Neutral Citation: [2025] UKFTT 00055 (TC)

Case Number: TC09407

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2022/12337

STAMP DUTY LAND TAX – HMRC application to strike out – no reasonable prospects of success? - connected party subsale scheme promoted by Cornerstone - consideration for subsale of equitable interest by way of an annuity – application of Schedule 2A FA 2003 and s 75A FA 2003 – interaction with s 52 FA 2003 –no qualifying subsale – if there had been then there were tax avoidance arrangements – s75A applied – consideration not limited by s52 - scheme wholly without technical merit –appellants case bad in law - prospects of a successful appeal merely fanciful - appeal struck out

Heard on: 17 December 2024
Judgment date: 3 January 2025

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR CHRISTOPHER JENKINS

Between

WILLIAM DAVID ROBINSON
MARIA FRANCIS MCALLISTER

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellants: Mrs McAllister

For the Respondents: Mr David Street litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns the efficacy of a mass marketed scheme ("**the scheme**"), marketed by Cornerstone Tax ("**Cornerstone**"). It was designed to reduce Stamp Duty Land Tax ("**SDLT**") on the acquisition of residential property.

2. In March 2016, the appellants purchased a residential property ("**the property**") for £599,950. They used the scheme to mitigate the SDLT payable on that transaction. They filed SDLT returns. Those returns self-assessed the SDLT due as zero. HMRC opened enquiries into those returns. They issued a closure notice on 20 October 2021 assessing the appellants to SDLT of £19,997. The appellants have appealed against this assessment.

3. HMRC have applied to strike out the appeal on the basis that it has no reasonable prospects of success.

4. HMRC told us that they are aware of approximately 750 transactions in which the scheme (or some variant of it) was used.

5. Following the publication of an adverse GAAR panel ruling in April 2023, Goldstone Tax (a company associated with Cornerstone, and who submitted the notice of appeal on behalf the appellants in this appeal) wrote to users of the scheme recommending that they settle.

6. The vast majority of scheme users settled. HMRC told us that at present there are currently only four appeals (including this one) outstanding in relation to the scheme.

7. In simple terms the scheme was envisaged to work as follows. P wishes to purchase a dwelling from V. They enter into an arm's-length contract ("**the original contract**"). Before completion of that contract, P sub sells a proportion of his putative equitable interest in that property to an associated individual, P2. Consideration is given by the provision, by P2, of an annuity. P then completes the contract with V.

8. It was Cornerstone's view that the subsale of the equitable interest was a qualifying subsale under the relevant SDLT legislation. This meant that P could apply for an exemption from SDLT in respect of the original deal with V. P2 was liable to SDLT on the subsale but only on the basis of the annuity which was limited to 12 annual annuity payments (plus it seems an amount equal to the value of the equitable interest as a proportion of the consideration under the original contract). These fell within the nil rate band for SDLT, so no SDLT payable on the transaction.

9. For the reasons given later in this decision, we think this analysis is, and has always been, wholly wrong. It is clear to us that there is no technical merit whatsoever in Cornerstone's analysis nor in the grounds of appeal which were drafted by Goldstone. We therefore have no hesitation in striking out this appeal as it has no reasonable prospects of success.

THE LAW

10. The law relating to strike out and to the relevant SDLT legislation is set out in the Appendix.

11. References in the body of this decision to sections and schedules are to sections and schedules of and to the Finance Act 2003 ("**FA 2003**"). References to paragraph numbers are to paragraphs in Schedule 2A.

THE FACTS

12. We were provided with a bundle of documents which included authorities. Although Mrs McAllister made oral representations, these were largely by way of submissions. On the basis of this evidence we make the following findings:

The scheme

(1) On 17 March 2016, Kenneth Alan Rumney and Jean Valerie Rumney ("**the vendors**"), entered into a contract ("**the original contract"**) to sell the freehold interest in the property to Mr Robinson and Mrs McAllister for consideration of £599,950. A deposit of £44,000 was paid on the entering into of the original contract and the completion date was stated to be 30 March 2016.

(2) On 25 March 2016, Mr Robinson and Mrs McAllister entered into an 'Agreement for Sale of an Equitable Interest' under which Mr Robinson agreed to sell 82% of his 99% equitable interest in the property to Mrs McAllister in return for an annuity with a capital value of £496,878.59 at a yield of 0.25% ("**the sale of the equitable interest")**. Clause 3 of that agreement provided that, "on completion of the purchase of the property", it "shall be held by William David Robinson and Maria Frances McAllister on trust as to 17% of the 99% beneficial interest in the Property for William David Robinson absolutely and as to the remaining 82% on trust for Maria Frances McAllister absolutely".

