money, or stock shall be deemed the whole or part, as the case may be, of the consideration in respect of which the conveyance is chargeable with ad valorem duty.

Submissions and Witness Evidence

Witness Evidence

16. The Commissioner heard oral evidence from [REDACTED] who is a Solicitor and who acted for the Bank at the time of the execution of the Deed of Transfer on [REDACTED] 2008.
17. [REDACTED] stated that the Appellant and his father as “Mortgagor” entered into a Mortgage Deed in relation to the Property with the Bank as “the Bank” on [REDACTED] 2006.
18. [REDACTED] stated that the effect of the Mortgage Deed, which was executed on [REDACTED] [REDACTED] 2006, was that the Appellant and his father became jointly and severally liable for the mortgage debt which was incurred under the mortgage. In particular in that regard, [REDACTED] referred to Clause 24 of the Mortgage Deed which states:

“In this Mortgage Deed where the context so admits the expression “the Mortgagor” and “the Bank” shall include the persons for the time being deriving the title under the Mortgagor or the Bank respectively; where the expression “the Mortgagor” refers to two or more persons, this Deed shall be construed as if such expression were in the plural mutatis mutandis and the covenants and agreements on the part of the Mortgagor shall have effect as if they were joint and several covenants and agreements by such persons;...”

19. ██████████ stated that joint and several liability means that each of the mortgagors, in this instance both the Appellant and his father, become liable for 100% of the assumed mortgage debt.
20. ██████████ stated that the transaction contained in the Deed of Transfer, and in particular the effect of Recitals D and E of the Deed of Transfer, meant that the Deed of Transfer had no effect on the terms and security of the Mortgage Deed. He stated that this was the reason that the Bank joined in the Deed of Transfer as Third Party as the Bank wished to ensure that the Deed of Transfer did not diminish or affect the Bank’s security or the joint and several liability of the Appellant and his father to the mortgage debt.

Appellant’s Submissions

21. The Appellant submitted that following the execution of the Deed of Transfer and the transfer of a one quarter interest in the Property to the Appellant from his father, both the Appellant and his father remained jointly and severally liable for the entirety of the €4,953,179.98 mortgage debt which was outstanding at that time. As such, the Appellant submitted that, there had been no “shift” in the liabilities of either the Appellant or his father when comparing the liabilities which pertained before the transaction and after the transaction contained in the Deed of Transfer.
22. The Appellant submitted that paragraph 24 of the Deed of Mortgage established that both the Appellant and his father were jointly and severally liable for the mortgage debt assumed on the Property in ██████████ 2006 and relied on the evidence of ██████████ that this position did not change as a result of the execution of the Deed of Transfer in ██████████ 2008.
23. The Appellant submitted that no consideration passed from the Appellant to his father on foot of the Deed of Transfer and therefore the transfer of the one quarter share of the Property to the Appellant was a gift from his father.

24. As a result, the Appellant submitted, section 30 of the SDCA1999 is the applicable provision under which the Deed of Transfer falls and the amount of €11,777 is the correct amount of Stamp Duty which falls to be paid on the Deed of Transfer.

Respondent's Submissions

25. The Respondent did not adduce any witness evidence to the Commissioner.

26. The Respondent submitted that section 41 of the SDCA1999 is the applicable provision under which the Deed of Transfer falls and that as a result €55,723 is the correct amount of Stamp Duty which falls to be paid on the Deed of Transfer and this is the basis on which the Notice of Assessment of Stamp Duty was raised.

27. The Respondent submitted that as the Property was held by the Appellant and his father as tenants in common and as no consideration was paid for the transfer the subject matter of the Deed of Transfer, Stamp Duty is assessed on one quarter of the outstanding mortgage, which the Respondent submitted the Appellant assumed as a result of the Deed of Transfer.

28. Therefore, the Respondent submitted that, applying the provisions of section 41 of the SDCA1999, one quarter of the outstanding mortgage debt of €4,953,180 equals €1,238,295. Allowing for consanguinity relief and applying a Stamp Duty rate of 4.5% to the transfer of the one quarter share of the Property to the Appellant, €55,723 is the applicable amount of Stamp Duty to be paid on the Deed of Transfer.

