



45TACD2023

Between/

[REDACTED]

Appellant

-v-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Introduction

1. This matter comes before the Tax Appeals Commission by way of an appeal against an assessment to Capital Acquisitions Tax raised by the Respondent on the Appellant in 2015. The assessment was raised in respect of the Appellant's inheritance of a dwelling house from her former partner and the amount assessed on the Appellant was €43,560.

B. Factual background

2. The Appellant formerly resided with her partner, [REDACTED], at [REDACTED] [REDACTED], which is hereinafter referred to as "**the Property**". Mr. [REDACTED] had formerly been married to one [REDACTED] and Mr.



████████ and Ms. █████ had acquired the leasehold interest in the Property as joint tenants in or about 1973. The Property was registered in the joint names of Mr. █████ and Ms. █████ until 2014.

3. Mr. █████ and Ms. █████ obtained a divorce from the English High Court on █████ 1979.
4. The Appellant and Mr. █████ began cohabiting in the Property in or about 1980.
5. █████ died on or about █████ 2011. The Appellant was the sole beneficiary of his Will and a Grant of Probate to his estate was issued to the Appellant on █████ 2011.
6. On █████ 2013, Ms. █████ commenced Circuit Court proceedings against the Appellant, claiming that she was, following the death of Mr. █████, the sole owner of the property and seeking an Order that the Appellant vacate the Property and deliver up possession to Ms. █████.
7. On █████ 2014, the Appellant and Ms. █████ entered into a settlement agreement of the said Circuit Court proceedings, pursuant to which Ms. █████ acknowledged that the Appellant was beneficially entitled to possession of the Property, and consented to the Appellant being registered as owner of the Property. It was a further term of the agreement that the Appellant would pay Ms. █████ the sum of €8,000 as a contribution towards her legal costs, and that sum was duly paid.
8. By Deed of Transfer dated █████ 2014, Ms. █████ transferred the leasehold interest in the Property to the Appellant. The Deed recorded that the consideration for the Transfer was the payment of €8,000 by the Appellant. The Appellant paid €1,500 stamp duty on the Deed.





9. The Appellant then applied to be registered as the sole owner of the Property and paid the application fee of €530. The Appellant was registered as sole owner of the leasehold interest on [REDACTED] 2014.
10. The Appellant was subsequently assessed to Capital Acquisitions Tax by the Respondent on her inheritance of the Property from the late Mr. [REDACTED]. The amount assessed on the Appellant was €43,560, calculated on the basis that the value of the Property as of the date of the inheritance was €150,000 but that the Appellant was entitled to deduct the sum of €15,000 from the value of the inheritance, made up of (a) mortgage payments totalling €7,000 paid by the Appellant, and (b) the sum of €8,000 paid by the Appellant to Ms. [REDACTED].

C. Grounds of Appeal

11. On 27 April 2015, the Appellant sought to appeal against the CAT assessment but her request for an appeal was refused by the Respondent on 9 July 2015 on the grounds that the Appellant had not stated the grounds for her appeal.
12. By undated letter received by the Office of the Appeal Commissioners on 2 September 2015, the Appellant stated that she wished to appeal the assessment to CAT on the following grounds:-

"I did not get this house as a gift or inheritance. I have lived in this property since 1980 and have paid approximately 50% of the Mortgage and for upkeep on this house all the time. I have already submitted proof of this to Revenue."





13. The Appellant expanded upon those grounds by letter dated 21 January 2016, stating that:-

"I have lived at [the Property] since 1982, with my late Partner, [REDACTED], who died in 2011. Previously, [REDACTED] was married to a lady from England from 1974 to 1978. Her name is [REDACTED]. [REDACTED]'s name had remained on the Deeds. She has never contributed anything towards the upkeep of the house since she left. I agreed with [REDACTED] to give her €8,000 to get her name off the Deeds which I have done about 2 years ago.

Since I moved into this property, I have contributed to the Mortgage, Bills, decorating and furniture, etc. I still have a lot of receipts to prove this.

The late [REDACTED]'s Will was made out to me and I also got Probate."

D. Submissions and evidence of the Appellant

14. Having decided to admit the Appeal, I conducted a hearing of the appeal at which the Appellant gave evidence and made submissions.

15. While the Appellant's recollection of events was imperfect in some minor regards, I found her to be a generally truthful and reliable witness. The Appellant's evidence confirmed the factual background to the appeal detailed in paragraphs 2 to 10 above.