(3) On 25 March 2016, Mr Robinson and Mrs McAllister entered into a 'Deed of Annuity' under which Mrs McAllister agreed to pay Mr Robinson an annuity of £1,242.20 "[for life / in perpetuity]". There is no evidence that payments were made by Mrs McAllister to Mr Robinson under the Deed of Annuity.

(4) On 30 March 2016, the original contract completed, and the balance of the purchase price was paid by the appellants to the vendors. A single transfer document (TR1) was used to effect the transfer from the vendors to the appellants. The consideration stated in the TR1 is £599,950. It declares that the appellants hold the property on trust as to 99% for Mr Robinson and 1% for Mrs McAllister.

Returns, enquiries, closure notices and appeals

(5) On 6 April 2016, the appellants submitted:

> (a) An SDLT return showing the vendors as sellers of the property and Mr Robinson as the sole purchaser of it. In that return, pre-completion transaction relief (relief code 34) was claimed. It further stated that the consideration for the transaction was £491,959 and that the SDLT due was nil ("**return 1**").
>
> (b) A second SDLT return showing the vendors as sellers of the property and the appellants as joint purchasers of it and stating that the consideration for the transaction was £122,897 and that the SDLT due was nil ("**return 2**").

(6) On 5 January 2017, HMRC wrote to the appellants to notify them of its intention to open enquiries into both returns. HMRC requested various information and documents in relation to the operation of the scheme.

(7) On 20 October 2021, HMRC issued a closure notice to each of the appellants in respect of return 2 which amended the return to increase the SDLT due to £19,997.

(8) On 18 November 2021, Goldstone appealed against the closure notice.

(9) On 3 March 2022, HMRC wrote to the appellants giving their view of the matter and offering them a statutory review of the decision.

(10) On 30 March 2022, Goldstone accepted the offer of a statutory review.

(11) On 22 June 2022, the HMRC review officer issued their review conclusion upholding the closure notice and amendments.

(12) On 21 July 2022, the appellants notified their appeal to the tribunal.

Grounds of appeal

(13) The grounds of appeal are set out below:

> "1. The Appellants filed an SDLT return for a property showing SDLT due as £nil.
>
> 2. The Appellants appeal against HMRC's SDLT assessment on the basis that:
>
> a. the appellants (A & B) entered into a contract with the original vendor (V) to purchase the property, obtaining title as tenants in common in the ratios 99 (A):1(8) (Contract 1);
>
> b. A sub-sold to B a percentage of the equitable interest in the property (Contract 2). B granted an annuity as consideration for the equitable interest under Contract 2;
>
> c. on completion the appellants (A and B) own the property on trust;
>
> d. The transactions constitute a qualifying subsale for the purposes of Finance Act 2003 (FA 2003), Schedule 2A (see FA 2003, s.45). Relief is due under paragraph 16;
>
> e. S.52 FA 2003 applies to exclusively determine the amount of SDLT paid in respect of the annuity consideration (such that no other amount can be attributed for SDLT purposes);
>
> f. S.75A FA 2003 does not apply. S 52 exclusively determines the amount of the consideration for SDLT purposes.
>
> The Appellants reserve the right to amend these Grounds of Appeal once HMRC has served its Statement of Case (as to the law and facts)".

Other matters

(14) In a document entitled "covering letter" which was attached to the appellant's email to the tribunal of 13 May 2024, the appellants state as follows:

> "House purchased via the grant of an annuity and sub sale - organised by Cornerstone Tax and the recommended solicitors - Lauriston & Saggar - professional fee insurance taken out and an extra premium paid to account for SDLT interest on the understanding that if this did not comply with UK lawful tax transactions, monies would be returned and the bill paid to HMRC as required".

DISCUSSION

Burden

13. It is up to HMRC to establish, on the balance of probabilities, that the appeal has no reasonable prospects of success.

Submissions

14. Mrs McAllister made no technical submissions at the hearing. However, in an email to the tribunal dated 21 August 2024, she and Mr Robinson essentially endorsed the grounds of appeal that had been submitted on their behalf by Goldstone and which are set out above. Shortly stated, those grounds are:

(1) The sale of 82% of his equitable interest by Mr Robinson to Mrs McAllister was a qualifying sub sale within Schedule 2A, the consideration for which is limited to 12 annual annuity payments.

(2) That reflects the provisions of section 52, which determines, exclusively, the SDLT payable for the sub sale limb of the transaction. So, section 75A does not apply.

