



Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against a Notice of Amended Assessment to Capital Acquisitions Tax (hereinafter “CAT”) raised on 27 September 2018 by the Revenue Commissioners (hereinafter the “Respondent”).
2. The total amount of tax under appeal is €105,583.02.

Background

3. Ms ██████████ (hereinafter the “Appellant”) separated from her husband in or around 2000 and as part of a settlement reached in family law proceedings, the former family home in ██████ was sold from which the Appellant received €202,624.
4. In or around May 2000 the Appellant moved to ██████ with her three daughters and took up residence with her mother at her mother’s home at ████████████████████ (hereinafter the “Dwellinghouse”).

5. The Appellant's mother died on [REDACTED] 2015 and a Grant of Probate in the Deceased's estate issued on [REDACTED] 2016.

6. The Appellant's mother executed her will on 26 June 2014 and the following relevant bequest was left to the Appellant:

"I give devise and bequeath all my interest in my dwellinghouse and premises to my daughter, [REDACTED] (who, with her three daughters has lived with me for the past fourteen years)...

All of the rest residue and remainder of my property of every nature and kind I give, devise and bequeath in equal shares between my said two daughters [REDACTED] and [REDACTED]..."

7. The Dwellinghouse was sold by the Appellant for €1,110,000 and the Appellant subsequently purchased a new house at [REDACTED] (hereinafter the "Replacement Property") for €575,000 and also paid stamp duty in the amount of €5,950 and legal fees in the amount of the €4,349 in relation to the purchase of the Replacement Property.

8. On 28 October 2016 the Appellant, through her Tax Agent, submitted a CAT Return to the Respondent which included a claim for a Dwellinghouse Exemption pursuant to section 86 of the Capital Acquisitions Tax Consolidation Act 2003 (hereinafter the "CATCA2003") on the following bases:

- i. The Dwellinghouse was continuously occupied by the Appellant as her only or main residence for a period of 3 years prior to the receipt of the inheritance;
- ii. The Appellant was not entitled to any interest in any other dwelling house at the date of the inheritance;
- iii. The Appellant would continue to occupy the Dwellinghouse (or a replacement property) as her only or man residence for a further period of 6 years commencing on the date the property was inherited by her.

9. The claim for Dwelling House exemption submitted by the Appellant was as follows:

Sales proceeds relating to dwelling house claim:		876,026
Proceeds reinvested in new house		- 575,000
Enhancement expenditure		- <u>97,500</u>

Proceeds not reinvested		203,526
<u>Proceeds not reinvested</u> x value of house at date of inheritance		
Total proceeds (for purpose of dwelling house relief claim)	<u>876,026</u>	
	203,526 @ 876,026	203,526
Other inheritances		
Bank of Ireland Shares		4,368
Household contents		<u>84,000</u>
		291,894
Less liabilities, costs and expenses		- 28,650
Less CAT threshold		<u>- 225,000</u>
Taxable inheritance (for purpose of clawback of relief claimed)		38,244
CAT @ 33% payable		12,621

10. The sales proceeds of €876,026 identified in the CAT return purported to represent the sale price for the Dwellinghouse of €1,110,000 minus €223,974. This represented an amount which the Appellant claims she invested in the Dwellinghouse by paying for an extensive renovation of same. As a result the Appellant claims she held an equitable interest in the Dwellinghouse prior to the death of her mother in ██████████ 2015. The Commissioner notes that there is an error in the calculation in this regard and that this figure should be €886,026.

11. The enhancement expenditure figure of €97,500 relates to the Replacement House and expenditure which the Appellant claims she incurred on the Replacement House.

12. On 13 February 2018 the Respondent notified the Appellant that her CAT return had been selected for an audit. On 27 September 2018 the Respondent wrote to the Appellant indicating that the Appellant's claim in relation to an equitable interest in the Dwellinghouse was disallowed and also that the Appellant's claim in relation to

enhancement expenditure on the Replacement House was disallowed. The Respondent's correspondence included the following calculation in relation to CAT:

Value of dwelling house at the date of inheritance and sale price		1,100,000
Replacement cost of dwelling house		575,000
Replacement cost	575,000	
Estimate legal costs @2%	<u>(11,500)</u>	
	586,500	
Amount not reinvested		523,500
Percentage rate not re-invested	47.16%	
Clawback of Dwelling House	1,110,000 x 47.16%	523,476
<u>CAT Assessment:</u>		
Proceeds not invested	523,476	
House contents	84,000	
Share	<u>4,368</u>	
	611,844	
Less expenses	<u>(28,650)</u>	
Taxable benefits	583,194	
Less Group A Threshold	<u>(225,000)</u>	
		<u>358,194</u>
Tax due @ 33%		118,204.02
Tax paid		(12,621.00)
Tax Due		<u>105,583.02</u>

13. On 27 September 2018 the Respondent also raised a CAT Notice of Amended Assessment to the Appellant reflecting the above figures in the amount of €105,583.02.

14. The Appellant submitted a Notice of Appeal to the Commission dated 25 October 2018 appealing the CAT Notice of Amended Assessment.

Legislation and Guideline

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

Section 86 of the CATCA2003 – Exemption relating to certain dwellings

“(1)In this section—

“dwelling-house” means—

(a) a building or part (including an appropriate part within the meaning of section 5(5)) of a building which was used or was suitable for use as a dwelling, and

(b) the curtilage of the dwelling house up to an area (exclusive of the site of the dwelling house) of one acre, but if the area of that curtilage (exclusive of the site of the dwelling house) exceeds one acre, then the part which comes within this definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling house;

“relevant period”, in relation to a relevant dwelling-house comprised in a gift or inheritance, means the period of 6 years commencing on the date of the gift or the date of the inheritance.

