[2016] UKFTT 384 (TC)

TC05138

Appeal numbers: SC/3004/2009
TC/2015/04180
SC/3005/2009
TC/2015/04178
TC/2010/04307
TC/2010/05092

PROCEDURE – application to strike out appeals – Denton v TH White Ltd [2014] EWCA Civ 906 and HMRC v BPP Holdings Ltd [2016] EWCA Civ 121 applied – application granted – appeals struck out

FIRST-TIER TRIBUNAL
TAX CHAMBER

BETWEEN

ANTHONY GRINDLEY
CAROL GRINDLEY
ANTHONY LYNCH
STEVEN WOOD

Appellants

- and –

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Tribunal: Judge Greg Sinfield

Sitting in public at the Royal Courts of Justice, Strand, London WC2 on 20 May 2016

Mr Jeremy Haft of Bowman's Chartered Tax Advisers, for the Appellants

Mr Jonathan Bremner, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

© CROWN COPYRIGHT 2016

DECISION

Introduction

1. This is an application by the Respondents ('HMRC') to strike out the appeals by the Appellants

2. For reasons set out below, I have decided that the appeals should be struck out.

Background

3. These four appeals are part of a number of appeals relating to a tax avoidance scheme known as Pendulum (the 'Scheme'). The Scheme involved the use of contracts for differences. The Scheme deployed a complex set of arrangements which purported (a) to establish a trade in derivatives and (b) to create, as a result of a series of transactions with entities related to the scheme promoters, a trading loss which the Scheme users would be able to set against their general income. The Appellants in these appeals are all participants in the Scheme. They appeal against closure notices issued by HMRC under section 28 of the Taxes Management Act 1970. The issue in the appeals is the correct characterisation of the transactions entered into in furtherance of the schemes and in particular, whether the transactions constituted the carrying on of a trade and, if so, whether the trade was on a commercial basis with a view of profit.

4. The Appellants are represented for the purposes of the proceedings by Ms Sue Bradshaw of Bradshaw Tax Services. The appellants are, in addition, also advised by Mr Haft of Bowman's Chartered Tax Advisers, who represented the appellants at the hearing of this application because Ms Bradshaw was unable to attend due to ill health.

5. On 20 July 2015, HMRC applied for directions in relation to, among others, the Appellants' appeals. The application included a request for a direction that the Appellants should provide further and better particulars of their cases. HMRC contended that the further and better particulars were necessary in order to enable HMRC to understand each Appellant's case because the grounds of appeal were wholly inadequate. The Tribunal granted HMRC's application and, on 18 August 2015, issued Directions which included the following:

> "On or before 30 November 2015 the Appellant (*sic*) shall serve on the Respondents, and the Tribunal, a reply to the Respondents (*sic*) Statement of Case setting out further and better particulars of their case."

6. On 27 November 2015, Ms Bradshaw applied, on behalf of the Appellants, for an extension of six weeks to serve the Replies. The grounds advanced in support of that application were:

> "Our client is in discussion with HMRC on a without prejudice basis to settle this appeal by agreement. We therefore ask that the Directions allow further time for these discussions to be finalised. May we respectfully request an extension of six weeks to 11 January 2015 (*sic*). This should provide sufficient time for these negotiations to be completed, for an offer and all relevant documents to be provided to HMRC and for HMRC to issue their acceptance letter."

7. On 11 December 2015, HMRC applied for further directions in relation to several appeals relating to the Scheme, including the Appellants' appeals. HMRC's application included draft directions which required the Appellants to serve their replies by 1 February 2016. The Tribunal allowed HMRC's application in a letter dated 6 January 2016.

8. At 4:35 pm on 1 February 2016, Ms Bradshaw Tax Services sent an email to the Tribunal applying for a further extension of time to an unspecified date to enable the Appellants to conclude negotiations to settle the appeals. The letter stated:

> "We can confirm that we are still in discussion in relation to all of these clients. We have been asked for certain documents for some of them so that the HMRC Officer can determine whether the level of settlement is appropriate and these will be supplied.
>
> Whilst we note Mr Leigh's suggestion that he sees no reason why the ongoing discussions should have prevented our clients from filing their replies we must point out that the cost of doing so would be substantial. Some of these clients are having financial difficulty which is known by the relevant officer/s and it is taking longer to agree settlement due to the queries and the documents now requested.
>
> In the circumstances we ask that further time is allowed, or the procedure stayed, to enable our client's (*sic*) discussions and offer to be concluded. We also point out that we are awaiting a response on a proposal for one of these clients which has already been submitted. Had we received a response from HMRC our client's appeal would be withdrawn. In the meantime we wish to retain his right to pursue his appeal should HMRC refuse the proposal."