15. In summary Mr Cross submitted as follows:

(1) There is no pre-completion transaction within the meaning of Schedule 2A.

(2) Firstly, adopting a purposive approach to the construction of the relevant legislation, there was only a single land transaction, namely the conveyance of the property from the vendors to Mr Robinson and Mrs McAllister. The sale of the equitable interest has no impact on the completion of that original contract.

(3) Secondly, they can only be a pre-completion transaction under Schedule 2A if, as a result of that transaction, "a person other than the original purchaser" becomes entitled to call for a conveyance of the property. Here, Mr Robinson and Mrs McAllister were the original purchaser, and in that capacity were the only people entitled to call for a conveyance. There is no person other than the original purchaser, therefore, who became so entitled as a result of the sale of the equitable interest.

(4) Thirdly, the sale of the equitable interest clearly formed part of tax avoidance arrangements. It is reasonable to conclude that the main purpose or one of the main purposes of the appellants in entering into the scheme was to obtain a tax advantage.

(5) There is no justification for the submission that section 52 excludes the application of section 75A. Section 75A applies to the scheme as the sale of the equitable interest is a scheme transaction. There is therefore a notional transaction between the vendors and the appellants, the consideration for which is the amount given by or on behalf the appellants (or received by the vendors) as consideration for the transaction. In both cases that is £599,950.

Our view

Pre completion transaction relief

16. We start by considering HMRC's challenge to the pre-completion transaction relief claimed by the appellants.

17. HMRC challenge the appellants' right to claim the relief on two bases. Firstly, when the statutory provisions are construed purposively against the facts viewed realistically, there was only ever a single land transaction.

18. Secondly, if there were two land transactions (a sale and the subsale), relief is not available as the subsale was not a qualifying subsale.

19. The current pre-completion transaction provisions are set out in s45 and Schedule 2A. The legislation is set out in the Appendix. But broadly speaking it works as follows.

20. Where a vendor has contracted with a purchaser for the sale of a chargeable interest and before that contract is completed, someone other than that purchaser becomes entitled to call for a conveyance of that interest, then subject to the satisfaction of certain conditions, the purchaser may be entitled to relief from the SDLT which would otherwise be payable on completion of the acquisition. A qualifying subsale is one class of transactions which potentially qualifies for the relief.

21. The purchaser needs to claim that relief by completing an SDLT return.

22. However, relief cannot be claimed where the qualifying subsale forms part of any tax avoidance arrangements.

23. The sub purchaser, too, must complete an SDLT return specifying the consideration payable for the subsale.

24. Where the purchaser and sub purchaser are connected, that consideration is deemed to be an appropriate proportion of the consideration payable by the purchaser under the original contract ("**the minimum consideration**") as well as any additional consideration payable by the sub purchaser.

25. The case of these appellants, return 1, which appears to deal with the sale limb of the transaction, somewhat bizarrely states that Mr Robinson is the sole purchaser, and expresses the consideration to be £491,959. It claims pre-completion transaction relief.

26. Return 2 states that the vendors are the sellers, the purchasers are the appellants, and the consideration is £122,897.

27. The maths here seems to be that that figure is made up as being 18% of the purchase price plus 12 annual annuity payments.

28. This again seems very odd since if this consideration was designed to comply with the minimum consideration rule, and the equitable interest sold by Mr Robinson to Mrs McAllister was 82% of his 99% interest, then the minimum consideration, based on the £599,950 payable under the original contract, is in the region of £491,959 (i.e. the consideration expressed to be payable under return 1).

29. However, this mathematical oddity is largely irrelevant to our consideration of the relevant issues.

30. Although this point was not made by Goldstone, we would observe that HMRC have issued their closure notice in respect of their enquiry into return 2. And in that return, no pre-completion transaction relief is claimed. That relief was only claimed in return 1. But we don't think this matters. Return 2 declares that the vendors are the sellers and the appellants are the purchasers and the consideration as being £122,987. HMRC have closed their enquiry and concluded that the consideration for the transaction in which there are those sellers and purchasers, should be £599,950. They say that for one reason or another, the appellants were the purchasers in a land transaction for which the consideration is that amount. We find that this is a valid closure notice.

Only one transaction

31. HMRC's first challenge is that has been no pre-completion transaction. This is either because there has only been a single transaction based on a purposive construction of the legislation, or that an essential precondition for the provisions to apply has not been met. They say that there has been no transaction as a result of which a person other than the original purchaser has become entitled to call for a conveyance of the property.