...

(3) Subject to subsections (4), (5), (6) and (7), a dwelling-house comprised in a gift or inheritance which is taken by a donee or successor who—

(a) has continuously occupied as that donee or successor's only or main residence—

(i) that dwelling-house throughout the period of 3 years immediately preceding the date of the gift or the date of the inheritance, or

(ii) where that dwelling-house has directly or indirectly replaced other property, that dwelling-house and that other property for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the gift or the date of the inheritance,

(b) is not, at the date of the gift or at the date of the inheritance, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house, and

(c) continues to occupy that dwelling-house as that donee or successor's only or main residence throughout the relevant period,

is exempt from tax in relation to that gift or inheritance, and the value of that dwelling-house is not to be taken into account in computing tax on any gift or inheritance taken by that person unless the exemption ceases to apply under subsection (6) or (7).

...

(6) If a dwelling-house exempted from tax by virtue of subsection (3) is sold or disposed of, either in whole or in part, within the relevant period, and before the death of the donee or successor (not being a donee or successor who had attained the age of 55 years at the date of the gift or inheritance), the exemption referred to in that subsection shall cease to apply to such dwelling-house unless the sale or disposal occurs in consequence of the donee or successor requiring long-term medical care in a hospital, nursing home or convalescent home.

...

(8) Where a dwelling-house exempted from tax by virtue of subsection (3) (in this section referred to as the "first-mentioned dwelling-house") is replaced within the relevant period by another dwelling-house, the condition specified in paragraph (c) of subsection (3) is treated as satisfied if the donee or successor has occupied as that donee or successor's only or main residence the first-mentioned dwelling-house, that other dwelling-house and any dwelling-house which has within the relevant period directly or indirectly replaced that other dwelling-house for periods which together comprised at least 6 years falling within the period of 7 years commencing on the date of the gift or the date of the inheritance.

...

(10) Subsection (6) shall not apply to a case falling within subsection (8), but the extent of the exemption under this section in such a case shall, where the donee or successor had not attained the age of 55 years at the date of the gift or at the date of the inheritance, not exceed what it would have been had the replacement of one dwelling-house by another referred to in subsection (8), or any one or more of such replacements, taken place immediately prior to that date.”

16. It is important to note that section 86 of the CATCA2003 was replaced in its entirety by section 56 of the Finance Act 2016 with effect from 25 December 2016. The provisions of section 86 of the CATCA2003 as enacted during the relevant period and which apply to the within appeal are set out above.

Submissions

Appellant’s Submissions

17. The Appellant submits that there are two aspects to her appeal:

- i. That she had an equitable interest in the Dwellinghouse prior to the date of the inheritance she received from the Deceased. The basis of this claim is that she claims that she invested €223,974 into the Dwellinghouse in 2000. The Appellant claims that Dwellinghouse required substantial renovations in order to make it a suitable home for three generations of her family to live in, that is to say the Deceased, the Appellant and the Appellant’s children; and
- ii. That, shortly after the acquisition of the Replacement Property, certain structural and other issues were discovered which required an additional spend. This additional spend plus the legal and together costs associated with the purchase of the Replacement Property came to €97,500 and that the works were required to make the Replacement Property habitable.

18. The Commissioner heard evidence from six witnesses on behalf of the Appellant.

Witness 1 – the Appellant

19. The Appellant stated that she separated from her husband in 2000 and as a result she decided that she and her three daughters would move in with her mother at the Dwellinghouse. The reason for this decision was to assist with the children’s education and also with her mother’s future needs in mind.

20. The Appellant stated that her mother had lived in the Dwellinghouse since 1986 and described the Dwellinghouse as being a three-bedroomed bungalow with a sitting room,

dining room, kitchen and bathroom. She stated that she discussed renovating the Dwellinghouse with her mother and the purpose of any renovations would be to bring the house to a standard whereby everyone would fit comfortably in the house and allow her mother to have her own separate living space. The Appellant stated that her mother was insistent on having her own living space if everyone was to be accommodated. The plan for the renovation was extensive and involved raising the roof, putting accommodation upstairs, extending the living accommodation and bathrooms.

21. The Appellant stated that her mother sought planning permission for the renovations as the Dwellinghouse was in her name and that the Appellant engaged the builders, the architects and any tradesmen required to carry out the work involved. In addition the Appellant stated that she paid for all of the renovations.
22. The Appellant stated that she used the funds which she received from the sale of her former family home which amounted to €202,623 to fund the renovations. In addition she stated that she used whatever monies she had available from work, when she returned to work, and that took out two personal loans totalling €40,000 all of which was used to fund the renovations. She stated that her mother did not make any financial contribution to the renovations as she was not in a position to do so. The Appellant stated that she was responsible for the upkeep and maintenance of the Dwellinghouse from the time she moved in.
23. The Appellant stated that the Dwellinghouse was transformed as a result of the renovations and that it turned into a family home with plenty of space for her mother as well as the three children. The Appellant referred to a Certificate of Market Valuation dated March 2001 which valued the Dwellinghouse at IR£380,000 (that is to say €482,600) prior to the renovations.
24. The Appellant stated she was her mother's full time carer in the years that she lived with her mother in the Dwellinghouse. She stated that her mother's health deteriorated over the years to such an extent that she required full time care. It had been her mother's wish that she would remain at home until her death and the Appellant eventually gave up work and cared for her mother on a full time basis. The Appellant stated that prior to giving up work she had held a number of jobs including working in an estate agent's office, working in a café and as an administrator.
25. The Appellant stated that she inherited the Dwellinghouse, minus her investment in it, from her mother. In addition she inherited some Bank of Ireland shares. She stated that she decided to sell the Dwellinghouse as she needed to downsize, two of her daughters had moved out and she had not been working for years and was dependent on Social

Welfare payments. She stated that prior to selling the Dwellinghouse she disposed of any paperwork that was not of any personal interest or that could have been of use moving forward. She clarified that any receipts, bills, copy books or any other paperwork relating to the renovations was disposed of at the time of the sale. This, she stated, was on the understanding that there was a requirement to keep receipts for a period of 7 years and that she thought she would not require them after that.

