



Between

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against a refusal of the Revenue Commissioners (hereinafter “the Respondent”) to allow a claim for the repayment of stamp duty pursuant to section 159A Stamp Duties Consolidation Act 1999 (hereinafter “SDCA 1999”).
2. In accordance with the provisions of section 949U Taxes Consolidation Act 1997 (hereinafter “TCA 1997”), this appeal is determined without a hearing. Both parties agreed to this adjudication format in accordance with section 949U TCA 1997.

Background

3. The Respondent received a stamp duty return (“Form SDR1”) by post on 28th November 2005. The Form SDR1 contained details on the conveyance of a property, known as ██████████ (“the property”). The associated stamp duty was paid by cheque on the Appellant’s behalf on 2nd December 2005 in the sum of €22,500 which was calculated by applying the then appropriate rate of stamp duty (6%) to the purchase price of the property (€380,000).

4. The property was registered with the Respondent as the Appellant's official address for correspondence from 30th November 2007 to 27th November 2017. The Appellant sold the property on 2nd November 2018.
5. On 2nd January 2022, the Respondent received a letter from the Appellant. This correspondence stated that the Land Registry informed the Appellant that the property was not owned by her until November 2012.
6. As the Appellant was of the belief that she did not own the property until November 2012, she requested the Respondent to refund her the sum of €19,000 which she believed had been overpaid in stamp duty by her.
7. The basis of the refund claimed by the Appellant was detailed in the Appellant's letter. It stated that as she only owned the property since November 2012, the prevalent rate of stamp duty which applied at that time (1%) was the rate which should have been applied in calculating her liability to stamp duty. The letter continued that as she had paid stamp duty at the rate which prevailed in 2005 (6%), then the differential on the two rates (5%) ought to be repaid to her.
8. On 1st January 2023, the Appellant sent a reminder to the Respondent seeking to remind it to respond to her request for the refund.
9. By way of reply on 17th February 2023, the Respondent notified the Appellant that it was unable to repay the refund as the claim was made outside the four year timeframe required under section 159A (1) SDCA 1999.
10. The Appellant who was not in agreement with this decision lodged her appeal with the Commission on 8th March 2023. This appeal is made in accordance with the provisions of section 949I TCA 1997.

Legislation

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

Part 2

2. Charging of, liability for and recovery of stamp duty

(1) Any instrument which—

(a) is specified in Schedule 1, and

(b) is executed in the State or, wherever executed, relates to any property situated in the State or any matter or thing done or to be done in the State,

shall be chargeable with stamp duty.

...

(3) Any instrument chargeable with stamp duty shall, unless it is written on duty stamped material, be duly stamped with the proper stamp duty before the expiration of 30 days after it is first executed.

Schedule 1 – Stamp Duty on Instruments.

Section 2.

...

CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance.

(1) Where the amount or value of the consideration for the sale is wholly or partly attributable to residential property and the transaction effected by that instrument does not form part of a larger transaction or of a series of transactions in respect of which, had there been a larger transaction or a series of transactions, the amount or value, or the aggregate amount or value, of the consideration (other than the consideration for the sale concerned which is wholly or partly attributable to residential property) would have been wholly or partly attributable to residential property.

...

Chapter 7.

Time limit for repayment of stamp duty, interest on repayment and time limits for enquiries and assessments.

159A Time limits for claiming a repayment of stamp duty.

(1) Without prejudice to any other provision of this Act containing a shorter time limit for the making of a claim for repayment, no stamp duty shall be repaid to a person in respect of a valid claim (within the meaning of section 159B), unless that valid claim is made within the period of 4 years from, as the case may be, the date the instrument was stamped by the Commissioners,

the date the statement of liability was delivered to the Commissioners, the date the transfer order referred to in section 78B was entered or the date the person achieves the standard within the meaning of section 81AA(11)(a).

(1A) Any person aggrieved by a decision of the Commissioners on a claim for repayment, within the meaning of section 159B(1), may appeal the decision to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notification of the decision to that person.

...

159B Interest on repayments of stamp duty.

...

