

THE HIGH COURT

[2023] IEHC 572

Record No. 2022/274MCA

IN THE MATTER OF PART 47 OF THE TAXES CONSOLIDATION ACT AS AMENDED BY THE FINANCE (NO.2) ACT 2008

BETWEEN

HENRY OLIVER

APPLICANT

AND

JOHN RYAN

RESPONDENT

Judgment of Mr. Justice Brian O'Moore delivered the 20th day of October 2023

1. This is my judgment on an application by Mr. Oliver, on behalf of the Revenue Commissioners, for the following reliefs:

“(1) A determination pursuant to s. 1077B(3) of the Taxes Consolidation Act, 1997 as inserted by the Finance (No. 2) Act, 2008 that the respondent herein is liable to a penalty of €87,714 pursuant to s. 1053 of the Taxes Consolidation Act, 1997 (as amended);

(2) Such further or other order pursuant to s. 1077C of the Taxes Consolidation Act, 1997 as inserted by the Finance (No. 2) Act, 2008 regarding the recovery of the penalty in the amount of €87,740 the subject matter of this application ...”

2. Other adjectival orders, including an order for costs, are also sought.
3. The application was grounded upon Mr. Oliver's affidavit. In this, he described the circumstances which he says gives rise to a liability for a penalty on the part of the respondent, Mr. Ryan.
4. In October 2013 Revenue received a notification from Allied Irish Bank of an offshore transaction with which Mr. Ryan was associated. The transaction referred to a lodgement of \$110,000 US Dollars on the 15th June, 1998 to Barclay's Bank Plc in the Isle of Man. The funds involved in the transaction were withdrawn from AIB in Crumlin, Dublin 12.
5. On the 6th December, 2013, Revenue wrote to Mr. Ryan requesting information in relation to these transactions. Notwithstanding that correspondence, and a reminder of the 22nd July, 2014 from Revenue, it was not until August 2014 that Mr. Ryan's tax advisor replied. The reply was essentially a holding one, indicating that Mr. Ryan had sought assistance from the tax advisor and that the latter was in the process of obtaining the required information. On the 29th August, 2014 Revenue both acknowledged the letter from the tax advisor of earlier that month, and issued a reminder for the requested information. A further reminder was sent on the 30th September, 2014. On the 3rd October, 2014, the tax advisor replied, apologised for the delay, and indicated that there was a difficulty in obtaining the requested information.
6. Revenue issued reminders on the 12th January, 2015, the 24th July, 2015, the 16th January, 2016, the 31st March, 2016, and the 8th July, 2016.
7. On the 23rd November, 2016 the relevant Revenue Inspector phoned the tax advisor for Mr. Ryan, who advised that he was recovering from an illness but would be meeting Mr. Ryan the following Friday or Monday and would thereafter contact the inspector.

8. The next event on which evidence is given is almost a year later. On the 20th October, 2017, the Revenue Inspector phoned Mr. Ryan directly and requested a meeting to resolve the issues arising from this offshore transaction. Mr. Ryan's position was that he understood that his agent had already dealt with the matter. While a meeting was arranged for the following Monday, Mr. Ryan phoned back to cancel the appointment, as he required his agent to be present at any meeting with the Revenue.

9. On the 11th January, 2018, Revenue issued a notice under s. 906A of the Taxes Consolidation Act, 1997 to AIB's head office requiring account statements including microfiche in respect of Mr. Ryan's account at the Crumlin branch of Allied Irish Bank. On the 28th June, 2018, the Revenue Inspector finally met Mr. Ryan, who was accompanied by his agent. Mr. Ryan confirmed that he had purchased a US property with funds that had been "suppressed from his business" and that he had, in 1995, withdrawn approximately IR£72,000 from the AIB branch in Crumlin to fund the acquisition of this property. Mr. Ryan's agent undertook to prepare Income Tax and Capital Gains Tax computations for all relevant years.

10. On the 27th September, 2018, Mr. Ryan's tax advisor advised Revenue that Mr. Ryan *"had actively engaged in discovering various property transactions, both at home and abroad and had encountered difficulties in that regard."* Mr. Ryan's tax advisor told Revenue that he was in the process of compiling submissions and was hopeful the relevant details would come to hand *"in the very near future in order to complete full submissions."*

11. On the 15th April, 2019, the Revenue Inspector advised the tax advisor that the latter would be given until the 30th April, 2019 to make the submission, failing which a further course of action will be required *"to force the issue"*.

12. On the 8th October, 2019 the Revenue Inspector issued an Income Tax Assessment for the year 1998/1999 and a Capital Gains Tax Assessment, for the year 2014, to Mr.

Ryan. These assessments were not appealed. As a result, Mr. Ryan has a liability to Revenue in respect of these assessments in the sum of €116,952.

13. The penalty sought by Revenue, in a Notice of Opinion issued on the 9th March, 2022, in the sum of €87,714. The penalty is calculated by Revenue on the basis the amount of tax which Mr. Ryan requires to pay as a result of his under declaration is (as noted already) €116,952, that a penalty of 100% would obviously give rise to a penalty liability of the same amount, but that the penalty should be reduced to 75% of the amount of tax due “*as there was full cooperation from [Mr. Ryan]*”. This leads to a mitigated penalty sum of €87,714. The 100% penalty (before the reduction for Mr. Ryan’s cooperation) is calculated on the basis that Mr. Ryan made no qualifying disclosure, and that Mr. Ryan deliberately understated his liability for income and capital gains tax. I find that Revenue has established these two facts on the balance of probabilities – see Peart J in *Tobin v Daly* [2011] IEHC 342.

14. It is plain from the record of the meeting between Revenue on the one hand and Mr. Ryan and his tax advisor on the other hand, which took place on the 28th June, 2018, that there was a failure to make full disclosure by Mr. Ryan of both Income Tax and Capital Gains Tax liabilities. Given the raising of assessments by Revenue, and the failure to appeal those assessments by Mr. Ryan, that sum has now been crystallised at the figure of €116,952. Having considered carefully the legal submissions made, both in writing and orally by counsel for Revenue, I am satisfied that the appropriate order to make is an order fixing at €87,714 the amount to be paid by Mr. Ryan by way of penalty. With regard to the reliefs sought in para. (2) of the originating Notice of Motion, I will make an order pursuant to s. 1077C(1)(a) of the Taxes Consolidation Act, 1997 that the applicant recover from Mr. Ryan the said penalty in the sum of €87,714 for which Mr. Ryan is liable. This mirrors the order made by Peart J. in *Tobin*.. For the sake of completeness, I shall say that

(on the 30th January, 2023) Ferriter J. made an order for substituted service of the originating Notice of Motion and all subsequent documents to be served at the proceedings. At the hearing of the motion, appropriate evidence was put before me to prove service of all relevant documentation on Mr. Ryan in accordance with the order of Ferriter J. Mr. Ryan did not appear at the hearing.

15. This matter will be listed for mention to deal with any outstanding issues, including the question of costs.