32. It is notable that both of these challenges were set out in HMRC's view of the matter letter dated 3 March 2022 and in their review conclusion letter dated 22 June 2022, yet neither were dealt with in the grounds of appeal.

33. Our task is to decide whether the relevant statutory provisions, construed purposively, are intended to apply to the scheme, viewed realistically. In this case the question is whether sections 44 and 45 and Schedule 2A construed purposively, are intended to apply to the scheme viewed realistically.

34. There is no doubt that the scheme is a tax avoidance scheme. That is abundantly clear from the facts as we have found them. The scheme's existence and purpose were solely to avoid SDLT on the purchase of the property from the vendors.

35. From the Supreme Court decision in *Hurstwood Properties (A) Ltd v Rossendale BC* [2022] A.C. 690 (SC), which dealt with business rates, we take the following principles of statutory construction in relation to the relevant SDLT legislation and the scheme:

(1) The essence of the approach is to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which might involve considering the overall effect of a number of elements intended to operate together) answers to the statutory description.

(2) Sections 44 and 45 and Schedule 2A must be read in the context of FA 2003 as a whole which in turn should be read in the historical context of the situation which led to its enactment.

(3) The purpose for which Schedule 2A was introduced requires consideration of its political and social objective.

(4) Since the scheme is a tax avoidance scheme which involves a series of steps planned in advance, it is both permissible and necessary not just to consider the particular steps individually but to consider the scheme as a whole.

(5) The result of applying the purposive approach to fiscal legislation has often been to disregard transactions or elements of transactions which have no business purpose and have as their sole aim the avoidance of tax. It is not generally to be expected that Parliament intends to exempt from tax a transaction which has no purpose other than tax avoidance.

36. HMRC's first challenge is that there is no subsale of the property notwithstanding the sale of the equitable interest. There was no land transaction until the original contract was completed, and when it was so completed, it completed the sale of the property from the vendors to the appellants for the purchase price. That is reflected in the TR1. The sale of the equitable interest does not impinge on that.

37. We recognise the force of this submission. The purpose of the pre-completion transaction relief (originally introduced in the FA 2003 by section 45 and subsequently amended by the introduction of Schedule 2A in 2013) was to relieve a purchaser who had only a fleeting or transient interest in land, from an SDLT charge, where that purchaser had assigned their rights to the land prior to completing the original purchase. The intention was that the sub purchaser in these circumstances, who would have an ongoing and substantial interest in the property, would bear the duty. It was never intended to relieve a transaction from duty completely. It was intended to remove the double charge to duty in circumstances where there was, in effect, only one purchaser who acquires the real economic interest in property.

38. We have applied this principle to our interpretation of the relevant legislation, and in particular whether there has been a pre-completion transaction. The transaction is only a pre-completion transaction if "as a result of the transaction a person other than the original purchaser… becomes entitled to call for a conveyance to that person of the whole or part of the subject matter of the original contract…".

39. On both a literal and purposive interpretation of this provision, the sale of the equitable interest does not comprise a pre-completion transaction. The legislation is clearly not intended to apply to a situation such as this. And it does not. Prior to the sale of the equitable interest, the original purchaser (the appellants) were entitled to call for a conveyance of the property from the vendors. After that transaction (or as a result of it) the only people who were entitled to call for a conveyance of the property from the vendors were the appellants.

40. Whether this was under the original contract, or as a result of the sale of the equitable interest does not matter. In our view the right to call for a conveyance arises under the original contract since, to the extent that there was a valid transfer of an equitable interest, that per se does not give the equitable owner the right to call for a conveyance to it. That right was enjoyed by the appellants under the original contract.

41. But what is crystal clear is that at no stage in the scheme was anyone other than the appellants entitled to call for a conveyance of the subject matter of the original contract.

42. And this is how the legislation is intended to work. The appellants purchased the property for their own use. Therefore, they should be liable to the tax. They do not have a fleeting or transient interest in the property. They have a substantive and long-term interest in it.

43. Goldstone have never challenged this point. Nor is it addressed in Cornerstones original advice.

44. The conditions for claiming pre completion transaction relief were not met. There was a single land transaction from the vendors to the appellants, the consideration for which, as reflected in the TR1, was £599,950.

Tax advantage

45. HMRC's second submission was that even if the sale of the equitable interest was a pre-completion transaction, relief for the original purchaser was not available as the qualifying subsale formed part of a tax avoidance arrangement.

46. Whether this is so is an objective test. Arrangements are tax avoidance arrangements under paragraph 18 "if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage for the original purchaser or any other person was the main purpose, or one of the main purposes of the original purchaser in entering into the arrangements".

