TC05646

Appeal number: TC/2015/05063

INHERITANCE TAX – whether a property was in the sole beneficial ownership of the deceased – whether money in a bank account was jointly owned by the deceased – whether to allow representative to give oral evidence – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BALDEV SINGH LIDHER **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE ANNE REDSTON
MR IAN ABRAMS

Sitting in public at the Royal Courts of Justice, Strand, London on 9 November 2016

Mr Jaswinder Singh Flora FCPA, of J&S Associates, for the Appellant

Mr Brendan Leyland, of HM Revenue & Customs' Appeals and Reviews Unit, for the Respondents

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DECISION

Introduction and summary

1. Mr Baldhav Singh Lidher ("Mr Lidher") is the executor and trustee of the estate of his father, Mr Bahall Singh Lidher ("Mr Bahall Lidher"). Mr Bahall Lidher passed away on 6 March 2007. On 7 August 2013 HM Revenue & Customs ("HMRC") made a determination that inheritance tax ("IHT") of £57,532.80 was due following a deemed chargeable transfer as a result of Mr Bahall Lidher's death.

2. Mr Lidher appealed that determination on the grounds that his father:

(1) had no beneficial interest in an Abbey bank account ("the Account") which held £102,700 on the date of his death; and

(2) was not the sole beneficial owner of a freehold property situated in Southall ("the Property"), but instead owned only half of that property.

3. The burden of proof in this appeal lies on Mr Lidher. Having considered the evidence and heard the parties' submissions, we dismissed the appeal and upheld the determination.

4. HMRC also charged penalties totalling £6,360 following Mr Lidher's failure to comply with an information notice issued under Finance Act 2008, Sch 36 ("Sch 36"). No appeals against those penalties were before this Tribunal.

The law

5. Section 1 of the Inheritance Tax Act 1984 ("IHTA") charges IHT on "the value transferred by a chargeable transfer". IHTA s 2 defines "a chargeable transfer" as "a transfer of value which is made by an individual but is not…an exempt transfer".

6. IHTA s 4(1) provides that:

> "On the death of any person tax shall be charged as if, immediately before his death, he had made a transfer of value and the value transferred by it had been equal to the value of his estate immediately before his death."

7. IHTA s 5(1) defines a person's "estate" as "the aggregate of all the property to which he is beneficially entitled", subject to certain exceptions which are not relevant on the facts of this case.

8. One of the issues in this appeal is whether Mrs Karam Kaur Lidher ("Mrs Lidher"), Mr Bahall Lidher's wife and Mr Lidher's mother, died intestate. The Administration of Estates Act 1925, s 46(1), read with Schedule 1A to that Act, provides that where a person dies intestate leaving a spouse and issue, the first £250,000 ("the fixed net sum"), together with any personal chattels, passes to the spouse absolutely.

The evidence

9. The Tribunal was provided with a bundle of documents prepared by HMRC. They include the correspondence between the parties and between the parties and the Tribunal; Mr Bahall Lidher's will and documents relating to the Account and to the Property.

10. On 8 December 2015, the Tribunal gave directions for the future conduct of the appeal. Direction 2 read:

> "**Witness statements**: Not later than 12 February 2016 each party shall send or deliver to the other party statements from all witnesses on whose evidence they intend to rely at the hearing, setting out what that evidence will be ('witness statements') and shall notify the Tribunal that they have done so."

11. Mr Lidher had failed to comply with any of the Directions. On 11 March 2016, Judge Dean issued an "Unless Order" under Rule 8(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules") stating that Mr Lidher's appeal may be struck out unless he confirmed in writing by 25 March 2016 that he intended to proceed with his appeal.

12. On 22 March 2016, J&S Associates, Mr Lidher's representative, wrote to the Tribunal saying "we do not expect other witnesses". The hearing was listed for 9 May 2016. On 11 April 2016, HMRC applied for the hearing to be adjourned on the basis that Mr Lidher had not complied with the Tribunal's directions to provide documents or witness statements. The letter said:

> "If it is the intention of the Appellant to give evidence personally at the hearing, he should provide a witness statement in advance so that HMRC is able to prepare its case properly in advance of the hearing."

13. The Tribunal adjourned that hearing, and on 27 July 2016 wrote to Mr Flora at J&S Associates requiring him to notify the Tribunal within 21 days if witness evidence was to be provided. No such notification was received.

14. Mr Lidher attended the hearing of his appeal, together with Mr Flora. At the inception of the hearing, Mr Flora confirmed that no witness evidence was being called. However, during his opening submissions, he sought to give evidence as to his own factual knowledge of the matters in dispute, as well as about Indian cultural traditions.