26. In relation to the Replacement Property, the Appellant stated that she purchased it for €575,000 and that, when she initially viewed it, it was a three-bedroom two-storey house which required some work in that the kitchen was extremely small and the porch area had no windows or doors. In addition there was extensive damage to the garden in that there had been a storm and the right hand side of the property had collapsed into a stream which required the realignment and building up of the boundary. She stated that after she moved in to the Replacement Property she discovered work was required to the skylight in the roof which had been leaking for years and also to a chimney and the bio-cycle unit in the garden need some repair. She stated that prior to completing the purchase of the Replacement Property she had been informed by her solicitor that all of the paperwork was in place and that she had assumed this meant that an engineer's report had been received. After the completion of the purchase she looked for the engineer's report and discovered that one had never been received.

27. As a result of all of the above the Appellant stated that she carried out the following renovations to the Replacement Property totalling €89,785 as follows:

- i. Extended kitchen
- ii. Build-in the porch area
- iii. Works to bio-cycle unit
- iv. Groundworks to the stream side of the property
- v. Fencing to the perimeter of the property

28. The Appellant identified the following receipts and amounts in support of her claim in relation to the renovations to the Replacement Property:

16/05/2016	Decking supplies	166.15
17/05/2016	Decking supplies	153.87
17/05/2016	Groundworks and fencing	5,618.25

18/05/2016	Decking supplies	199.97
24/05/2016	Fencing supplies	279.04
26/05/2016	Fencing supplies	178.55
27/05/2016	Fencing supplies	199.67
28/05/2016	Fencing supplies	124.77
27/05/2016	Gate parts	105.00
09/06/2016	Gabion baskets and groundworks	5,391.25
20/07/2016	Kitchen tap	141.87
06/08/2016	Drain work	150.00
17/08/2016	Drawings for kitchen extension	450.00
05/09/2016	Building supplies	139.02
20/09/2016	Plumbing supplies	427.00
24/09/2016	Stairs / railing / close in alcove	2,500.00
15/10/2016	Garden supplies	392.32
22/10/2016	Railings and gates	3,800.00
22/11/2016	Laminate flooring for kitchen extension	505.00
09/12/2016	Garden supplies	323.24
15/12/2016	Building contractor for kitchen extension	49,206.00
09/01/2017	Electrical contractor for kitchen extension	2,227.00
16/01/2017	Kitchen appliances	3,420.00
15/03/2017	Tiles	280.00
22/03/2017	Windows	1,190.00
28/03/2017	Windows	1,490.00
05/08/2017	Garden supplies	349.90
15/09/2017	Building supplies	79.79

		79,487.66
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Witness 2 – ██████████

29. The Commissioner heard evidence from Ms ██████████ who was a former babysitter and subsequent close friend of the Appellant and has known the Appellant for 25 years. Ms ██████████ stated that she recalled the Appellant's separation from her former husband and the discussions which she had with the Appellant around moving back to ██████████ and to the Dwellinghouse. Ms ██████████ stated that the Appellant had expressed concerns that the Dwellinghouse was not large enough for her and her daughters along with her mother and that it would require renovations. She stated that the Appellant had discussed with her that the proceeds of the sale of the former family home would be used to pay for the renovations to the Dwellinghouse. She stated that it was always her understanding that the Appellant would pay for the renovations and that it was never going to be the Appellant's mother who would pay.

30. Ms ██████████ stated that she would have called to visit the Appellant at the Dwellinghouse on a number of occasions and seen the renovations and would also have spoken on the telephone to the Appellant whilst the renovations were ongoing.

31. Ms ██████████ stated that the Appellant was a full-time carer for her mother and that the Appellant gave up her job to look after her mother to ensure that her care was 100 per cent.

Witness 3 – Ms ██████████

32. The Commissioner heard evidence from Ms ██████████ who is a lifelong friend of the Appellant since school and college and is godmother to one of the Appellant's daughters. Ms ██████████ is a property developer. She stated that at the time of the Appellant's separation from her former husband she had discussions with the Appellant as to housing and what the Appellant might be able to purchase with her share of the funds from the sale of the former family home. She stated that her memory was that the funds released from the sale of the former family home were sufficient for the Appellant to purchase a home in ██████████ but that the Appellant told her that she would probably have to move into the Dwellinghouse to care for her mother.

33. She stated that once the Appellant moved into the Dwellinghouse, the Appellant started to plan the renovations with a view to making the Dwellinghouse a home suitable for everyone. Ms [REDACTED] described the renovations as being substantial in that a very large kitchen / dining / family space was added on to the Dwellinghouse along with a conservatory and large laundry area. The roof was raised with dormer windows being installed and four bedrooms were created upstairs along with a family bathroom. Ms Supple stated that as far as she understood the Appellant had funded the renovations.

