[2019] UKFTT 0750 (TC)

TC07507

STAMP DUTY LAND TAX – refund claim – residential and non-residential tax rates – classification of property – residential or mixed use? – definition of grounds – appeal dismissed

Appeal number: TC/2018/07272

FIRST-TIER TRIBUNAL
TAX CHAMBER

Dr CRAIG GOODFELLOW **MRS JULIE GOODFELLOW**	**Appellants**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondents**

TRIBUNAL: JUDGE JOHN MANUELL
Mr MICHAEL BELL ACA CTA

Sitting in public at Taylor House, 88 Rosebery Avenue, London WC1R 4QU on 15 November 2019

Having heard Mr Graham Callard (instructed by Cornerstone Tax) for the Appellant and Mr M McDougall-Moore for the Respondents

DECISION

Introduction

1. The Appellants appealed HMRC's decision made on 22 June 2018 to refuse the Appellants' claim for a Stamp Duty Land Tax ("SDLT") refund of £48,500. The

Appellants are the registered proprietors of Heathermoor House, Hale Purlieu, Fordingbridge, Hampshire SP6 2NN ("the property"). The property was described in the land agent's particulars as a "fantastic family home set in about 4.5 acres within the sought after New Forest National Park" with six bedrooms, gardens, swimming pool, garaging, stable yard and paddocks. The Appellants completed the purchase on 21 March 2016. The consideration was £1,775,000, on which the Appellants paid SDLT of £126,750, having entered the property as residential on their SDLT1 return.

2. Nearly one and half years later, on 30 October 2017, the Appellants' tax agents submitted a claim under paragraph 34 of Schedule 10 of the Finance Act 2003 ("FA03") seeking relief of SDLT which it was said had been overpaid. It was asserted that the property had been misclassified as residential and should have been entered as mixed use. A claim was made of relief of SDLT overpaid of £48,500.

3. An enquiry was opened by HMRC on 15 May 2018. Additional information was subsequently supplied on the Appellants' behalf. On 22 June 2018 a closure notice was issued, rejecting the Appellants' claim that the property was mixed use, and reducing the claim to overpaid tax to nil. A review upheld the closure notice and the present appeal followed.

HMRC's contentions

4. HMRC submitted that the detached garage, stable yard and paddocks formed part of the grounds of the residential property and were correctly classified as residential under section 116 of FA03.

The Appellant's case

5. The Appellant submitted that the space above the garage was used as an office for the First Appellant's business. Their vendor had done the same. That was non-residential use. The stable yard and paddocks were also non-residential as they were used by a third party for grazing horses. Furthermore the paddocks were undeveloped land and were by definition non-residential. Hence the property was mixed use.

The law

6. The rates of SDLT chargeable are set out in section 55 FA03. Table A lists the residential rate and Table B the non-residential or mixed rate. Table A (the higher rates) applies only if the property is wholly residential, whereas if any of the property is non-residential, the whole of the property is treated as mixed use and the lower mixed rate of Table B applies.

7. This appeal turns on the correct interpretation of section 116 FA03 and its application to the facts found by the tribunal:

> **116Meaning of "residential property"**
>
> (1) In this Part "residential property" means –
>
> (a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use, and
>
> (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land), or
>
> (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b); and
>
> "non-residential" means any property that is not residential property.

8. Both parties referred the tribunal to First-tier Tribunal Judge McKeever's determination dated 17 July 2019 in *Hyman v HMRC* [2019] UKFTT 469, which contains an extensive analysis of the law in this area. Coincidentally the same advocates appeared in that appeal as in the current appeal. The same or closely similar legal arguments were deployed and the same authorities were cited and relied on. As Judge McKeever observed at [6] of *Hyman*, "Section 116 provides an exhaustive definition. If the property falls within any of paragraphs (a), (b) or (c) of subsection (1), the property is residential property. If the property falls outside those paragraphs, it is not residential property." We found Judge McKeever's analysis persuasive.

Burden and standard of proof

9. The burden of proof lies on the Appellants to show that they are entitled to a refund of SDLT because of the mixed use for which they contend. The standard of proof is the normal civil standard, the balance of probabilities.

Evidence

10. Two separate bundles of documents were served by the parties, together with a bundle of authorities, which included HMRC SDLT Guidance. Photographs and plans of the property were provided.

11. The tribunal heard evidence from the First Appellant. In summary, the First Appellant described the history of the purchase and the property. He used the room above the garage as an office for his company, as had the vendor for her company. The stable opened into a courtyard. Two of the paddocks were let to a neighbour who grazed her horses there. The rent was £1 per month with responsibility for looking after the land.

12. In cross examination the First Appellant agreed that the office could be used as a spare room, although there was no kitchen. The previous arrangements for the use of the paddocks had been informal. The stabling had recently been rebuilt.

Submissions

13. Mr McDougall-Moore for HMRC relied on his skeleton argument. The grounds of the property were all occupied with the house. Thus the office above the detached garage was suitable for use as a dwelling, and as was certainly so as the date of the purchase. The stable yard and paddocks were part of the grounds, and the grounds were commensurate with the size of the dwelling house. The use of the paddocks by a neighbour for grazing did not alter their character as part of the grounds. The Appellants retained possession and the grazing was of value to them. The rental could not be described as commercial. The fact that the paddocks were undeveloped land was not material as they had not been sold on their own, but rather as part of the residential property.