9. In a letter dated 10 February 2016, HMRC opposed that application on the ground that the Appellants had not had any discussions with HMRC between 27 November 2015 and 11 January 2016 and, although the appellants had been in contact with HMRC since that date, had not made any formal offers to settle the appeals. HMRC applied for an unconditional unless order requiring the Appellants to file their replies within two weeks and specifying that failure to comply would result in the Appellants' appeals being automatically struck out.

10. On 18 February 2016, the Tribunal issued Directions which required the Appellants to file and serve their replies setting out further and better particulars of the Appellant's cases within two weeks (i.e. by 3 March 2016) and made a conditional unless order in the following terms:

> "Failure by the Appellant (*sic*) to comply with the directions … above within the required time frame (ie within two weeks of the date of these Directions) may lead to the Appellants (*sic*) appeal being struck out".

11. On 3 March 2016, Ms Bradshaw wrote separate letters to the Tribunal in relation to each Appellant (except for Mr and Mrs Grindley who were dealt with together in a single letter) and applied for a further extension of time stating in each case that:

> "We would expect to be in a position to agree settlement with HMRC within the next 4 to 6 weeks and possibly earlier."

The letters stated that, following receipt of the Tribunal's directions of 18 February 2016, Bradshaw Tax Services had made contact with John Ferguson, the new operational leader at the relevant HMRC office, and made arrangements for a conference call to discuss settlement of the appeals on a without prejudice basis. The call took place on 25 February. During the call, it was agreed that it was preferable to attempt to reach an agreed settlement before 3 March.

12. In relation to Mr and Mrs Grindley, the letter stated that Bradshaw Tax Services are not received any response from HMRC as at the date of letter. The letter stated:

> "In the circumstances we would ask the tribunal to consider some further time to allow an agreed settlement. This would avoid any unnecessary cost by our clients in producing a statement of case when their financial situation is unstable and when we expect to receive HMRC's response within a short space of time. We would expect to be in a position to agree settlement within HMRC within the next 4 to 6 weeks and possibly earlier. Once the agreement is reached our clients would be in a position to withdraw their appeal. Whilst we fully expect to reach agreement with HMRC we would prefer to retain our clients (*sic*) right to pursue the appeal. We note that Mr Leigh confirms the Appellants will not be prevented from settling the appeals by way of the agreement after they file their replies if they wish to do so. It appears however that should our clients (*sic*) appeals be struck out they will be faced with much higher penalties, in accordance with the penalty determinations, than the current negotiations. This is likely to force insolvency. One of Mr Leigh's points was that HMRC has not been provided with any evidence of the financial position and we would hope that now HMRC has this it can see that any further cost to our client, whether in providing a Statement of Case or by way of higher penalties, would be detrimental to both our client and HMRC."

The letter does not explain how Mr and Mrs Grindley incurring further cost in providing a reply or paying higher penalties would be detrimental to HMRC.

13. The letter relating to Mr Lynch stated that he had been in hospital with severe pneumonia since 29 February and so Mr Haft had not been able to obtain instructions to enable him to provide a settlement amount to Mr Ferguson. The letter in relation to Mr Lynch letter stated:

> "In the circumstances we would ask the tribunal to consider some further time to allow an agreed settlement. Mr Lynch's financial position is not sufficiently stable and the further time would avoid any unnecessary cost by our client in producing a statement case. We expect to be in a position to agree settlement with HMRC within the next 4 to 6 weeks and possibly earlier. Once the agreement is reached our client would be in a position to withdraw his appeal. Whilst we fully expect to reach agreement with HMRC we would prefer to retain our clients (*sic*) right to pursue the appeal."

14. On 17 March 2016, Bradshaw Tax Services notified the Tribunal that two appellants, not among the Appellants, had withdrawn their appeals as settlement had been reached with HMRC.