Witness 4 – [REDACTED]

34. The Commissioner then heard evidence from Ms [REDACTED], the Appellant's sister. Ms [REDACTED] stated that she and her sister and mother moved into the Dwellinghouse in or around 1986 where she remained living until she finished college in 1987. She described the Dwellinghouse as being a small bungalow and in no way large enough for a family of 5 to live in. She described the living conditions in the Dwellinghouse as being rather chaotic when the Appellant and her daughters moved in stating that they slept in the attic space which was accessed by an attic folding stairs.

35. She stated that she believed that the Appellant funded the renovations for a number of reasons. First she stated that her mother would not have had the funds for such a huge change to the house, second she stated her mother would not have had any reason to implement such a huge change and third that the Appellant had the funds from the sale of the former family home. She stated that at the time that the Appellant moved to the Dwellinghouse it was her mother's intention that, on her death, the Dwellinghouse would have been for the Appellant. She stated that the Appellant was her mother's carer from that time onwards and that her mother's health deteriorated over the years.

Witness 5 – [REDACTED]

36. Ms [REDACTED], the Appellant's eldest daughter, gave evidence to the Commissioner. She stated that she was 6 years of age when her parents separated and that she had discussions at the time about moving in with her gran whom she stated they all loved. She stated that it was always her understanding that the monies from the sale of their former family home would be used to pay for the renovations.

37. Ms [REDACTED] stated that she was 10 years of age when the renovations took place and that the Dwellinghouse went from being a house that was much smaller to their former family home, to being a two storey house which had two separate living rooms with a conservatory and a large kitchen / dining area with a conservatory. She stated that subsequent to the renovations, adaptation works for her grandmother's needs would also

have been carried out by making her bathroom wheelchair accessible and changes to the driveway and front doorway being made.

38. Ms [REDACTED] stated that she remembers the renovations and that a significant amount of workers attended the Dwellinghouse during their course. She stated that the renovations were the topic of conversation for quite some time with her mother and that her mother would have asked each of the children what decorations they would like in their rooms. She stated that she would have been with her mother on occasions when she went to collect supplies from builder's providers or to showrooms. She stated that she was also with her in the car when she went to the bank although she was unable to state what her mother would have done when she went into the bank. She also recalled meetings with architects and accountants at the Dwellinghouse whom, she stated, always spoke to her mother and not to her grandmother.
39. She stated that it was always her understanding that her mother was paying for the renovations and that she would have discussed with her mother how much money she and her father got from the sale of the former family home.
40. She stated that her mother was the person running the Dwellinghouse as a home and that her grandmother's health deteriorated over the years with mobility becoming an issue such that her mother was her grandmother's full time carer.

Witness 6 – [REDACTED]

41. Ms [REDACTED] [REDACTED], the Appellant's youngest daughter, gave evidence to the Commissioner. She stated that she was 6 years of age when she moved to the Dwellinghouse and that she remembers the renovations taking place, moving in with relations for a time when they were taking place and staying with her father the summer when the renovations were taking place.
42. She stated that she and her siblings were exceptionally close to their grandmother who was like a second mother to them and that it was a very emotional time when her grandmother died. She stated that after her grandmother's death it was decided to sell the Dwellinghouse as it was too big for their needs. She stated that when they moved in to the Replacement House it was habitable but there were definitely works which were needed such as a leaky roof with a bucket under it for a number of years. She stated that there were problems outside with the driveway, the drainage system and the bio-cycle unit.

Issue 1: The Appellant's claim that she had an equitable interest in the Dwellinghouse prior to her mother's death:

43. The Appellant submitted that she spent an amount of €223,974 on the renovations to the Dwellinghouse which represented an increase of value of 46%. In leaving her remaining interest in the Dwellinghouse to the Appellant in her will, the Appellant's mother implicitly acknowledged the Appellant's interest in the Dwellinghouse at the time of making her will.

44. It was submitted that section 10 of the CATCA2003 provides that an inheritance is deemed to be taken when:

"...under or in consequence of any disposition, a person becomes beneficially entitled in possession 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."

45. The Appellant submitted that at the time of her mother's death she already had an interest in the Dwellinghouse which she received from her mother that being a beneficial interest in the property relative to the investment which she had made in it. It is the Appellant's contention that her financial contribution to the Dwellinghouse gave her, as a matter of law, an interest in the property which was held by her mother by way of a constructive trust on her behalf.

46. In support of this it was submitted that Keane in *Equity and the Law of Trusts* at para 12.01 describes trusts which arise by operation of law as follows:

"...there are also trusts which arise, not because of the expressed intention of the settlor, but by operation of law. They arise either because the law presumes that the original owner of the property did not intend to part with his property gratuitously (in which case they are known as 'resulting trusts') or because the law considers it inequitable in the particular circumstances that persons should retain property for their own benefit (in which case they are known as 'constructive trusts')."

47. The Appellant submitted that the portion of the Dwellinghouse which the Appellant held a beneficial interest in was not the Appellant's mother's to give to the Appellant as the Appellant retained a beneficial interest in the property from in or around 2000 and that her mother held this interest by way of a constructive trust.

48. Therefore, it is the Appellant's submission that in contributing €223,974 in 2000 to the renovation of the Dwellinghouse, she obtained an interest in the property which her mother held by way of constructive trust for her benefit.

49. The Appellant also submitted that in letters dated April 2018 and 22 May 2018, her solicitors had confirmed their view that the Appellant had an interest in the Dwellinghouse.