(4) A claim for repayment under this section shall only be treated as a valid claim when—

(a) it has been made in accordance with the provisions of the law (if any) relating to stamp duty under which such claim is made,

and

(b) all information which the Commissioners may reasonably require to enable them determine if and to what extent a repayment is due, has been furnished to them.

...

Documentation Presented to the Commission

12. The Appellant provided the Commission with the following documentation:

- (i) A deed of transfer dated 28th November 2005. This document recorded the transfer of Folio [REDACTED] from [REDACTED] (as registered beneficial owner of the property) to the Appellant for a consideration of €380,000. That transfer is recorded as being in “fee simple”. The term “fee simple” describes a landowner’s complete and total ownership of a piece of land and all properties on it. The fee simple owner may do anything lawful they wish on such lands as long as it falls within established easements and planning laws. The Appellant is recorded as the purchaser of the lands within that document.

- (ii) A form titled "Land Registry Application for Registration" dated 29th November 2012. That document was lodged by [REDACTED] ("the Appellant's solicitor") and seeks to have a Folio reference number [REDACTED] transferred to the Appellant by reference to a deed of transfer in the sum of €380,000.
- (iii) An uncompleted Property Registration Authority ("PRAI") form titled "Land Registry Application for Registration". This form which was partially complete had the reference [REDACTED] was stamped "Rejected" and dated 29th November 2012. The document contained a further reference to "Folio [REDACTED]".
- (iv) An email from the Appellant's solicitor to the Appellant dated 19th February 2013. That email states:
- "Hi [REDACTED], Could you contact me at your convenience. I have a query about mapping re [REDACTED], I would like to discuss it with you. Regards [REDACTED]"*.
- (v) A further letter from the Appellant's solicitor to the Appellant dated 27th March 2013. This letter states:
- "The Land Registry advise that they did not have a correct map in the matter. They have kindly sent me an original which can be marked by an engineer and resubmitted. You might please make an appointment to call to this office so that we can finalise the matter.*
- As you know, I acted for the vendor of this property to you and have only recently become involved in your registration after [REDACTED] solicitors wrote to me advising that they were coming off record. I am not privy to whatever discussions [REDACTED] solicitor had with the Land Registry about the map or indeed what has held up registration this length of time, but it does appear that all remains to be done is to submit the map and registration will complete..."*
- (vi) A copy of a letter dated 20th August 2014 from the Respondent addressed to the Appellant at the property address. This document stated:
- "...I refer to your letter of 18 August regarding stamp duty paid. Based on the information given we have no record of a Deed stamped 29th November 2012 Folio No. [REDACTED]..."*

- (vii) A letter from the Appellant to the Respondent's Local Property Tax section dated 31st August 2014. That letter states:

"Dear Sirs

Further to my recent telephone conversation please confirm the stamp payment date and property transfer date is November 2005 for the above property as I understood from another source that the transfer was not completed until November 2012. I can not {sic} locate the stamp details at present but please also confirm what rate of stamp duty was charged..."

- (viii) A letter from the Law Society of Ireland to the Appellant dated 6th February 2017. This letter referred to a "██████████" and stated:

"...Unfortunately, the remit of the Society's Complaints Section does not extend to providing legal advice or assistance. I regret therefore, I cannot respond to your request for assistance in sorting out your property ownership."

- (ix) A letter from the PRAI to the Appellant dated 10th May 2021. This letter stated:

"...Having reviewed the application we are of the view that the amount of compensation claimed in this case is excessive for the reasons already communicated. Your reply dated 8/1/2021 does not rebut any of the points made in my letter dated 16/12/21 and in particular items 1 and 2. Section 120 of the Registration of Title Act, 1964 deals with losses arising from mistaken registration only. The ownership of the folio was transferred to you on 29/12/2012 and you remained as owner until 23/10/2018. Therefore you cannot claim for 13 years of losses. Section 51(2) of the Registration of Title Act, 1964 reads as follows: "There shall be executed on the transfer an instrument in the prescribed form, but until the transferee is registered as owner of the land transferred, that instrument shall not operate to transfer the land" [emphasis added]. In other words you were not the legal owner until your ownership was registered and the mistake (if any) arose on 29/11/2012.