16. The Appellant further gave evidence that she had made the following payments in respect of the maintenance and upkeep of the Property:-

(i) July 1986 - £1,200 for construction of a new chimney;





- (ii) October 1989 - £1,940 for installation of uPVC windows;
- (iii) May 1993 - £300 for new carpets in bedroom, stairs and landing;
- (iv) November 1996 - £150 for replacing wallpaper;
- (v) December 1999 - £200 for painting;
- (vi) March 2006 - €1,200 for painting and papering;
- (vii) April 2006 - €1,019 for blinds;
- (viii) January 2007 - €1,200 for new wiring;
- (ix) November 2007 - €5,000 for constructing new garden wall and painting outside of house;
- (x) June 2008 - €1,000 for new downstairs carpets;
- (xi) November 2008 - €2,100 for new wardrobes and tiling bathroom;
- (xii) April 2009 - €3,000 for electrical works in the attic; and,
- (xiii) July 2009 - €2,600 for replacing the boiler and decorative works.

17. The Appellant further gave evidence that she had paid approximately €9,000 or €10,000 in respect of her legal costs of defending and settling the Circuit Court proceedings brought against her by [REDACTED].

18. The Appellant, who was unrepresented, submitted that she ought not to be liable to inheritance tax in respect of the Property.

E. Submissions of the Respondent

19. The Respondent submitted that the Appellant had been advised that the receipted amounts for rent paid, etc. could be deducted from the value of her benefit. The value of the benefit on the property transfer was €150,000 and the value of the benefit on the return now filed was €135,000, which allowed for the expenses receipted. The Respondent further submitted that, because the Appellant had a holiday home in





Sligo, she was not entitled to relief pursuant to section 86 of the Capital Acquisitions Tax Act 2003 (hereinafter "**CATA 2003**").

F. Relevant Legislation

20.Section 10(1) of CATCA 2003 provides that:-

"For the purposes of this Act a person is deemed to take an inheritance where, 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."

21.The relevant provisions of section 28 of the 2003 Act further provide that:-

"(1) In this section, "incumbrance-free value", in relation to a taxable gift or a taxable inheritance, means the market value at the valuation date of the property of which the taxable gift or taxable inheritance consists at that date, after deducting any liabilities, costs and expenses that are properly payable out of the taxable gift or taxable inheritance.

(2) Subject to this section (but except where provided in section 89), the taxable value of a taxable gift or a taxable inheritance (where the interest taken by the donee or successor is not a limited interest) is ascertained by deducting from the incumbrance-free value of such a taxable gift or taxable inheritance the market value of any bona fide consideration in money or money's worth, paid by the donee or successor for the gift or inheritance, including -





*(a) any liability of the disposer which the donee or successor undertakes to discharge as that donee or successor's own personal liability, and
(b) any other liability to which the gift or inheritance is subject under the terms of the disposition under which it is taken,
and the amount of so ascertained is the taxable value, but no deduction shall be made under this subsection in respect of any liability which is to be deducted in ascertaining the incumbrance-free value."*

G. Analysis and Findings

22. Having carefully considered the documentary evidence furnished prior to, during and subsequent to the hearing, and having carefully considered the submissions made by the parties, I am satisfied and I find that the Appellant did take an inheritance from the late Mr. [REDACTED] of his share of the leasehold interest in the Property.

23. It was not in dispute between the parties that the value of the leasehold interest in the Property as of the valuation date of the inheritance was €150,000.

24. The Property was, as of the date of death of Mr. [REDACTED], registered in the joint names of Mr. [REDACTED] and Ms. [REDACTED]. Ms. [REDACTED] instituted proceedings against the Appellant claiming sole ownership of the leasehold interest in the Property. In order to establish her entitlement to the leasehold interest in the Property, the Appellant was obliged to defend those proceedings and enter into a settlement agreement with Ms. [REDACTED]. I am satisfied and I find as a material fact that the Appellant paid Ms. [REDACTED] the sum of €8,000 in order to settle Ms. [REDACTED]'s claim against the Property. The Respondent has accepted that this sum ought to be deducted from the value of the





Appellant's inheritance when calculating the amount of Capital Acquisitions Tax for which she is liable.

25. I am satisfied on the evidence and I find as a material fact that the Appellant paid the sum of €7,000 in respect of mortgage payments on the Property during the years that she cohabited there with Mr. [REDACTED]. The Respondent has accepted on a concessionary basis that this sum ought to be deducted from the value of the Appellant's inheritance when calculating the amount of Capital Acquisitions Tax for which she is liable.