Issue 2: The works carried out on the Replacement Property:

50. The Appellant submitted that section 86(8) of the CATCA 2003 permits the beneficiary of an exemption under section 86(3) of the CATCA2003 to replace the dwelling house which was inherited with a replacement house. The Appellant submitted that section 86(8) of the CATCA2003 merely provides the original house is to be “*replaced within the relevant period by another dwellinghouse*” and that it is otherwise silent as to the form.

51. The Appellant submits that there is no basis for the Respondent’s view that section 86(8) of the CATCA2003 permits only the contractual purchase price of the property to be taken into account rather than the need to make such a property habitable such that it would truly be a replacement house within the express statutory wording of sections 86(8) or (10) of the CATCA2003.

52. The Appellant submits that the purpose of the provision was to permit the Appellant replace the dwelling she inherited (and upon which she was entitled to the dwelling house exemption) with another dwelling. The Appellant submits that the costs incurred were required to make the Replacement Property suitable for use as a dwelling. It is the Appellant’s submission that she would not have been able to live in the Replacement Property without these additional works.

53. The Appellant submits that the Respondent’s approach seems to restrict the Replacement House to being a fully completed and habitable house and makes no account for a house which may require any modernisation or improvement. The Appellant submits that this approach is difficult to reconcile with the one year grace period provided for in section 86(8) of the CATCA2003 whereby a replacement property must be lived in for six out of the seven years since the benefit was obtained. The Appellant submits that this grace period implies that a replacement property may require works such that a taxpayer could not live in it immediately.

54. The Appellant submits that the Respondent’s own notes for guidance provide in relation to section 86(10) of the CATCA2003:

“The clawback provision contained in subsection (6) will not apply where an exempt dwelling-house is sold or disposed of and replaced by another dwellinghouse in accordance with subsection (8). However, this disapplication of the clawback applies only to the extent of the proceeds of the sale or disposal which are invested in the replacement dwelling-house.”

55. The use of the word “*invested*” is repeated in Revenue’s Tax Briefing 40 which states

“The clawback will be limited to any proceeds of the sale not invested in the replacement house.”

56. The Respondent’s Tax and Duty Manual CAT Part 24 – Dwelling House Exemption states at paragraph 5.1:

*“However, a sale or disposal does not result in the cessation of the exemption where—
the full proceeds from a sale are re-invested in a replacement dwelling house that then becomes the successor’s only or main residence. If less than the full proceeds are re-invested in a replacement dwelling house there is a clawback of the exemption in proportion to the amount of the proceeds not reinvested.”*

57. The manual goes on to state:

“The sales proceeds are not required to be re-invested completely in the purchase price of the replacement house. Necessary expenses associated with the purchase, such as stamp duty and legal costs, are treated as a legitimate part of the re-investment.”

58. It is the Appellant’s position that the scope and purpose of sections 86(8) and (10) of the CATCA2003 is sufficiently broad to permit a taxpayer to reinvest more than the mere cost price of the property but to also invest such proceeds such as to render the dwelling habitable and suitable for use as a dwelling.

59. In interpreting the phrase “*replaced within the relevant period by another dwelling-house*”, it is the Appellant’s submission that the Commissioner must consider the ordinary, broad, meaning of that phrase. It is the Appellant’s contention that the ordinary meaning of “*replaced*” would include those costs the Appellant was required to incur to bring the replacement house up to the standard of the house it replaced, or at a minimum, to a standard so as to make it habitable. The phrase “*replaced within the relevant period by another dwelling-house*” does not have the narrow meaning the Respondents are proposing, namely, solely the cost of a replacement property even if that property requires structural or remedial work to render it habitable. If there is any doubt as to its correct interpretation of the phrase, or if the Commissioner forms the view that it is ambiguous, then the Appellant is entitled to a construction which benefits her, namely, that such replacement cost includes costs incurred in making the replacement dwelling habitable.

Respondent’s Submissions

Issue 1: The Appellant's claim that she had an equitable interest in the Dwellinghouse prior to her mother's death:

60. In relation to the Appellant's claim that she had an equitable interest in the Dwellinghouse prior to her mother's death the Respondent submitted that the Appellant has not substantiated her claim that she expended the amount of €223,974 on renovations to the Dwellinghouse. The Respondent submits that the Appellant has not vouched this claimed expenditure and on this basis alone the Appellant has failed to substantiate her claim that she acquired an equitable interest in the Dwellinghouse prior to her mother's death.
61. The Respondent submitted that no contractual basis for the Appellant's claim of an equitable interest in the Dwellinghouse prior to her mother's death has been submitted and that no memorandum in writing has been submitted to substantiate her claim.
62. In addition, the Respondent submitted that the Commissioner does not have equitable jurisdiction and has no capacity to declare, recognise, or otherwise acknowledge any equitable claim. Without prejudice to this position the Respondent submitted that the Appellant cannot establish that she had an equitable interest in the Dwellinghouse prior to her mother's death.
63. The Respondent submits that the cases of *Smith v Halpin* [1997] 2 ILRM 38 supports its position that it is a matter for a Court of Equity to say that an equity exists and how it is to be satisfied. The Respondent submitted that no declaration has been made by a Court of Equity in relation to the equitable claim made by the Appellant and reiterated its position that the Commissioner does not have jurisdiction in relation to same.