Please withdraw your application as currently constituted or it will be formally refused. Note that the decision to refuse compensation can only be appealed to the Court under s 19(1) of the Registration of Title Act, 1964.

Alternatively, any revised claim must be reasonable and be evidenced by proof of actual loss..."

Submissions

Appellant

13. The Appellant submitted that the “four year rule” relating to the repayment of stamp duty was “outside her control” as she was unable to gain access to “her file”. The Appellant stated that this was evident from the Respondent’s supplied letter of 20th August 2014 in which it stated that it was “unable to locate her records”.
14. The Appellant submitted the “correct date” the “four year clock” began was 10th May 2021, as this was the date the PRAI advised her that she did not become the legal owner of the property until 29th November 2012. Thus, the Appellant submitted that she had four years from 10th May 2021 in which she could claim repayment of the alleged overpaid stamp duty as this was her date of knowledge that she was not registered as the owner of the property on the date she acquired it.
15. The Appellant submitted as it took the PRAI “several years” to register the property in her name then it was the fault of the PRAI that she was unable to apply for the refund of stamp duty within four years from the date she paid the associated liability. The Appellant submitted that as the PRAI do not backdate registration of a property then this was evidence that she did not legally acquire the property until 29th November 2012.
16. The Appellant submitted as she did not acquire the property on 28th November 2005, then the property was merely “resting in contact” until the date the property was actually transferred into her name. The term “resting in contact” was a process which facilitated the avoidance of stamp duty on the transfer of property. It operated on the principle that when purchase monies were paid under a sale contract (or other instrument), the seller became nominee or trustee for the buyer (and hence ownership of the property was not transferred) or by the seller of the property granting the purchaser purported rights over the lands which equated to ownership and a positive obligation was placed on the seller to transfer the legal ownership of lands to the purchaser upon payment of a nominal sum. The effect of these type of transactions was that stamp duty was avoided or deferred until such stage as the underlying property was “sold”¹.
17. The Appellant submitted large developers frequently utilised “resting in contract” to avoid the payment of stamp duty and as such she should be afforded the same treatment as

¹The provisions of section 31A SDCA 1999 effectively ceased this practice by requiring property instruments executed after 13th February 2013 upon which 25% or more of the sales consideration was paid to have stamp duty payable on execution of the property disposal instrument.

those developers as to deny her this right would be treating “developers differently to ordinary citizens”. Thus, the Appellant submitted that while she paid the stamp duty “in good faith” on the property in 2005, as it was resting in contract until the date the property was legally transferred to her, and as she was not required to pay the stamp duty until 29th November 2012, then she had overpaid her stamp duty owing to the differential stamp duty rates in operation.

18. The Appellant submitted between the date she originally acquired the property and some years after the actual registration of the property in November 2012, she was unable to access her file in the land registry as it was missing. The Appellant stated that she had travelled numerous times from [REDACTED] to the Land Registry’s offices and when she could not get access to her file after those visits, she requested a solicitor to look into the matter. The Appellant further submitted that this solicitor was unable to gain access to her file either.
19. The Appellant submitted that it was not until 2013 that her solicitor informed her that the property registration was being processed but the PRAI were looking for outstanding information in order for the registration to complete.
20. The Appellant submitted that she had attempted to contact the Respondent on a number of occasions by registered and ordinary post but prior to 2023 she only received one reply. This reply she stated was the Respondent’s supplied letter of 20th August 2014 in which the Respondent stated they could not locate the stamp duty details on the property.
21. In summation, the Appellant submitted as she was not the legal owner of the property until 29th November 2012, then she was not obliged to pay stamp duty on the property until that date. As the rate of stamp duty was 6% on the date she acquired the property, and as it had subsequently decreased to 1% on the date she became the “legal owner” of the property, the Appellant submitted that the Respondent was required to repay her the differential on the two rates of stamp duty.
22. Additionally, the Appellant submits as she was informed by the PRAI on 21st May 2021, that the property was registered into her name on 29th November 2012, then the four year timeframe from which she could seek repayment of the overpaid stamp duty should apply from that date as this was the date that she became aware of the late registration. As the Appellant submitted her claim for repayment with the Respondent on 2nd January 2022, she submitted that her claim for repayment ought to be allowed by the Commission.