Material Facts

29. The following material facts are not at issue between the parties and the Commissioner accepts same as material facts:

- i. The Appellant and his father purchased the Property as tenants in common.
- ii. The Property was the subject of a mortgage in favour of the Bank which was drawn down by the Appellant and his father on [REDACTED] 2006;
- iii. The Appellant and his father were jointly and severally liable for the indebtedness created by the drawdown of the mortgage;
- iv. On [REDACTED] 2008 the Appellant's father as "Donor" executed a Deed of Transfer in favour of the Appellant whereby he transferred an undivided one quarter share of the Property to the Appellant as "Donee". The Bank was also party to the Deed of Transfer as "Third Party";

- v. The effect of the Deed of Transfer was that the Appellant held a three-quarter share of the Property and the Appellant's father held a one-quarter share of the Property;
- vi. At the date of execution of the Deed of Transfer on [REDACTED] 2008 the balance of the mortgage on the Property was €4,953,179.98;
- vii. The Property was valued at €6,000,000 on the date of the execution of the Deed of Transfer;
- viii. No consideration was paid by the Appellant on foot of the transfer of the one quarter share of the Property to him by his father;
- ix. The Appellant was entitled to consanguinity relief on the transfer the subject matter of the Deed of Transfer which meant that the appropriate rate of Stamp Duty applicable was 4.5%.

30. The following material fact is at issue in this appeal:

- i. The Appellant assumed an additional one quarter of the outstanding mortgage debt as a result of the Deed of Transfer.

31. On the one hand the Appellant submits that the effect of the Deed of Transfer was that a one quarter share of the Property was transferred to him by his father, but that both he and his father remained jointly and severally liable for the outstanding mortgage debt on the Property. Therefore, the Appellant submits that he did not assume any additional liability in relation to the outstanding mortgage on the Property and his father's liability for the outstanding mortgage on the Property was not reduced as a result of the provisions of the Deed of Transfer.

32. On the other hand, the Respondent has calculated the Stamp Duty applicable to the Deed of Transfer on the basis that the Appellant assumed one quarter of the outstanding mortgage debt as a result of the transfer the subject matter of the Deed of Transfer.

33. The Commissioner has already found as a material fact that the Appellant and his father were jointly and severally liable for the indebtedness created by the drawdown of the mortgage. This is not in dispute between the Parties and the Commissioner notes that Clause 24 of the Mortgage Deed establishes the joint and several liability of the Appellant and his father to the mortgage debt relating to the Property.

34. The Bank was party to the Deed of Transfer as Third Party and the recitals of the Deed of Transfer states as follows:

“A. The Donor and Donee are seized of the premises described in part one of the Schedule hereto (hereinafter called “the Unregistered Premises”) for an estate in fee simple in possession as tenant in common in equal shares subject to the Mortgage next hereinafter recited but otherwise free from incumbrances and are also the persons entitled to be registered as owners of the Premises described in part two of the Schedule hereto (hereinafter call “the Registered Premises”) as tenants in common in equal shares subject to the said Mortgage.

B. By a Mortgage and Charger (hereinafter called “the Mortgage”) dated the [REDACTED] [REDACTED] [REDACTED] 2006 made between the Donor and the Donee of the one part and the Bank in fee simple by way of Mortgage and the Registered Premises were charged in favour of the Bank to secure payment to the Bank of all monies then or thereafter owing (hereinafter called “the Mortgage debt”) and interest thereon as therein provided.

C. The Mortgage debt remains owing to the Bank on the security of the Mortgage by all interest thereon accrued due at the date hereof has been paid.

D. The Donor is desirous of conveying and transferring an additional one undivided quarter share in and to the Unregistered Premises and the Registered Premises to the Donee by way of gift for an estate in fee simple in possession subject to the Mortgage and the Mortgage debt in the manner hereinafter appearing.

E. The Bank has agreed to join in this deed to confirm its consent to the said conveyance.”

35. Clause 2(a) of the Deed of Transfer provides that the Appellant and his father covenant with the Bank:

“a) To henceforth pay the Mortgage debt with is secured by the Banks Security and all interest thereon at the times and in the matters stipulates in the Banks Security.”