Issue 2: The works carried out on the Replacement Property:

64. In relation to the works carried out on the Replacement Property the Respondent submitted that section 86(8) of the CATCA2003 provides that where there is a disposal/sale of the Dwellinghouse and it is replaced by another dwelling the clawback is quantified by restricting the relief/exemption to "*what it would have been had the replacement... taken place immediately prior*" to the date of the inheritance.
65. The Respondent submitted that the provision is concerned only with the actual replacement of the Dwellinghouse and relief ceases at that point in time. The Respondent submitted that there is no reference to any further reinvestment of any proceeds or any enhancement expenditure on the property which has been replaced or any other property. The Respondent submits that it is a simple point in time test. The relief/exemption is strictly limited/restricted to what it would have been if the dwellinghouse had been replaced prior to the date of the inheritance

66. The Respondent submitted that the words of the provision are effective and clear and straightforward. The Respondent submitted that no mention whatsoever is made of any additional reinvestment enhancement expenditure after purchase. The Respondent submitted that there is no basis whatsoever for any other relief/additional relief or the extension of the relief/exemption in this case to cover enhancement expenditure arising being incurred after the Dwellinghouse has been replaced.

Material Facts

67. The following facts are not in dispute between the Parties and the Commissioner accepts same and finds them as material facts:

- a. The Appellant separated from her husband in or around 2000;
- b. The Appellant's former family home was sold and the Appellant received €202,624 from the sale;
- c. The Appellant moved in to the Dwellinghouse with her mother and children and lived in the Dwellinghouse with her mother and children for a period of in excess of 3 out of the 4 years immediately preceding the Appellant's mother's death;
- d. The Appellant's mother died on [REDACTED] 2015;
- e. The Grant of Probate in the Appellant's mother's estate issued on [REDACTED] 2016;
- f. Under the terms of the Appellant's mother's will the Appellant received her mother's "*remaining interest*" in the Dwellinghouse along with its contents, shares and 50% of the residue of the estate;
- g. The Appellant sold the Dwellinghouse in early 2016 for a sum of €1,110,000;
- h. The Appellant purchased the Replacement Property for €575,000 in April 2016.

68. The following facts are in dispute between the Parties:

- i. The Appellant funded renovations to the Dwellinghouse in the amount of €223,974 prior to her mother's death;
- ii. The works carried out on the Replacement Property were necessary to make the Replacement Property habitable.

69. The Commissioner has examined the material facts at issue.

The Appellant funded renovations to the Dwellinghouse in the amount of €223,974 prior to her mother's death:

70. The Appellant submitted that she funded renovations to the Dwellinghouse in the amount of €223,974 prior to her mother's death. In support of this claim the Commissioner heard evidence from the Appellant and from five other witnesses. In her direct evidence the Appellant gave evidence surrounding her marriage breakdown and the sale of her former family home along with evidence of the thought process and reasons behind moving into the Dwellinghouse with her mother. She also gave evidence in relation to the general renovations which were carried out and in relation to the overall cost of those renovations. However, it was noteworthy that the Appellant did not give any evidence in relation to the specifics of how the renovations were funded beyond stating that she funded them from the funds which she received from the sale of the former family home, from loans which she had taken out and stating that her mother would not have been in a position to fund them.
71. The Commissioner notes that under cross-examination the Appellant stated that she did not remember the name of the builder who carried out the works over a period of approximately 36 months. In addition the Appellant indicated that she had not made any attempt to contact the builder who carried out the works although, in contrast to her statement that she could not remember the name of the builder, she stated that she heard he had gone out of business. When asked by Counsel for the Respondent whether she had made any attempt to get copies of cheques which would have been issued to pay for the renovations the Appellant indicated that she had not.
72. Under cross-examination the Appellant was asked how she supported herself after she had moved to the Dwellinghouse. In response she stated that she was working and that she had several different jobs at which she worked full time up to a certain point and that in 2008/2009 she became a full-time carer for her mother. It was put to the Appellant by Counsel for the Respondent that records show that the Appellant worked from April to June 2002 and then not again until December 2008 when she worked until November 2010. In response the Appellant accepted that she had worked during the periods which the Respondent's Counsel had set out. The Appellant stated that her family were very good to her at that time in relation to her living expenses that that all of the monies from the sale of the former family home were used to fund the renovations. She stated that she lived very frugally spending most of her time at home running the household and that any maintenance which she received from her former husband went towards the children's expenses along with any children's allowance which she received.

73. The Appellant was then asked about the loans which she claimed she had taken out to fund the renovations and it was put to her that these loans which she had taken out were not 100% used for renovations and that her claim to have used all of the monies raised from loans to fund the renovation was not fully correct. In response the Appellant stated that 99% of the money was spent on the renovations.

74. The Appellant has not submitted any documentary evidence to support her claim save and except a letter from the Appellant's solicitor dated April 2018 which indicates that the Appellant calculates that she invested €223,974 in the Dwellinghouse. The Commissioner notes the Appellant's evidence wherein she indicated that any paperwork in relation to the renovations was disposed of at the time of selling the Dwellinghouse and moving to the Replacement Property in circumstances where she did not believe she needed to retain the records after 7 years following the expenditure. Whilst the Commissioner accepts that any house move involves a significant amount of clearing of records and possessions, it is noteworthy that the Appellant on her own evidence has stated that she did not attempt to get copies of cheques from her bank to support her claim nor did she attempt to contact the builder in order to support her claim. In addition the Commissioner notes that no documentary evidence of any loans having been taken out by the Appellant has been submitted during this appeal.