Respondent

23. The Respondent submitted that it first received contact from the Appellant regarding the alleged overpayment of her stamp duty on the property on 2nd January 2022. The Respondent submitted that as the property's stamp duty return was dated 28th November 2005 and the associated liability paid on that date, then it was unable to process the Appellant's claim some sixteen years later.
24. The Respondent submitted given this lapse of time and as the provisions of section 159A SDCA 1999 require claims to be submitted within four years of the date to which the transaction relates, then it was unable to repay the amount requested by the Appellant. The Respondent noted the lack of discretion afforded to it and the Commission in allowing repayments outside the four year period as the provisions of section 159A TCA 1997 state that such repayments shall not be repaid out of that four year timeframe.
25. The Respondent further submitted that the Appellant's reliance on the Respondent's letter of 20th August 2014 was ill conceived as the Appellant had quoted a folio number which related to a previous property owned by her rather than the folio number of the property which is the subject of this appeal.
26. In summation, the Respondent submitted while they had every sympathy for the position the Appellant found herself in, as a result of a valid claim not being made within the statutory timeframe and as there was no discretion provided in the relevant legislation, then the Appellant's claim could not succeed.

Material Facts

27. The Commissioner finds the following material facts:-

- 27.1 The Appellant entered into a deed of transfer on 28th November 2005 to purchase the property from a third party for a consideration of €380,000.
- 27.2 The Appellant acquired the property on that date in fee simple.
- 27.3 The deed of transfer was executed in the State and the property is situate in the State.
- 27.4 A stamp duty return was lodged with the Respondent on 2nd December 2005. The liability associated with that return calculated by applying the rate of stamp duty which prevailed at that time (6%) to the purchase price of the property.
- 27.5 The property was not transferred into the Appellant's name until 29th November 2012.

These material facts are not at issue between the parties and the Commissioner accepts them.

Analysis

28. Although the Commission was not provided with the complete set of correspondence by the Appellant, it appears to the Commissioner that, in part, mapping issues contributed to the delay in registering the property into the name of the Appellant. The effect of this issue is while the property was acquired by the Appellant on 28th November 2005, it was not registered into her name until 29th November 2012. The Commissioner appreciates that this caused an element of uncertainty with the Appellant in relation to the relevant date the stamp duty was due on the property acquisition.
29. The Commissioner notes that the Appellant seeks a refund of stamp duty outside the four year period specified under section 159A (1) SDCA 1999. In order for a repayment claim to be considered, those provisions require the Appellant's claim to be a "valid claim".
30. In order to establish if a valid claim exists, the Commissioner is required to consider the provisions of section 2 SDCA 1999. This provision charges any instrument which is specified in schedule 1 SDCA 1999 and which is executed in the State (or wherever executed, relates to property situated in the State) to stamp duty.
31. Schedule 1 SDCA 1999 specifies that a conveyance or transfer on sale of any such property is a chargeable instrument for the purpose of section 2 SDCA 1999. The Commissioner notes that the Appellant entered into a Deed of Transfer in respect of the property on 28th November 2005 and paid the purchase price of the property on that date.
32. As a Deed of Transfer is considered a "transfer on sale" for the purpose of section 2 SDCA 1999, it follows that the transaction entered into by the Appellant on 28th November 2005 was within the charge to stamp duty on that date.
33. As the transaction was within the charge to stamp duty, the provisions of section 2 (3) SDCA 1999 apply. These provisions require that the Deed of Transfer be duly stamped and the associated liability paid within 44² days of the date the Deed of Transfer was executed. As the Deed of Transfer was executed on 28th November 2005, it follows that the Appellant had until 10th January 2006 to comply with her obligations. The

² While section 2(3) SDCA 1999 requires that any instrument which is chargeable to stamp duty is duly stamped (and the associated duty paid) within 30 days, the Commissioner notes that it is a practice of the Respondent to allow 44 days after the execution of the instrument for that process to complete.

Commissioner notes that the Appellant complied with these obligations on 2nd December 2005.