36. The correct approach to interpreting the construction of a contract has been set out by the Supreme Court in the judgment of *Analog Devices B.V. v Zurich Insurance Company* [2005] 1 IR 274 and was expressed by Laffoy J in *UPM Kymmene Corporation v BWG* unreported, High Court, Laffoy J, 11 June 1999 as follows:

“[T]he basic rules of construction which the Court must apply in interpreting the documents which contain the parties agreement are not in dispute. The Court’s task is to ascertain the intention of the parties and that intention must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. Moreover, in attempting to ascertain the presumed intention

of the parties, the Court should adopt an objective, rather than a subjective approach, and should consider what would have been the intention of reasonable persons in the position of the parties.”

37. The principles of interpretation applicable to contracts or agreements generally are well known having been recorded by Lord Hoffman in *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896 which was confirmed in the UK Supreme Court decision in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900 and subsequently confirmed by Kelly J in *Dunnes Stores v Holtglen Limited* [2012] IEHC 93 and summarised by Gross LJ in *Al Sanea Saad Investments Co_Limited* [2012] EWCA Civ 313 where he stated as follows:

“ ...

- *The ultimate aim of contractual construction is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant. The reasonable person is taken to have all the background knowledge which would have reasonably been available to the parties in this situation in which they were in at the time of the contract.*
- *The Court has to start somewhere and the starting point is the wording used by the parties in the Contract.*
- *It is not for the Court to rewrite the party’s bargain. If the language is unambiguous, the Court must apply it.*
- *Where a term of a contract is open to more than one interpretation, it is generally appropriate for the Court to adopt the interpretation which is most consistent with the business common sense. A Court should always keep in mind the consequences of a particular construction and should be guided throughout by the context in which the contractual provision is located.*
- *The contract is to be read as a whole and an ‘iterative process’ is called for: ‘... involving checking each of the rival meanings against other provisions of the document and investigating its commercial consequences’.*”

38. In interpreting the Amendment Deed the Commissioner must start by looking at the wording of the document.

39. The Commissioner considers that the wording of Recitals A to E along with the wording of Clause 2(a) of the Deed of transfer are unambiguous and the Commissioner finds that the wording used means that:

- i. The Appellant and his father agreed to remain jointly and severally liable for the mortgage debt after the transfer of a one quarter share of the Property to the Appellant by his father;
- ii. The Bank required that the Appellant and his father agreed to remain jointly and severally liable for the mortgage debt after the transfer of a one quarter share of the Property to the Appellant by his father; and
- iii. There was no change in the liability of the Appellant or his father for the mortgage debt following the transfer of a one quarter share of the Property to the Appellant by his father.

40. ██████████ evidence to the Commissioner was that, in entering the Deed of Transfer as Third Party, it was the Bank's intention that the Deed of Transfer would not diminish or affect the Bank's security or the joint and several liability of the Appellant and his father to the mortgage debt. The Commissioner accepts ██████████ evidence in this regard.

41. Having considered all of the above, the Commissioner finds as a material fact that the Deed of Transfer did not result in the Appellant assuming an additional one quarter of the outstanding mortgage debt as a result of the Deed of Transfer. The Commissioner finds as a material fact that the Deed of Transfer did not affect the joint and several liability of the Appellant and his father for the mortgage debt in relation to the Property.

42. For the avoidance of doubt the Commissioner finds the following material facts in this appeal:

- i. The Appellant and his father purchased the Property as tenants in common.
- ii. The Property was the subject of a mortgage in favour of the Bank which was drawn down by the Appellant and his father on ██████████ 2006;
- iii. The Appellant and his father were jointly and severally liable for the indebtedness created by the drawdown of the mortgage;
- iv. On ██████████ 2008 the Appellant's father as "Donor" executed a Deed of Transfer in favour of the Appellant whereby he transferred an undivided one quarter share of the Property to the Appellant as "Donee". The Bank was also party to the Deed of Transfer as "Third Party";

- v. The effect of the Deed of Transfer was that the Appellant held a three-quarter share of the Property and the Appellant's father held a one-quarter share of the Property;
- vi. At the date of execution of the Deed of Transfer on [REDACTED] 2008 the balance of the mortgage on the Property was €4,953,179.98;
- vii. The Property was valued at €6,000,000 on the date of the execution of the Deed of Transfer;
- viii. No consideration was paid by the Appellant on foot of the transfer of the one quarter share of the Property to him by his father;
- ix. The Appellant was entitled to consanguinity relief on the transfer the subject matter of the Deed of Transfer which meant that the appropriate rate of Stamp Duty applicable was 4.5%;
- x. The Deed of Transfer did not result in the Appellant assuming an additional one quarter of the outstanding mortgage debt as a result of the Deed of Transfer;
- xi. The Deed of Transfer did not affect the joint and several liability of the Appellant and his father for the mortgage debt in relation to the Property.