15. Mr Leyland objected to Mr Flora seeking to provide evidence about Indian cultural traditions. He said that, had evidence of that nature been provided before the hearing, HMRC would have sought expert advice.

16. We considered Rule 15(2)(b), which allows the Tribunal to:

> "exclude evidence that would otherwise be admissible where–
>
> (i) the evidence was not provided within the time allowed by a direction or a practice direction;

(ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or

(iii) it would otherwise be unfair to admit the evidence."

17. Mr Flora was clearly seeking to give evidence which "was not provided within the time allowed by a direction". It was also "in a manner that did not comply with a direction", because it was not in the form of a witness statement. We also agreed with Mr Leyland that it would be unfair to HMRC to allow Mr Flora to give evidence about Indian cultural traditions. We therefore excluded that evidence.

18. Mr Leyland did not object to Mr Flora giving evidence as to his involvement with the issues before the Tribunal, providing he could:

(1) cross-examine Mr Flora;

(2) be granted a short adjournment following Mr Flora's opening to consider that evidence and prepare his cross-examination; and

(3) be granted a further short adjournment to consider the evidence Mr Flora provided in cross-examination.

19. Although Mr Flora's oral evidence as to his involvement with the issues before the Tribunal was not provided within the time allowed by the Tribunal's directions, and was not in the form of a witness statement, we agreed with Mr Leyland that the approach he suggested would mean that it would not be unfair to admit that evidence, and we directed accordingly.

20. Having heard and considered Mr Flora's oral evidence, we found him to be an unreliable witness. He changed his evidence under cross-examination (see §57 and §59); he made statements which were inconsistent with other accepted facts (see §22-24) and some of his evidence was implausible (see §59 and §63).

21. In reliance on the evidence provided to the Tribunal, and taking into account our assessment of Mr Flora's credibility, we make the following findings of fact. They are not in dispute other than where indicated. We make further findings of fact later in our decision.

The facts

Mrs Lidher's death

22. In August 2006, Mrs Lidher passed away. Mr Bahall Lidher took out Letters of Administration to deal with her estate.

23. Mr Flora's evidence was that Mr Lidher approached him in mid-December 2006, asking if "the will could be altered" by way of a Deed of Variation". Under cross-examination, Mr Flora accepted that Letters of Administration were "most commonly associated with intestacy"; he also accepted that he did not see "the will itself". However, he maintained that "there was a will. There must have been a will". He also said he had told Mr Lidher he would take legal advice on a Deed of Variation,

but in the event did not do so because Mr Bahall Lidher became ill soon after this meeting.

24. We considered Mr Flora's evidence. As he had accepted, Letters of Administration are most commonly used in cases of intestacy. Although they can be issued in other situations, such as where an executor appointed by a will refuses to act, or is unable to act, in this case there is no evidence as to any other basis for their issuance. Mr Flora also accepted that he had never seen the will which he asserted existed. Taking all the evidence into account, we find as a fact that Mrs Lidher died intestate.

25. On 10 October 2006, Mr Bahall Lidher returned the net value of Mrs Lidher's estate as being £72,000, well below the IHT nil rate band which applied on that date.

Mr Bahall Lidher's death

26. Mr Bahall Lidher passed away on 6 March 2007. Mr Lidher was the sole executor of his father's will. On 23 May 2007 he filed a short IHT account (form IHT205), which stated that Mr Bahall Lidher's assets were made up only of cash (including money in banks, building societies and/or National Savings) of £275,046. After deducting funeral expenses and debts, his estate reduced to £261,059, below the IHT nil rate band of £285,000 which applied on that date. By signing the IHT205, Mr Lidher confirmed that:

> "to the best of my knowledge and belief, the information I have given in this form is correct and complete. I have read and understood the statements above."

27. The Property was sold on 12 April 2007. Probate was granted on 17 October 2007.

28. On 14 October 2008 HMRC wrote to Mr Lidher, stating that it was in possession of information suggesting that his father's estate was above the IHT threshold. Despite many letters and calls from HMRC to Mr Lidher and Mr Flora, no substantive response was provided to HMRC.

29. On 9 June 2010, HMRC required Mr Lidher to complete a full IHT account (IHT400), but this was not supplied. On 27 October 2010 HMRC asked Mr Lidher to provide:

(1) an explanation as to why the Property had not been included in the IHT205;

(2) a detailed schedule of all bank accounts owned by Mr Bahall Lidher in his sole name;

(3) a detailed schedule of all bank accounts owned by Mr Bahall Lidher in joint names, including details of the contributions to the account made by each joint owner;

(4) details of any gifts or other transfers of value made by Mr Bahall Lidher in the seven years before his death.