47. Tax advantage is broadly defined and includes a relief from tax and the avoidance or reduction of a charge to tax.

48. We have no hesitation in concluding, and find as a fact, that the scheme had, as its main or one of its main purposes, the obtaining of a tax advantage for the appellants.

49. We say this for a number of reasons.

(1) Firstly, it is self-evident that a purchaser buying a residential property would not go through the transactions envisaged by the scheme unless it would save them SDLT. There are no domestic or other reasons why the appellants would have structured the purchase in the way described in the scheme unless they had as their main purpose the avoidance or reduction to the SDLT otherwise payable.

(2) Secondly, the grounds of appeal clearly demonstrate that the scheme exploited the legislation (or rather was intended to exploit the legislation) in a way reflected in the SDLT returns and consequently no SDLT was payable under either.

(3) Cornerstone's generic letter (which was sent to users of the scheme although there is no evidence that such a letter was sent to the appellants) clearly set out that the scheme is designed to "mitigate" SDLT and suggests that this is "aggressive tax planning" (and thus a user might incur a reputational risk if they used the scheme).

(4) The GAAR panel's opinion was that these were abusive arrangements.

(5) The letter sent by Goldstone to scheme users following the GAAR panel's ruling tals about "your tax planning".

(6) The fact that the appellants paid a premium to nominated lawyers for implementing the scheme.

50. We have no hesitation in concluding that the scheme comprises tax avoidance arrangements and thus the appellants, in their capacity as original purchasers, could not claim relief for any pre-completion transaction.

51. Once again, it is notable that this challenge to the efficacy of the scheme, and justification for it being claimed in return 1, was contained in both HMRCs view of the matter letter and their review conclusion letter, yet it was not addressed at all in Goldstone's grounds of appeal.

52. It is worth saying however that in the Cornerstone letter referred to above, they do deal with tax avoidance arrangements and say "however these are subject to the overriding condition that the TAAR in s75A overreaches this rule. Since this is not triggered in this case… then relief can be properly claimed".

53. This is a novel and somewhat ambitious interpretation of the law. There is nothing in the legislation itself to suggest that the tax avoidance arrangements provisions in paragraph 18 do not apply where section 75A does not apply. Or to put it the other way round, paragraph 18 applies only when section 75A applies. There is no caselaw of which we are aware supports it. No authority for the proposition was given in the letter.

54. The two provisions are independent and perform separate tasks. Paragraph 18 is a specific, motive-based provision which applies only to pre-completion transactions. Section 75A is a freestanding motiveless anti-avoidance provision which applies across the SDLT landscape.

55. It would be very surprising if the former is only switched on by the engagement of the latter. And it is not. It is possible for a qualifying subsale to fall foul of paragraph 18 yet section 75A might not apply. And vice versa. The qualifying subsale might be entered into for perfectly proper motives yet be struck down by section 75A.

56. There is a statutory link in paragraph 18(5) which specifically states that "Nothing in… this paragraph affects the breadth of the application of section 75A to 75C (anti-avoidance)".

57. But that simply emphases the broad application of section 75A and that it remains applicable even if the provisions of paragraph 18 apply. It does not say that paragraph 18 is switched on only if section 75A is also engaged.

58. This did not comprise a ground of appeal and so we consider it no further in this decision. But it is symptomatic of the cavalier analysis which Cornerstone has adopted towards the application of the relevant SDLT legislation to the mechanics of the scheme.

S75A

59. HMRC's final challenge is under section 75A. Again, this challenge was set out in HMRC's foregoing correspondence, but on this occasion, as can be seen from the grounds of appeal, Goldstone provided a "justification" as to why section 75A does not apply.

60. It is clear from the text of section 75A itself, and the circumstances in which it was introduced into FA 2003 in 2007 (having already been introduced into the SDLT regime by

way of statutory instrument) that section 75A is a targeted anti-avoidance provision, designed to combat the avoidance of SDLT (see *Project Blue* in the FTT per Judge Brannan at [211-216]).

61. It is motiveless as per Lord Hodge in *Project Blue Limited v Commissioners for Her Majesty's Revenue and Customs* [2018] UKSC 30 ("***Project Blue***"), at [42] "there is nothing in the body of the section which expressly or inferentially refers to motivation. The provision was enacted to counter tax avoidance which resulted from the use of a number of transactions to effect the disposal and acquisition of a chargeable interest. It is sufficient for the operation of the section that tax avoidance, in the sense of a reduced liability or no liability to SDLT, resulted from the series of transactions which the parties put in place, whatever their motive for transacting in that matter".