Analysis

43. As with all appeals before the Commission 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."

44. For the reasons set out above, the Commissioner has already found, *inter alia*, the following material facts:

- i. The Appellant and his father were jointly and severally liable for the indebtedness created by the drawdown of the mortgage;
- ii. The Deed of Transfer did not result in the Appellant assuming an additional one quarter of the outstanding mortgage debt as a result of the Deed of Transfer;
- iii. The Deed of Transfer did not affect the joint and several liability of the Appellant and his father for the mortgage debt in relation to the Property.

45. Section 41 of the SDCA1999 is entitled "*How conveyance in consideration of debt, etc., to be charged*" and provides that:

"Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to such person, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance on the property or not, the debt, money, or stock shall be deemed the whole or part, as the case may be, of the consideration in respect of which the conveyance is chargeable with ad valorem duty."

46. Before section 41 of the SDCA1999 can apply there must be consideration in the form of, *inter alia*, the assumption of debt. The Commissioner has already found as a material fact that the Deed of Transfer the subject matter of this appeal did not result in the Appellant assuming any additional amounts of the mortgage debt. The Commissioner has also already found as a material fact that the Deed of Transfer did not affect the joint and several liability of the Appellant and his father for the mortgage debt in relation to the Property.

47. As a result of the material facts found, section 41 of the SDCA1999 cannot apply to the Deed of Transfer.

48. As a result, the Commissioner finds that the Appellant has succeeded in discharging the burden of proof in this appeal and has established that the Stamp Duty of €55,723.27 was not payable.

49. It then falls to the Commissioner to consider what the correct amount of Stamp Duty payable on the Deed of Transfer was.

50. Section 30 of the SDCA1999 is entitled "*Voluntary dispositions inter vivos chargeable as conveyances or transfers on sale*" and subsection (1) thereof provides that:

"(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"

51. The Appellant has submitted that his calculation of Stamp Duty payable on the Deed of Transfer was based on the provisions of section 30 of the SDCA1999 and was also based on the Respondent's interpretation of section 30 of the SDCA1999 as contained in the Respondent's own Notes for Guidance and which state that:

“Where the voluntary disposition inter vivos is subject to a mortgage the Revenue Commissioners will, as a matter of practice, deduct the mortgage liability in arriving at the value of the benefit passing. Stamp duty is chargeable on the net benefit taken i.e. on the equity of redemption.”

52. Whilst the Commissioner is aware that the Respondent’s Notes for Guidance are guidance for taxpayers and do not form binding guidance on which the Commissioner must rely, the Commissioner notes that the Appellant has calculated the Stamp Duty due on the Deed of Transfer based on the net benefit taken by him, that is say the equity of redemption as follows:

Property value	€6,000,000
Less mortgage debt	€4,953,180
Equity of redemption	€1,046,820
25% share	€ 261,705
4.5% Stamp Duty	€ 11,777

53. The Respondent has not made any submissions in relation to the correctness or otherwise of the Appellant’s calculation.

54. Having considered the entirety of the Appellant’s calculation and the basis on which the calculation has been made, the Commissioner finds that the Appellant has discharged the burden of proof and has established that the correct amount of Stamp Duty payable on the Deed of Transfer is €11,777.

Determination

55. The Commissioner determines that the Appellant has discharged the burden of proof in this appeal and that it has succeeded in showing that the Respondent’s Notice of Assessment of Stamp Duty issued on decision of 27 June 2008 was incorrect.

56. The Commissioner further determines that the correct amount of Stamp Duty payable on the Deed of Transfer is €11,777.

57. The Commissioner determines that the Appellant is entitled to a refund of Stamp Duty in the amount of €43,946.

58. The Commissioner commends the Parties for the manner in which this appeal was conducted.

59. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular section 949AK thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal to the High Court on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
29 June 2023