30. No response was received, and on 9 February 2011 HMRC issued Mr Lidher with a Notice issued under Sch 36 ("a Sch 36 Notice") requiring the provision of the above information, together with a detailed statement of the steps taken by Mr Lidher to ensure that the information included on the IHT205 was correct. A copy was sent to Mr Flora. The required information was not provided, and on 5 August 2011, HMRC reissued the Sch 36 Notice with a letter warning of penalties. On 23 December 2011, HMRC sent a further letter, stating that it was "a final warning" of penalties.

31. On 18 May 2012, HMRC issued a penalty Notice charging Mr Lidher £300 for failing to comply with the Sch 36 Notice issued on 5 August 2011. On 4 July 2012, HMRC issued a Notice charging daily penalties of £1,380 because Mr Lidher had failed to comply with the Sch 36 Notice. A further daily penalty of £1,800 was issued on 6 August 2012.

32. On 15 October 2012, HMRC received the IHT400. So far as relevant to this decision, it was completed as follows:

(1) Box 11 asked for Mr Bahall Lidher's last known permanent address: this was completed with the address of the Property.

(2) Box 12 asked "was the property in Box 11 owned or part-owned by the deceased or did the deceased have a right to live in the property". If the answer to that question was "yes", then Box 13 had to be completed. Mr Lidher ticked "no" and stated "deceased lived with son". Box 32 asks "did the deceased own any house, land or buildings or rights over land in the UK in their sole name" and the "No" box is ticked.

(3) Page 6 asked for the value of jointly owned assets. This was given as £172,774. Schedule IHT404, attached to the IHT400, analysed that figure as made up of:

(a) £51,350, being 50% the money held in the Account, with the other 50% stated to be owned by Mr Lidher; and

(b) £121,424, being 50% of the sales proceeds of the Property, with the other 50% again stated to belong to Mr Lidher.

(4) Page 6 also asked for the value of solely owned assets. This was given as £150,821, of which £200 was stated to be household items, with the balance being bank/building society accounts. Schedule IHT406 analyses the latter as being made up of £145,412 held in a different Abbey account and £5,209 held in a Lloyds TSB account.

(5) The value of the estate therefore totalled £323,395 before deductions; the net value was given as £307,408.

(6) Mr Lidher signed the IHT400 confirming that the statements made therein were "correct and complete".

33. On 17 October 2012 HMRC asked for further explanations as to Mr Lidher's 50% interests in the Account and the Property. Mr Flora replied on 5 December 2012, saying:

> "with regard to the joint account, we have been advised that the capital was provided by Mr Baldev S Lidher (son). The account was held in joint names for family reasons…the property…was a family home, although the property was held in the deceased's name, Mrs Lidher had a half share of the property. She predeceased the husband and it was her wish that her share should be given to Mr Baldev Lidher. Unfortunately before the situation could be regularised, Mr Bahall S Lidher passed away."

34. On 12 December 2012 and 14 February 2013, HMRC set out its position in relation to the Property, and asked for specified documents and information to support Mr Flora's statement as to the capital in the Account being provided by Mr Lidher. No response was received.

35. On 7 August 2013 HMRC issued the determination. All of the Property's value was now included in the estate, so that the deemed chargeable transfer increased from the £307,408 given in the IHT400 to £428,832. HMRC did not seek to adjust the IHT400 figure to include the full value of the money held in the Account, but accepted that 50% was owned by Mr Lidher.

36. On 14 August 2013, J&S Associates appealed the determination, saying that:

> "1. Half the funds in joint account should be excluded.
>
> 2. Half the value of proceeds of the property should be excluded."

37. On 8 January 2014, HMRC responded, pointing out that the determination had already excluded 50% of the funds in the Account and inviting J&S Associates to amend its grounds of appeal.

38. On 25 February 2015, J&S Associates replied, stating that the whole of the Account should be excluded from the estate because the capital had been provided by Mr Lidher, and that Mr Bahall Lidher had "retired in 1984 and apart from the pension he had no other source of income which could have enabled him to have the balance in the account".

39. On 23 July 2015, following a statutory review, HMRC upheld the determination.

40. On 23 August 2015, Mr Lidher notified his appeal to the Tribunal on the basis that all the money in the Account should be excluded from Mr Bahall Lidher's estate, together with half of the value of the Property.