62. It therefore must be construed in the same manner as sections 44 and 45 and Schedule 2A, and the principles regarding statutory construction set out at [35] above apply.

63. Section 75A itself was designed to combat subsale schemes such as the scheme. Such schemes are envisaged as being scheme transactions within the ambit of section 75A(3)(b).

64. Under section 75A, where there is a disposal of a chargeable interest from V to P, one or more scheme transactions are involved in connection with that disposal and as a result of the scheme transactions less SDLT is payable than would have been payable had there been a notional transaction from V to P, then any scheme transactions which are land transactions are disregarded, and SDLT is charged on that notional transaction.

65. One difficulty which arises is identifying V and P, and in particular P. But Lord Hodge has made it clear in [44] of *Project Blue* that P is the "person on whom the tax charge would have fallen if there had not been the scheme transactions to which subsection (1)(b) refers and which exploited a loophole in the statutory provisions".

66. In relation to the acquisition of the property by the appellants, the appellants are P as they are the person on whom the SDLT liability would have fallen had it not been for the scheme.

67. So, applying the provisions of section 75A to the scheme:

(1) Section 75A is engaged since the vendors disposed of the property which was acquired by the appellants and a number of transactions (including the sale of the equitable interest and the Deed of Annuity) were involved in connection with that disposal and acquisition.

(2) The SDLT payable in respect of the scheme transactions (zero) is less than the amount that would have been paid on a notional transaction between the vendors and the appellants (£19,997).

(3) In these circumstances the sale of the equitable interest is disregarded and there is a notional transaction between the vendors and the appellants for which the chargeable consideration is the £599,950 paid by the appellant under the original contract, and (subject to what we say below) the 12 annual annuity payments payable for the sale of the equitable interest.

68. HMRC do not suggest that the appellant's liability is anything other than the duty payable on the consideration of £599,950. They are not seeking to increase the duty by adding the annuity payments to that consideration.

69. And this is not something which we need to consider further in the context of strike out application.

Section 52

70. Finally, in the context of section 75A, we have considered the assertion that section 52 applies to exclusively determine the amount of consideration for SDLT purposes.

71. Section 52 is a charging provision. Like sections 51 and 53 it deals with circumstances in which the chargeable consideration provisions in Schedule 4 do not readily apply to a particular transaction. Section 52 applies where consideration is given by way of an annuity. Section 52(2) provides that the consideration to be taken into account "is limited to 12 years annual payments".

72. We firstly observe that Cornerstone, who presumably recommended the figures which were to be included in the SDLT returns, did not recommend that the amount of SDLT was only 12 annual annuity payments. In return 2, the chargeable consideration was stated to be £122,897. This suggests that the appellants are connected and the minimum consideration provisions apply.

73. Furthermore, we can see no justification for the assertion that somehow section 52 ousts the application of section 75A.

74. As stated above, section 75A is a wide-ranging charging provision which applies, mechanically, where the preconditions for its application are made out (as they are in this case). There is nothing in that section which limits its application in the manner suggested by Goldstone.

75. In the Upper Tribunal decision of *David Hannah* [2021] UKUT 22 (an individual associated with Cornerstone and which also involved the use of an annuity) it was argued that section 52 was a relieving provision from which the notional transaction under section 75A should benefit by virtue of section 75C (2).

76. That submission was rejected by the Upper Tribunal. They doubted that section 52 was a relief. We would go further and say that it is not a relief. To the contrary, it is a charging provision.

77. Furthermore, the Upper Tribunal pointed out that even if the consideration for the notional transaction could be reduced by dint of the annuity being given by way of consideration for the sale, the amount received by the vendors was still the amount they actually received for the sale (in that case £765,000). That amount is unaffected by the provisions of section 52 even if it could be construed as a relief. The same is true in this case.

78. In conclusion, therefore, it is our view that section 75A applies to the scheme with the consequence that the SDLT payable is £19,997. That application is unaffected by the provisions of section 52.

Strike out

79. Our role is not to determine the appeal. It is to consider HMRC's application that the appeal should be struck out on the basis that it has no reasonable prospect of success.

80. We have considered the legal principles on strike out as set out in the Appendix. We must decide whether there is a realistic as opposed to a fanciful prospect of the appellants succeeding if their appeal went to a trial. Their appeal must carry some degree of conviction.

81. We need to consider whether if the matter went to trial, further evidence might be adduced which would affect the outcome of the case.