75. The Commissioner notes the evidence of the five other witnesses who gave evidence on behalf of the Appellant and the four witnesses who gave evidence as to their understanding of how the renovations were funded, the sixth witness not having given evidence in relation to this aspect of the Appellant's claim. The Commissioner notes that none of the witnesses had any direct knowledge of any payments made by the Appellant and that none of them were able to state anything more definitive than it had been their understanding that the Appellant paid for the renovations.

76. In appeals before an Appeal Commissioner the burden of proof rests on the Appellant who must prove on the balance of probabilities that the contested tax is not payable. This is confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 by Charleton J at paragraph 22:-

"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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable."

77. The Commissioner does not accept that the Appellant has discharged the burden of proof in relation to her claim that funded renovations to the Dwellinghouse in the amount of

€223,974 prior to her mother's death. This is where the Appellant has not provided any documentary evidence to support her claim that she paid for the renovations to the Dwellinghouse and in circumstances where the Appellant has not provided any documentary evidence that she took out loans to assist in paying for the renovations to the Dwellinghouse. The Commissioner acknowledges that the renovations took place sometime in or around 20 years ago however by her own evidence the Appellant has stated that she did not make any attempt to procure documentary evidence of cheques which she would have issued in payment of the renovation works and that she did not attempt to contact the builder who carried out the works. In addition the Appellant has not provided evidence of any loans which she claims to have taken out to fund the renovations. Therefore, the Commissioner finds, on the balance of probabilities, that the Appellant has not proven that she funded renovations to the Dwellinghouse in the amount of €223,974 prior to her mother's death and that she has not discharged the burden of proof in this regard. Therefore this material fact is not accepted.

The works carried out on the Replacement Property were necessary to make the Replacement Property habitable:

78. The Appellant claims that she is entitled to include the expenditure which she incurred in relation to works on the Replacement Property as part of the reinvestment pursuant to section 86 of the CATCA2003. The Appellant claimed in her Outline of Arguments that she should be allowed to do this on the basis that the expenditure was necessary to ensure that the Replacement Property was rendered habitable. During oral submissions Counsel for the Appellant referred to this and submitted that monies that were expended to make the Replacement Property habitable were an investment as set out in section 86 of the CATCA2003.
79. The Commissioner notes that all of the works to the Replacement Property building were improvement works such as an extension to the kitchen and building in the porch area. The Commissioner also notes that external works to the grounds of the replacement property were carried out in the form of works to the bio-cycle unit, groundworks to the stream side of the property and fencing to the perimeter of the property
80. No evidence, whether oral or documentary, was adduced to the Commissioner which established that the Replacement Property was not habitable when the Appellant purchased it. The Commissioner notes that the Appellant's daughter, Ms [REDACTED], moved into the Replacement Property at the time of its purchase and stated that when she and the Appellant moved in to the Replacement House it was habitable but there

were works which were needed such as a leaky roof with a bucket under it for a number of years. She also stated that there were problems outside with the driveway, the drainage system and the bio-cycle unit.

81. In addition no evidence, whether oral or documentary, was adduced to the Commissioner which established that works were carried out to the Replacement Property prior to the Appellant moving in to the Replacement Property. All of the receipts submitted by the Appellant were dated after the date of purchase of the Replacement Property and no evidence, whether oral or documentary, was adduced to the Commissioner which established that the Appellant was unable to move in to the Replacement Property prior to any works being carried out. The Commissioner notes that no sales brochure or other documentary evidence in relation to the state of the property prior to its purchase by the Appellant was submitted.
82. The Commissioner notes that the Appellant stated that no engineer's report was lodged with her solicitor at the time of purchasing the Replacement Property and that damage had been caused to garden of the Replacement Property which necessitated external works being carried out. The other works which the Appellant gave evidence of being required were an extension to the kitchen as the existing kitchen was too small, the creation of a study area and the building-in of a porch area with some works to windows also being required. None of the other witnesses, apart from Ms [REDACTED], gave evidence to the Commissioner in relation to the Replacement Property.
83. On the basis of the evidence received, both oral and documentary, the Commissioner finds that the works carried out to the Replacement Property by the Appellant were discretionary improvement works which were carried out after the Appellant had moved in to the Property.
84. The Commissioner reiterates that the burden of proof rests on the Appellant to establish on the balance of probabilities that her claim that the monies which she expended on the Replacement Property were necessary to bring the property to a habitable standard. Based on the evidence received the Commissioner finds that the Appellant has not discharged the burden of proof in relation to her claim that the works carried out on the Replacement Property were necessary to make the Replacement Property habitable and that she has not established that she would not have been able to live in the Replacement Property without these additional works. Therefore this material fact is not accepted.

Analysis

85. Section 86 of the CATCA2003 (as it was enacted on 26 April 2016 the date of the purchase by the Appellant of the Replacement Property) is entitled “*Exemption relating to certain dwellings*” and for the purposes of the within appeal subsection (3) thereof provides that, subject to subsections (4), (5), (6) and (7), a dwelling house which is taken by a donee or successor:

- a. Who has continuously occupied the dwelling house as their only or main residence for a period of 3 out of the 4 years immediately preceding the date of the inheritance;
- b. Who, at the date of the inheritance, is not beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house; and
- c. Who continues to occupy that dwelling-house as their only or main residence throughout the relevant period of 6 years commencing on the date of the inheritance;

is exempt from tax in relation to that inheritance and the value of that dwelling-house is not taken into account in computing tax on any gift or inheritance taken by that person unless the exemption ceases to apply under subsection (6) or (7). It is not in dispute that the Appellant satisfied the conditions of section 86(1) of the CATCA2003.