14. Mr Callard for the Appellants relied on his skeleton argument and submitted a contrary view. The property was mixed use. The office space was not for the benefit of the house and was not suitable for use as a dwelling. "Gardens and grounds" were not statutorily defined. Assistance could be found in case law, such as *Lewis v Lady Rook* [1992] 1 WLR 662 and *Longson v Baker* [2000] STC 244, as well as *Hyman* (above). Size, character and whether the land was necessarily required were all relevant factors, as was use. HMRC Guidance SDL TM00460 set out a list of factors. The paddocks were exploited commercially. The undeveloped land had no dwelling house and was not residential. The appeal should be allowed.

Findings

15. The tribunal accepts Mr McDougall-Moore's submissions. The arguments advanced by Mr Callard seemed to us artificial, strained and contrary to common sense. We agree with Judge McKeever that *Lewis v Lady Rook* (above) and *Longson v Baker* (above), Capital Gains Tax cases to which Mr Callard drew our attention, were of no real assistance. The CGT regime is different as Judge McKeever explained. The cases are simply illustrations of particular facts found as to what constituted grounds. Much the same point applies to HMRC's SDLT's Guidance, specifically SDL TM00365, SDL TM00390, SDL TM00440, SDL TM00445, SDL TM00450, SDL TM00455, SDL TM00460, SDL TM00465, SDL TM00470, SDL TM00475 and SDL TM00480, of which both parties are well aware and which are too lengthy to set out in this decision.

16. As Judge McKeever observed in *Hyman*, the classification of a property for SDLT purposes is not a matter to be determined solely by reference to an estate agent's particulars of sale. Nevertheless, in the present instance the particulars were prepared by reputable agents and clearly they must have had some bearing on the Appellants' decision to purchase the property. They are the fullest description we have and were

not challenged. They describe an equestrian property. There is no reference to any current commercial activity or the prospect of future development in the particulars. There is no suggestion that the property is anything other than a country residence. That was also plainly the view of the Appellants' solicitors who acted on the purchase, as the SDLT return was made on the basis that the whole of the property was residential, i.e., the garden and grounds were all part of a dwelling. We infer that the solicitors so advised their clients.

17. Now putting both those matters to one side, it seems to us, looking at the character of the property as a whole, that the land surrounding the house is very much essential to its character, to protect its privacy, peace and sense of space, and to enable the enjoyment of typical country pursuits such horse riding. This is a country setting, in an area of outstanding natural beauty.

18. The large room above the detached garage is in fact connected to the house by a covered walkway, as the evidence such as the plans and photographs showed. The room is equipped with its own bathroom. It is plainly and obviously suitable for domestic use and capable of being furnished at will. It could readily be used as a guest suite, play room for children, or a games room for teenagers. There was no evidence that it had ever been let out or was separately rated for office use.

19. The tribunal finds that the room above the garage currently used by the First Appellant as an office is wholly residential in character. It is in principle no different from the First Appellant working from a study, spare room or even the dining room table. Home working is hardly new and it saves the First Appellant from making the long journey to his company's headquarters in Essex. No question of mixed use arises.

20. As to the paddocks, these are an adjunct to the stables. They form part of the grounds, for recreational purposes. Without the paddocks, keeping horses at the property would be inconvenient and impractical. The house would cease to be an equestrian property. There was no evidence that anything approaching a commercial arrangement was made at any material time for the use of the paddocks. The current rental arrangement of £1.00 per month is the modern equivalent of a peppercorn rental. The previous owner's arrangement for the land was similar. No doubt the presence of the horses helps keep the land in good heart and saves on mowing, as well as providing an agreeable view in keeping with the rural scene.

21. The fact that the paddocks have not been developed is in our view of no real relevance. There was no evidence that development of open land (or the woodland area) would be countenanced by the local authority and there was no suggestion in the particulars of sale that the paddocks or woodland had any development potential. The tribunal finds that the paddocks and woodland form part of the grounds of the property and are residential.

22. Much the same point applies to the stables and stable yard. There was no evidence that any livery business or similar had been in operation at the time of completion of the purchase, nor that they were sold subject to the rights of an existing

occupier. The stables and stable yard also form part of the grounds of the house and are necessary to its enjoyment. They are residential. The tribunal so finds.

23. The tribunal is fortified in that finding by the fact that the Appellants agreed to defer immediate vacant possession on completion and granted a shorthold assured tenancy to their vendor. That is a further indication that there was no existing business use as at the date of the purchase.

24. None of the arguments raised by the Appellants long after they had agreed the purchase of the property (prior to which point the SDLT payable on the purchase must have been known to them, as the SDLT was payable on completion) has any substance. For SDLT purposes, applying section 116 FA03, the tribunal finds that the whole of the property is residential with no non-residential element. It follows that the appeal must be dismissed.

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.

TRIBUNAL JUDGE MANUELL
RELEASE DATE: 16 DECEMBER 2019