34. As noted in paragraph 28 above, the Appellant based her appeal, in part, on the grounds that the date she acquired the property and the date the property was registered into her name were some seven years apart. The Appellant submits that the latter date is the appropriate date that the stamp duty on the property became due.
35. The Commissioner notes that the Appellant seeks to apportion an element of fault with her progressing her appeal on delays caused by the PRAI in registering the title of the property into her name and the Respondent not providing her with access to her file and being unable to locate same.
36. Turning to the former, as stated, mapping issues contributed to the delay in registering the property in the Appellant's name. These issues do not appear to have been resolved by the Appellant's solicitor until some stage in 2013. The PRAI are unable to complete registration until such stage as they are in possession of all the information necessary to complete the transfer. Issues related to any apportionment of fault are not within the remit of the Commissioner's statutory role (see below at paragraph 39 for further).
37. From the information provided to the Commission by the Appellant, the Commissioner finds that the Appellant suffered a significant delay in effecting the property being transferred into her name. However, as there is nothing contained in the SDCA 1999 to support the Appellant's claim that the stamp duty is payable on the date the property was transferred into her name, it follows that the Commissioner is required to determine that the stamp duty was correctly calculated and payable within 44 days of the date the Appellant completed the Deed of Transfer, 28th November 2005. Therefore, the Commissioner must refuse the Appellant's appeal and determine that no valid claim for a refund of stamp duty exists.
38. The Commissioner further notes the Appellant's submission in which she seeks to treat the acquisition of the property as a "resting in contract transaction". However, as the Appellant acquired the property on 28th November 2005 in fee simple, it follows that she had full ownership rights on the property from that date. As such, it follows that the Appellant did not fulfil the conditions necessary (less than full ownership rights) for the Deed of Transfer to be treated as resting in contract and for those reasons the Commissioner is unable to consider this submission.
39. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. Section 6(2) of the Finance (Tax Appeals) Act 2015 sets out the functions of Appeal

Commissioners appointed pursuant to that Act. Appeal Commissioners therefore have the jurisdiction set out in statute and do not have jurisdiction to consider or decide on the constitutionality of legislation or to set aside a decision of the Respondent based on alleged unfairness, breach of legitimate expectation or disproportionality, as such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. This comes within the jurisdiction and remit of the Courts.

40. The scope of the jurisdiction of an Appeal Commissioner, has been discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 (hereinafter “*Lee*”), *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 (hereinafter “*Menolly Homes*”) and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 and is confined to the determination of the amount of tax owing by or due to a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Appeal Commissioner or based on undisputed facts as the case may be.

41. Most recently Murray J. in *Lee* held as follows:

“From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge. The ‘incidental questions’ which the case law acknowledges as falling within the Commissioners’ jurisdiction are questions that are ‘incidental’ to the determination of whether the assessment properly reflects the statutory charge to tax having regard to the relevant provisions of the TCA, not to the distinct issue of whether as a matter of public law or private law there are additional facts and/or other legal principles which preclude enforcement of that assessment.”

42. Therefore, the jurisdiction of an Appeal Commissioner does not extend to the provision of equitable relief and as such the Commissioner is unable to consider the Appellant’s submissions which seek to establish that the legislation is unfair or that factors outside her control contributed to her unsuccessful appeal.

43. As no valid claim to repayment of stamp duty exists, it follows that the Commissioner is not required to consider the provisions of section 159A (1) SDCA which imposes a four year time limit on the repayment of stamp duty.

44. In appeals which seek the repayment of taxation, such as this appeal, the burden of proof lies with the Appellant. As confirmed in *Menolly Homes* by Charleton J at paragraph 22:-

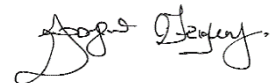
“The burden of proof in this appeal process is ... on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”

45. The burden of proof has not been discharged to satisfy the Commissioner that a refund of stamp duty is due to the Appellant under the provisions of section 159 (1) SDCA 1999. Therefore, the Appellant’s appeal is refused.

Determination

46. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant refund is payable. The Commissioner appreciates that the Appellant will be disappointed with this determination but she was correct to seek legal clarity on her appeal.

47. This appeal is determined in accordance with Part 40A TCA 1997. 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 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery
Appeal Commissioner
22nd August 2023