82. Where we are satisfied that we have all the evidence necessary for a proper determination of the issues and that the parties have had an adequate opportunity to address them in argument, we should grasp the nettle and decide it.

83. That is what we intend to do. The issues in these appeals involved short points of statutory construction. The evidence is before us. Whilst there are many inconsistencies in the scheme analysis and the way in which it was implemented in the conveyancing documents and reflected in the SDLT returns, we are in no doubt as to the moving parts of the scheme. There is no need for oral evidence. The documents speak for themselves. The appellants are innocents abroad. They will be able to give no additional evidence which would affect the legal analysis of the scheme. The question of whether the scheme involved tax avoidance arrangements is an objective test. For the reasons set out above, we have no hesitation in saying that there were such arrangements.

84. For all the reasons given above, it is our view that the appellants' case is bad in law and there is no realistic prospect of it succeeding if this matter went to a trial.

DECISION

85. We allow HMRC's application and Direct that these proceedings are struck out with immediate effect.

86. We would advert the appellants to the provisions of Rule 8(5) and (6) regarding reinstatement.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

87. 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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 03rd JANUARY 2025

APPENDIX

STRIKE OUT

The F-tT Rules

1. The relevant Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "**Rules**") are Rules 2 and 8:

Rule 2(3) requires us to give effect to the over-riding objective when exercising any power under the Rules. The overriding objective, as set out in Rule 2(1), is as follows:

> "The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly".

Rule 8 deals with strike out:

> **"8. Striking out a party's case**
>
> (1) …
>
> (2) …
>
> (3) The Tribunal may strike out the whole or a part of the proceedings if—
>
> (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
>
> (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
>
> (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.
>
> (4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out…".

Case law

2. The legal principles which we must consider have been neatly set out in the Upper Tribunal in *The First De Sales Limited Partnership and others v HMRC* [2018] UKUT 396:

> **"Approach to applications to strike out - legal principles**
>
> 31 At [30] of the decision, the judge applied the summary of principles set out by the Upper Tribunal in *HMRC v Fairford Group plc* [2014] UKUT 329; [2015] STC 156 ('*Fairford Group plc'*). The Upper Tribunal held (at [41]) that:
>
> > "In our judgment an application to strike out in the FTT under r 8(3)(c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the FTT Rules to

summary judgment under Pt 24). The tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of succeeding on the issue at a full hearing, see *Swain v Hillman* [2001] 1 All ER 91 and *Three Rivers* [2000] 3 All ER 1 at [95], [2003] 2 AC 1 per Lord Hope of Craighead. A 'realistic' prospect of success is one that carries some degree of conviction and not one that is merely arguable, see *ED & F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [2003] 24 LS Gaz R 37. The tribunal must avoid conducting a 'mini-trial'. As Lord Hope observed in *Three Rivers*, the strike-out procedure is to deal with cases that are not fit for a full hearing at all".

32. It was common ground that the application should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the FTT Rules to summary judgment under Part 24).

33. Although the summary in *Fairford Group Plc* is very helpful, we prefer to apply the more detailed statement of principles in respect of application for summary judgment set out by Lewison J, as he then was, in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]. This was subsequently approved by the Court of Appeal in *AC Ward & Sons v Caitlin Five Limited* [2009] EWCA Civ 1098. The parties to this appeal did not suggest that any of these principles were inapplicable to strike out applications.

"i) The court must consider whether the claimant has a 'realistic' as opposed to a fanciful prospect of success: *Swain v Hillman* [2001] 1 All ER 9;

ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];

iii) In reaching its conclusion the court must not conduct a 'mini-trial': *Swain v Hillman*;

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the

outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725"".

SDLT

Relevant legislation

Pre-completion transactions

1. "Section 44 - contract and conveyance

(1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.

(2) A person is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.

(3) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction. In this case the effective date of the transaction is the date of completion…"

2. Section 45 – Transactions entered into before completion of contract

"Schedule 2A contains—

(a) provision about the application of section 44 (contract and conveyance) in certain cases where an assignment of rights, subsale or other transaction is entered into without the contract having been completed, and

(b) other provision about such cases."

3. Schedule 2A

Paragraph 1 – Pre-completion transactions

"(1) This Schedule applies where—

(a) a person ("the original purchaser") enters into a contract ("the original contract") for the acquisition by that person of a chargeable interest under which the acquisition is to be completed by a conveyance, and

(b) there is a pre-completion transaction.