The Property

Mr Flora's submissions on behalf of Mr Lidher

41. Although Mr Flora accepted that Mrs Lidher had never been a legal owner of the Property, he submitted that she was the beneficial owner of half the Property. He

agreed that he had no evidence to support her beneficial ownership, other than information provided during discussions between him and Mr Lidher.

42. Mr Flora also accepted that no share in the property had been transferred to Mr Lidher. This had, he said, been Mrs Lidher's intention, but Mr Bahall Lidher died before the transfer could be effected. Mr Flora asked the Tribunal to give effect to Mrs Lidher's intention, and hold that half the Property had passed to Mr Lidher on her death. Mr Flora was not able to cite any statute or case law authority which would support such an outcome, but instead asked the Tribunal to "apply common sense".

Mr Leyland's submissions on behalf of HMRC

43. Mr Leyland's starting point was the Land Registry record, which stated that the Property had been registered in Mr Lidher's sole name since 1962. He then relied on *Stack v Dowden* [2007] UKHL 17 where Lady Hale, giving the leading judgment, said at [56]:

> "Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest."

44. Here, there was no reliable evidence that the beneficial ownership was different from the legal ownership. He went on to say that, even had Mrs Lidher beneficially owned part of the Property, she would have done so either as a joint tenant or as a tenant in common. If the former, Mr Bahall Lidher would have become the sole owner on his wife's death. If the latter, he would have become the owner of the Property by reason of his wife's intestacy.

45. He concluded by referring to the Law of Property Act 1925 ("LPA") s 53, which provides that it is not possible to transfer an interest in land other than in writing. That section reads:

> "**Instruments required to be in writing**
>
> (1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol–
>
> > (a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
> >
> > (b) a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
> >
> > (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person

> disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.
>
> (2) This section does not affect the creation or operation of resulting, implied or constructive trusts."

5 46. As a result, an intention to transfer, even if evidenced (which was not the position here) was simply inadequate. It followed that no share of the Property had been transferred to Mr Lidher at any time.

Discussion and decision on the Property

47. The legal position where, as here, a property is registered in the sole name of 10 one person who forms part of a couple is helpfully summarised by *Halsbury's Laws of England: Matrimonial and civil partnership law: property rights in the family home* as follows:

> **"301. Property purchased in one name only**.
>
> Where the house is taken in only one of the two names, there is no 15 scope for a legal presumption that the parties intended a joint tenancy both in law and in equity. It may be necessary to inquire into the circumstances and reasons why a house or flat has been acquired in a single name. The claimant whose name is not on the proprietorship register has the burden of establishing some sort of implied trust, 20 normally what is now termed a 'common intention' constructive trust. The first issue is whether it was intended that the other party have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership, but the parties' common intention has to be deduced 25 objectively from their conduct."

48. That passage essentially summarises, so far as relevant to this appeal, the principles established in *Jones v Kernott* [2011] UKSC 50 and *Thompson v Hurst* [2012] EWCA (Civ) 1752. In the former, Lord Walker and Lady Hale, giving the judgment of the Court, further explained the principles set out in *Stack v Dowden,* on 30 which Mr Leyland relied. In *Thompson v Hurst*, Etherton LJ said at [20]:

> "The transfer was not in fact into the joint names of the appellant and the respondent. There is, therefore, no scope for a legal presumption that the parties intended a joint tenancy both in law and equity. Mr Josling's argument amounts to a submission that there should be a legal 35 presumption of joint beneficial ownership, not merely where the parties are indeed the joint legal owners, but where there is evidence that they would have liked to be joint legal owners but for one reason or another that was not practical or desirable. Neither *Stack* nor *Jones*, nor any other case, is authority for such a proposition. Indeed, the 40 proposition is neither consistent with principle nor sound policy."

49. The Property is in Mr Bahall Lidher's sole name, so there can be no legal presumption that any part of the Property was owned by Mrs Lidher. To show that she nevertheless had a beneficial interest in the property it would be necessary to provide cogent evidence of a common intention constructive trust. Here there is no

contemporaneous evidence of any such trust. Mrs Lidher's reported estate at death did not include the Property.

50. As to later evidence, Mr Lidher did not provide a witness statement or give oral evidence. His case in relation to the Property rests on assertions in the IHT400 and on his discussion with Mr Flora after Mrs Lidher's death, about which we have only Mr Flora's evidence. We have found Mr Flora to be an unreliable witness, and we place no weight on his recollections of that discussion.

51. As a result of the foregoing, there is no basis on which we could conclude that Mrs Lidher owned any part of the Property under a common intention constructive trust. We therefore find as a fact that the Property was owned beneficially as well as legally, entirely by Mr Bahall Lidher.

