



TC06150

Appeal number: TC/2017/03193

PROCEDURE – Application for costs – Withdrawal of decision by HMRC that SDLT was due – Whether acting unreasonably in defending or conducting proceedings – No – Application dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DEEPAK TANNA

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOHN BROOKS

**Sitting in chambers at Taylor House, 88 Rosebery Avenue, London, EC1 on 4
October 2017**

DECISION

1. The appellant, Mr Deepak Tanna (“Mr Tanna”) together with Mr Natverial Tanna, were the registered owners of a freehold property in Leicester (the “Property”) which they had bought in 2003 with the assistance of a mortgage from Lloyds Bank (the “Bank”). However, they defaulted on their mortgage repayments and, on 3 November 2015, the Bank appointed Fixed Charge Receivers (the “Receivers”) to sell the Property by auction where their offer to buy it for £279,000 was accepted by the auctioneer.

2. The sale was completed on 26 January 2016 and the transfer document records that the transferor and transferee of the Property were the same, namely Mr Tanna and Mr Natverial Tanna. In an email, dated 15 January 2016, to the solicitors acting for Mr Tanna and Mr Natverial Tanna, HM Revenue and Customs (“HMRC”) explained that a Stamp Duty Land Tax (“SDLT”) return and payment of any SDLT shown on that return was due as a result of the purchase of the Property. A return was therefore filed and the SDLT paid.

3. The Leicester Land Registry, in a letter dated 7 July 2016 sent in response to an application by Mr Tanna’s solicitors for registration of the Property at the Land Registry, explained that:

“The common law rule is that a person cannot convey a property to himself as it be impossible for any contractual obligations to be enforced. This does not prevent a person conveying land to himself in a different capacity (eg an executor conveying land in the deceased’s estate to himself).”

4. A copy of the Land Registry’s letter was provided to HMRC who, in a letter to the solicitors dated 15 December 2016, confirmed that an SDLT return was due and any tax payable because:

“... when your clients purchased the property at auction they purchased it from the receivers not from themselves.”

5. However, such a view fails to take account of and is inconsistent with s 109(2) of the Law of Property Act 1925 which provides:

A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; ...

Therefore, in this case the Receivers when selling the Property were acting as the agents for the mortgagors, Mr Tanna and Mr Natverial Tanna, who were also the purchasers of the Property. As such they could not convey it to themselves and accordingly a liability to SDLT could not arise.

6. However, seemingly unaware of s 109, HMRC, having undertaken a review, continued to maintain, in a letter of 20 March 2017 to Mr Tanna’s solicitors, that an

SDLT return and tax were due. The letter stated that if Mr Tanna disagreed with HMRC's conclusion he had 30 days in which to appeal to the Tribunal. As he did not accept HMRC's view, on 13 April 2017 Mr Tanna appealed to the Tribunal.

7. Following receipt of that appeal, an Appeals Caseworker at HMRC's Solicitor's Office to whom the matter was referred was concerned that, given the comments of the Land Registry, the appeal could be defended. He therefore sought clarification from the Birmingham Stamp Office who confirmed on 10 July 2017 that the decision made in this case was "incorrect". On 11 July 2017 the Caseworker wrote to Mr Tanna's solicitors as follows:

"I refer to your Notice of Appeal dated 13 April 2017.

As part of the case preparation I have been in contact with my colleagues at Birmingham Stamp Office who have advised me that they have reconsidered their original decision and now consider a return and payment are not required in respect of the transaction. They will be making arrangements to repay the tax and penalty which are the subject of the appeal."

8. The Tribunal having been notified that HMRC were no longer defending the appeal wrote to Mr Tanna's solicitors on 7 August 2017 stating that the appeal would be allowed and any hearing date cancelled.

9. By an application, dated 7 August 2017, Mr Tanna seeks an order that HMRC pay his costs of £2,101.50 which have "been unnecessarily incurred" in respect of work undertaken by his solicitors over a period of some 11 months.

10. In a case, such as the present, which has been categorised as a "standard" category appeal, a party may only be awarded costs under Rule 10(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (the "Procedure Rules"):

... if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings;...

11. It is clear from the decision of Judge Bishopp in *Catanã v HMRC* [2012] UKUT 172 (TCC) at [7]:

"... the tribunal may only make an order in respect of costs "of and incidental to" the proceedings. There is no power to make an order in respect of anything else, and particularly, in the context of this case, in respect of the investigation into Mr Catanã's tax affairs which preceded the proceedings."

He agreed, at [8], with the following observation of Judge Berner at [11] in *Bulkliner Intermodal Ltd v HMRC* [2010] UKFTT 395 (TC) that:

"...one thing that has not changed is that the Tribunal's jurisdiction continues to be limited to considering actions of a party in the course of "the proceedings", that is to say proceedings before the Tribunal

whilst it has jurisdiction over the appeal. It is not possible under the 2009 Rules, any more than it was under the Special Commissioners' regulations, for a party to rely upon the unreasonable behaviour of the other party prior to the commencement of the appeal, at some earlier stage in the history of the tax affairs of the taxpayer, nor, even if unreasonable behaviour were established for a period over which the Tribunal does have jurisdiction, can costs incurred before that period be ordered. In these respects the principles in *Gamble v Rowe*, and *Carvill v Frost* [2005] STC (SCD) 208 remain good law. That is not to say that behaviour of a party prior to the commencement of proceedings can be entirely disregarded. Such behaviour, or actions, might well inform actions taken during proceedings, as it did in *Scott and another (trading as Farthings Steak House) v McDonald* [1996] STC (SCD) 381, where bad faith in the making of an assessment was relevant to consideration of behaviour in the continued defence of an appeal."

12. I sympathise with Mr Tanna, who has incurred costs because of HMRC's unreasonable and erroneous insistence that, in the circumstances of the case and contrary to s 109 of the Law of Property Act 1925, an SDLT return and tax were due regarding the sale of the Property as being by the Receiver as principal rather than as agent of the mortgagors. However, as this conduct occurred prior to the commencement of the appeal and before the Tribunal had jurisdiction it cannot provide the basis for an order for costs. It therefore follows that, having regard to all the circumstances, the application for an order for costs cannot succeed and I have no choice but to dismiss the application.

13. However, I must add that it is most regrettable that HMRC did not adopt the commendable and reasonable approach taken, particularly by the Appeals Caseworker at their Solicitor's Office, once they had been notified of the appeal and when it had come within the Tribunal's jurisdiction immediately on becoming aware of the circumstances of the transfer of the Property.

14. 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.

**JOHN BROOKS
TRIBUNAL JUDGE**

RELEASE DATE: 05 OCTOBER 2017