(2) A transaction is a "pre-completion transaction" for the purposes of sub-paragraph (1) if —

(a) as a result of the transaction a person other than the original purchaser ("the transferee") becomes entitled to call for a conveyance to that person of the whole or part of the subject- matter of the original contract, and

(b) immediately before the transaction took place a person was entitled under the original contract to call for a conveyance of the whole or part of that subject-matter.

(3) A transaction that effects a person's acquisition of the whole or part of the subject-matter of the original contract is not a precompletion transaction.

(4) The grant or assignment of an option is not a pre-completion transaction.

(5) The fact that a transaction has the effect of discharging the original contract does not prevent that transaction from being a precompletion transaction.

(6) The reference in sub-paragraph (1)(a) to a contract does not include a contract that is an assignment of rights in relation to another contract.

(7) In this Schedule references to "part of the subject-matter of the original contract" —

(a) are to a chargeable interest that is the same as the chargeable interest referred to in sub- paragraph (1)(a) except that it relates to part only of the land concerned, and

(b) also include, so far as is appropriate, interests or rights appurtenant or pertaining to the chargeable interest".

4. Paragraph 16 – Relief for original purchaser: qualifying subsales

"(1) This paragraph applies if—

(a) the pre-completion transaction is a qualifying subsale,

(b) the original purchaser would, in the absence of this paragraph, be liable to pay tax in respect of a land transaction effected by the completion of the original contract or deemed to be effected by the substantial performance of the original contract,

(c) the performance of the qualifying subsale takes place at the same time as, and in connection with, the performance of the original contract, and

(d) relief is claimed in respect of the land transaction mentioned in paragraph (b).

(2) If the subject-matter of the qualifying subsale is the whole of the subject-matter of the original contract, no liability to tax arises in respect of the land transaction…".

5. Paragraph 18 – Tax avoidance arrangements

"(1) Relief may not be claimed—

(a) under paragraph 15 if the assignment of rights referred to in sub-paragraph (1)(b) of that paragraph forms part of any tax avoidance arrangements, or

(b) under paragraph 16 if the qualifying subsale referred to in sub-paragraph (1)(c) of that paragraph forms part of any tax avoidance arrangements.

(2) Arrangements are "tax avoidance arrangements" if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage for the original purchaser or any other person was the main purpose, or one of the main purposes, of the original purchaser in entering into the arrangements.

(3) In this paragraph "tax advantage" means—

(a) a relief from tax or increased relief from tax,

(b) a repayment of tax or increased repayment of tax,

(c) the avoidance or reduction of a charge to tax, or

(d) the avoidance of a possible assessment to tax.

(4) In this paragraph "arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

(5) Nothing in paragraphs 12 to 14 (minimum consideration rule) or this paragraph affects the breadth of the application of sections 75A to 75C (anti-avoidance)".

Section 75A

6. 75A Anti-avoidance

"(1) This section applies where–

(a) one person (V) disposes of a chargeable interest and another person (P) acquires either it or a chargeable interest deriving from it,

(b) a number of transactions (including the disposal and acquisition) are involved in connection with the disposal and acquisition ("the scheme transactions") and

(c) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition of V's chargeable interest by P on its disposal by V.

(2) In subsection (1) "transaction" includes, in particular–

(a) a non-land transaction,

(b) an agreement, offer or undertaking not to take specified action,

(c) any kind of arrangement whether or not it could otherwise be described as a transaction, and

(d) a transaction which takes place after the acquisition by P of the chargeable interest.

(3) The scheme transactions may include, for example–

(a) the acquisition by P of a lease deriving from a freehold owned or formerly owned by V;

(b) a sub-sale to a third person;

(c) the grant of a lease to a third person subject to a right to terminate;

(d) the exercise of a right to terminate a lease or to take some other action;

(e) an agreement not to exercise a right to terminate a lease or to take some other action;

(f) the variation of a right to terminate a lease or to take some other action.

(4) Where this section applies–

(a) any of the scheme transactions which is a land transaction shall be disregarded for the purposes of this Part, but

(b) there shall be a notional land transaction for the purposes of this Part effecting the acquisition of V's chargeable interest by P on its disposal by V.

(5) The chargeable consideration on the notional transaction mentioned in subsections (1)(c) and (4)(b) is the largest amount (or aggregate amount)–

(a) given by or on behalf of any one person by way of consideration for the scheme transactions, or

(b) received by or on behalf of V (or a person connected with V within the meaning of [section 1122 of the Corporation Tax Act 2010]2) by way of consideration for the scheme transactions.

(6) The effective date of the notional transaction is–

(a) the last date of completion for the scheme transactions, or

(b) if earlier, the last date on which a contract in respect of the scheme transactions is substantially performed".