Dwellinghouse

86. The Appellant claims that she held a beneficial interest in the Dwellinghouse in that she claims she funded renovations to the Dwellinghouse in the amount of €223,974 prior to her mother’s death. The Appellant sold the Dwellinghouse in early 2016 and in April 2016 purchased the Replacement Property for €575,000 and claims she spent an additional sum of in or around €97,500 in order to make the Replacement Property habitable.

87. In October 2016 the Appellant submitted a CAT return to the Respondent as follows:

Sales proceeds relating to the Dwellinghouse	€876,026
Proceeds reinvested in new house	(€575,000)
Enhancement expenditure	<u>(€ 97,500)</u>
Proceeds not reinvested	€203,526

88. The reason behind the amount of €876,026 being the sales proceeds relating to the Dwellinghouse was that the value of the claimed beneficial interest was deducted from the sales price achieved for the Dwellinghouse, albeit that a calculation error in same appears to have been made in that the sales price of €1,110,000 minus €223,974 equals €886,026 and not €876,026 as contained in the CAT return.

89. The Commissioner has already found as a material fact that the Appellant did not fund renovations to the Dwellinghouse in the amount of €223,974 prior to her mother's death. Having made this finding, it follows that the basis of the Appellant's claim that she had a beneficial interest in the Dwellinghouse at the time of her mother's death has not been established.

90. The Appellant did not put forward any other basis for her claim that she had a beneficial interest in the Dwelling house at the time of her mother's death other than her claim that she funded renovations to the Dwellinghouse in the amount of €223,974 prior to her mother's death and that this established that she had a beneficial interest in the Dwellinghouse. Having made the finding that the Appellant did not fund renovations to the Dwellinghouse in the amount of €223,974, it follows that the basis of the Appellant's claim that she had a beneficial interest in the Dwellinghouse at the time of her mother's death has not been established.

91. Therefore the Commissioner finds that for the purposes of the CAT assessment the correct amount for the sales proceeds relating to the Dwellinghouse is €1,110,000.

92. In relation to the Respondent's position put forward that the Commissioner does not have equitable jurisdiction and has no capacity to declare, recognise, or otherwise acknowledge any equitable claim, the Commissioner makes no finding in relation to same save to state that the scope of the jurisdiction of an Appeal Commissioner has been set out in a number of cases decided by the Courts, 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 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577.

93. 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"*¹

Replacement Property

94. Under section 86(6) of the CATCA2003 the exemption available under section 86(3) of the CATCA2003 ceases to apply if the dwelling-house is sold or disposed of within the relevant period of 6 years unless the sale or disposal occurs in consequence of the donee or successor requiring long-term medical care in a hospital, nursing home or convalescent home.
95. Section 86(8) of the CATCA2003 provides that where a dwelling-house exempted under section 86(3) of the CATCA2003 is replaced by another dwelling-house within the relevant period of 6 years then *"the condition specified in paragraph (c) of subsection (3) is treated as satisfied if the donee or successor has occupied as that donee or successor's only or main residence the first-mentioned dwelling-house, that other dwelling-house and any dwelling-house which has within the relevant period directly or indirectly replaced that other dwelling-house for periods which together comprised at least 6 years falling within the period of 7 years commencing on the date of the gift or the date of the inheritance."*
96. It is not in dispute between the Parties that the Appellant purchased the Replacement Property within 6 years of selling the Dwellinghouse and it is not in dispute between the Parties that the provisions of section 86(6) of the CATCA2003 apply to the Appellant.
97. Section 86(10) of the CATCA2003 provides that:
- "Subsection (6) shall not apply to a case falling within subsection (8), but the extent of the exemption under this section in such a case shall, where the donee or successor had not attained the age of 55 years at the date of the gift or at the date of the inheritance, not exceed what it would have been had the replacement of one dwelling-house by another referred to in subsection (8), or any one or more of such replacements, taken place immediately prior to that date."*
98. The Appellant asserts that the purpose of this provision is to permit the Appellant replace the Dwellinghouse which she inherited and upon which she was entitled to the dwelling

¹ At paragraph 64

house exemption with another dwelling. The Appellant asserts that the costs which she expended additional to the purchase price were necessary to make the Replacement Property suitable for use as a dwelling. It is the Appellant's submission that she would not have been able to live in the Replacement Property without these additional works. The Commissioner has already found as material fact that the Appellant has not discharged the burden of proof in relation to her claim that the works carried out on the Replacement Property were necessary to make it habitable and that she has not established that she would not have been able to live in the Replacement Property without these additional works.

99. 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”.

100. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words contained in 86(10) of the CATCA2003 are plain and their meaning is self-evident. The Commissioner finds that the words contained in section 86(10) of the CATCA2003 mean that the relief / exemption is restricted to what it would have been if the Dwellinghouse had been replaced prior to the date of the inheritance. The Commissioner finds that the words of the provision do not allow for any additional reinvestment or enhancement expenditure after purchase.

101. Therefore the Commissioner finds that the Appellant has not succeeded in establishing that the additional enhancement expenditure claimed falls within the provisions of section 86 of the CATCA2003.

Determination

102. 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:-

“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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable.”

103. The Commissioner determines that the Appellant has failed to discharge the burden of proof in this appeal and that she has not succeeded in showing that the relevant tax was not payable.

104. The Commissioner therefore determines that the Notice of Amended Assessment to Capital Acquisitions Tax raised by the Respondent on 27 September 2018 shall stand.

105. This Appeal is determined in accordance with Part 40A of the TCA1997 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 TCA1997.



Clare O'Driscoll
Appeal Commissioner
23 November 2022