26. The Appellant further gave oral evidence that she had paid "*€9,000 or €10,000*" in respect of her own legal fees in defending the proceedings brought by Ms. [REDACTED] and in being registered as the owner of the Property. While it is less than satisfactory that no bills, receipts or other written evidence was produced in support of this oral evidence, notwithstanding my having afforded the Appellant an opportunity to produce such written evidence, I am satisfied on a balance of probabilities basis and I find as a material fact that the Appellant paid the sum of €9,000 in respect of her own legal fees and outlays in resisting the proceedings brought by Ms. [REDACTED], negotiating a settlement agreement and registering her ownership of the leasehold interest in the Property. In reaching this finding, I have had regard to the fact that it is implausible to the point of being incredible that the Appellant would not have had to pay her legal advisors for the legal work done on her behalf, and to the nature and extent of that work as well as to the value of the estate.

27. It is also relevant in this regard that I find as material facts that the Appellant paid the sum of €200 as the cost of extracting the Grant of Probate to the estate of the late Mr [REDACTED], paid fees of €530 to the Property Registration Authority in respect of the registration application, and paid Stamp Duty of €1,500 on the Deed of Transfer from Ms. [REDACTED] to the Appellant. For the avoidance of any doubt, the said three sums form





part of the figure of €9,000 which I have found was paid by the Appellant in establishing her ownership of the Property.

28.I further accept as correct and find as a material fact that the Appellant made payments in respect of substantial improvements to and refurbishment of the Property during the period she resided there with the late Mr. [REDACTED]. I find that the following monies paid by the Appellant would have materially contributed to the market value of the Property on the valuation date of the inheritance:-

- (i)** July 1986 - £1,200 (€1,523.69) for construction of a new chimney;
- (ii)** October 1989 - £1,940 (€2,463.29) for installation of uPVC windows;
- (iii)** January 2007 - €1,200 for new wiring;
- (iv)** November 2007 - €5,000 for constructing new garden wall and painting outside of house;
- (v)** April 2009 - €3,000 for electrical works in the attic; and,
- (vi)** July 2009 - €2,000 for replacing the boiler (cost of decorative works excluded).

29.I am satisfied and I find that the aforesaid sums paid by the Appellant constituted bona fide consideration in money or money's worth paid by the Appellant for the inheritance received from Mr. [REDACTED]. Accordingly, I find that the sum of €15,186.98 ought to be deducted from the value of the Appellant's inheritance when calculating the amount of Capital Acquisitions Tax for which she is liable.

30.Accordingly, in addition to the €15,000 which the Respondent had prior to the hearing of this appeal accepted as being deductible from the taxable value of the Appellant's inheritance from Mr. [REDACTED], the Appellant is further entitled to have the sums of €9,000 (in respect of legal fees and outlays) and €15,186.98 (in respect





of works carried out to the Property) deducted from the taxable value of the inheritance for the purposes of calculating her liability to Capital Acquisitions Tax.

H. Conclusion

31. The foregoing findings can be summarised as follows:-

- (a)** The Appellant did take an inheritance from the late Mr. [REDACTED] of his share of the leasehold interest in the Property, and is liable to capital acquisitions tax on the taxable value of that inheritance.
- (b)** The Respondent has correctly conceded that the Appellant is entitled to deductions of €8,000 (in respect of the settlement payment to Ms. [REDACTED]) and €7,000 (in respect of mortgage payments paid by the Appellant) in calculating the taxable value of her inheritance of the leasehold interest in the Property.
- (c)** The Appellant is further entitled to deductions of €9,000 (in respect of legal fees and outlays) and €15,186.98 (in respect of construction works to the Property) in calculating the taxable value of her inheritance of the leasehold interest in the Property.
- (d)** The taxable value of the leasehold interest in the Property inherited by the Appellant is €110,813.02.

32. The Appellant has therefore succeeded in part in this appeal. I find that the Appellant has been overcharged by reason of the assessment to capital acquisitions tax the subject of this appeal, and determine pursuant to section 949AK of the Taxes Consolidation Act 1997 as amended that the said assessment be reduced accordingly.





Dated the 16th of January 2023

A handwritten signature in black ink, appearing to read "MARK O'MAHONY".

MARK O'MAHONY
Appeal Commissioner