52. Mr Leyland is also correct that, even had Mrs Lidher owned half the Property, her share would have passed automatically to Mr Bahall Lidher on her death, either because the couple were joint tenants or under the law of intestacy. A half share of the Property was worth £121,424; when added to the £72,000 value of Mrs Lidher's disclosed estate, the total would have come to £193,424, below the "fixed net sum" of £250,000 which under the Administration of Estates Act passes automatically to the spouse.

53. Mr Flora does not seek to challenge Mr Leyland's reliance on LPA s 53. Section 52 of that Act is also in point, and provides that:

> "All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed."

54. The Law of Property (Miscellaneous Provisions) Act 1989 s 2 further provides:

> "a contract for the sale of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or where contracts are exchanged in each."

55. No deed was executed so as to transfer any part of the Property to Mr Lidher. Taking all the above into account, we have no hesitation in finding that the whole of the Property has been correctly included in Mr Bahall Lidher's estate.

The Account

Mr Flora's submissions on behalf of Mr Lidher

56. Before the hearing, the only submissions in relation to the Account were that Mr Lidher had provided all the capital in the account, and that Mr Bahall Lidher was a pensioner who would have been unable to provide the funds contained in the Account.

57. During the hearing, Mr Flora initially said that there was a fourth bank account, which had been amalgamated with the Account when the figures were reported to HMRC. However, when asked to explain further by Mr Leyland, he asked the Tribunal to "disregard [this] earlier evidence about this being an amalgam of two accounts".

58. He then confirmed that the Account was in the names of Mr Bahall Lidher and Mr Lidher. He also said that, when completing the IHT400, he had not asked about withdrawals from the Account, or how the Account was operated, because he "didn't think it relevant".

59. He went on to say that Mr Lidher had last year provided him with a Schedule showing how the deposits in the Account had been made up, but that he had not provided that Schedule to HMRC or the Tribunal. When asked for the circumstances in which this Schedule had been provided to him, he said he could not remember, but that he had not advised Mr Lidher to send the Schedule to HMRC or to the Tribunal. On being pressed by Mr Leyland, Mr Flora changed his positon again, saying that the Schedule might instead have related to deposits made by Mr Lidher into an account in Mr Bahall Lidher's sole name, rather than relating to deposits into the Account.

Mr Leyland's submissions on behalf of HMRC

60. Mr Leyland began by pointing out that when Mr Lidher signed the IHT400, he formally confirmed that the Account was owned as to 50% by him and 50% by Mr Bahall Lidher. It was not until after the determination had been issued – and the appeal to HMRC had been made – that Mr Lidher's position changed.

61. Mr Leyland invited the Tribunal to reject Mr Flora's submission that Mr Bahall Lidher would have been unable to source the funds to place in the Account. Mr Bahall Lidher also had a sole account with Abbey containing £145,412, so it was clearly not the case that he had no financial resources. Instead, he said, Mr Bahall Lidher had "substantial liquid capital at his disposal".

62. Mr Leyland described Mr Flora's oral evidence about the Account as "confusing" and submitted that no reliance should be placed on the existence or contents of any purported Schedule, which had been provided neither to HMRC nor to the Tribunal.

Discussion and decision

63. We found Mr Flora's evidence as to the existence of a Schedule which might have set out the sources of deposits into the Account to be entirely unreliable, for the following reasons:

(1) Mr Flora himself was uncertain as to whether this alleged Schedule related to the Account, or to an account in Mr Bahall Lidher's sole name;

(2) it is over six years since HMRC first asked, on 27 October 2010, for "a detailed schedule of all bank accounts owned by Mr Bahall Lidher in joint names, including details of the contributions to the account made by each joint owner". That request for information was subsequently repeated on many occasions. If such a Schedule existed or could have been created from other material, it is not credible that it would not have been provided to HMRC and to the Tribunal.

64. We also dismiss Mr Flora's submission that Mr Bahall Lidher had insufficient funds to provide the capital in the Account; instead we agree with Mr Leyland that the evidence shows him to have substantial liquid assets.

65. Finally, Mr Flora confirmed that the Account was in joint names, and the IHT400 itself states that the Account was jointly owned by Mr Bahall Lidher and Mr Lidher.

66. Taking all the above into account, we have no hesitation in finding that 50% of the Account was correctly included in Mr Bahall Lidher's estate.

Decision and appeal rights

67. For the reasons given above, we uphold the determination and dismiss Mr Lidher's appeal.

68. 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 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ANNE REDSTON
TRIBUNAL JUDGE

RELEASE DATE: 7 FEBRUARY 2017