



TC05205

Appeal number: TC/2013/04111

VAT – strike-out of appeal – Rule 8, The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 – application for re-statement – Allowed with further Directions

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PATRICK JOHN MISKELLY & HELEN MISKELLY Appellants

- and -

THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS

TRIBUNAL: JUDGE KENNETH MURE
MEMBER: MISS PATRICIA GORDON

Sitting in public at The Royal Courts of Justice, Belfast on Monday 13 June 2016

Appellants:- Mr M Marsden

Respondents:- Miss S Spence, Presenting Officer, HMRC Respondents

DECISION

1. This is an application for re-instatement of a VAT appeal relating to an assessment in excess of £1M for the period 10/07. HMRC had not been aware of the application for re-instatement which had been allowed earlier this year without opposition. The present hearing was convened to enable both parties to address the Tribunal.

2. Mr Marsden explained that Mr and Mrs Miskelly had been advised at the material time by a local agent, Ronan Boyle, who died during 2014. The dispute had been referred to Smith & Williamson for specialist guidance and Mr Marsden was the person immediately involved. He explained that he had experienced considerable difficulty in preparation as Mr Miskelly has for some time been in precarious health and is regularly hospitalised. (Medical certificates are produced.) There was no colleague or associate of Mr Boyle who could assist. Mrs Miskelly, while an appellant, performed only a nominal role in relation to the couples' business affairs.

3. Mr Marsden acknowledged his personal involvement from May 2014 to November 2015 when he left Smith & Williamson. He resumed acting for Mr and Mrs Miskelly in his new firm in Preston but after an interval of some two or three months.

4. Miss Spence advised that HMRC had issued its Stated Case in April 2014. There had been some delay initially about a "hardship" application. Thereafter there had been delays by the appellants in complying with lodging Witness Statements and a List of Productions. It appears that HMRC had agreed to extensions of time sought by the appellants. However, the matter had become acute by about the end of 2015 and in January 2016 HMRC had sought to have the appeal struck-out. It was accepted that this development occurred during the hiatus in which Mr Marsden was not acting.

5. Miss Spence was understandably anxious to progress matters. HMRC had produced its List of Documents and she considered that the appellants could reasonably readily have decided what further items should be added. She referred to Press publicity in which, it seemed, Mr Miskelly had been instrumental in assisting the police in relation to some serious criminal investigation and that in spite of his poor health. Surely in these circumstances his Witness Statement could be produced. No Witness Statements for other witnesses had been produced. There had been, in Miss Spence's submission, a failure to pursue preparation with reasonable diligence.

6. We adjourned briefly to consider whether one further opportunity should be granted to the appellants to comply with the need to produce Witness Statements and a List of Documents. We considered that at the crucial stage (end December 2015 and early January 2016) Mr Marsden could not act professionally. We appreciated his difficulties in preparation earlier given the state of Mr Miskelly's health and Mr Boyle's death. However, we indicated to Mr Marsden that while we were prepared to reinstate the case, he should now anticipate that he had to prepare for a hearing in which little assistance might be afforded by Mr Miskelly. He should,

therefore, consider what other witness evidence might assist. (Apparently draft Witness Statements have been prepared.) We suggested also to Mr Marsden that he should be prepared to “trawl” through personally such business records as were available.

5 7. Having indicated this decision in principle we adjourned again briefly to enable Mr Marsden and Miss Spence to consider an acceptable and realistic timetable for the production of the appellants’ Witness Statements and List of Documents. We have incorporated this in our Directions. On Miss Spence’s suggestion we have provided for possible strike-out in terms of Rule 8(3)(a) in the event of continuing delay.

10 8. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

20 **KENNETH MURE, QC**
TRIBUNAL JUDGE

RELEASE DATE: 27 JUNE 2016