15. On 18 May at 18:14, the Tribunal received an email from Ms Bradshaw stated that:

> "Unfortunately Miss Bradshaw was hospitalised in July 2015 for the removal of a tumour. This was followed by 6 months of chemotherapy commencing at the end of August 2015. More recently she has undergone an intensive internal radiotherapy and is unable to attend the hearing. Under the circumstances we would prefer that the hearing be adjourned and rearranged to a future date."

16. The letter did not explain why, in the circumstances, it had only been sent two days before the date of the hearing or why it had not been possible to instruct anyone else to represent the Appellants at the hearing. In anticipation of the tribunal refusing to

adjourn the hearing, the letter set out a response to HMRC's skeleton argument for the hearing which have been served on the tribunal on 13 May. The letter set out the history of the negotiations between the Appellants and HMRC and the position of each of the Appellants. In relation to Mr and Mrs Grindley, the last of made by them to HMRC was rejected on 22 April and that rejection was confirmed in a conference call with Mr Ferguson on 28 April. There was no offer on the table in relation to Mr and Mrs Grindley at the date of the letter. In relation to Mr Wood, the last offer had been rejected on 19 April and that too was confirmed in the conference call with Mr Ferguson on 28 April. At the date of the letter there was no offer on the table in relation to Mr Wood. The positon in relation to Mr Lynch had not changed since the letter dated 3 March 2016 saved that, since his release from hospital, he had been diagnosed with terminal pancreatic cancer. At the date of the letter, no offer to settle had been made in relation to Mr Lynch.

17. The letter did not explain why the appellants had failed to observe the time limits for service of the replies or engage with the Tribunal before the expiry of the time limit on 3 March 2016 or subsequently until the letter dated 18 May. In relation to HMRC's application to strike out the appeals, the letter stated:

> "We believe we have done what we can to negotiate with HMRC. We have now removed two more client (*sic*) from the appeals list as settlement has been agreed. The remaining clients are having financial difficulties and this was known by HMRC, has been proved to HMRC with statements of assets, list of income and outgoings etc. We have avoided delay where possible and latterly have chased HMRC for replies which we had expected promptly. Information has more recently been requested which had not previously been requested and this has been supplied other than the projections of income and outgoings which is in the process of being completed.
>
> Given our clients (*sic*) financial difficulties we have attempted to negotiate settlement with HMRC to avoid the time and cost of Tribunal. We believed this was also preferable to HMRC rather than the suggestion of prejudice to HMRC as stated in the Skeleton Arguments.
>
> Under the circumstances we wish to avoid striking out as this will most likely result in bankruptcy proceedings and will most definitely prejudice our clients (*sic*) livelihood. We have therefore prepared Statements of Case although these have been prepared in a fairly short space of time. We do of course intend to continue discussions with HMRC as we have progressed to a better understanding of what HMRC require. Had this been explained previously we believe these remaining appeals could have been settled. Under the circumstances we do not consider our previous requests for extension of time to be unreasonable."

18. On 19 May 2016, the Tribunal responded to rumours Bradshaw's application for the hearing of the application to be postponed by stating that any such application would have to be made at the hearing itself on 20 May. At the hearing, the Appellants were represented by Mr Haft and the application to adjourn was not pursued.

Relevant legislation

19. Rule 2 of FTT Rules provides, so far as material:

> "(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it -

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction."

20. Rule 8 of the FTT Rules relates to the striking out of a party's case and provides, so far as material, as follows:

> "(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.
>
> …
>
> (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 cooperate with the Tribunal to such an extent that the tribunal cannot deal with the proceedings fairly and justly; or
>
> (c) …
>
> (4) The Tribunal may not strike out the whole or a part of the proceedings under [paragraph (3)(b)] without first giving the appellant an opportunity to make representations in relation to the proposed striking out.
>
> (5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.
>
> (6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days of the date that the Tribunal sent notification of the striking out to the appellant."

Relevant case law

21. As the Senior President of Tribunals observed in *BPP Holdings v HMRC* [2016] EWCA Civ 121 ('*BPP'*) at [29], the guidance provided by the Court of Appeal in *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 WLR 795 ('*Mitchell'*) and *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926 ('*Denton'*) while not strictly relevant to a decision whether to impose a sanction such as in this case because they concerned applications under the Civil Procedure Rules, ('CPR') which do not apply to the Tribunal, for relief from sanctions already imposed under the CPR, approved the approach of the Tribunal in *BPP* to such guidance at [32] and [33] as follows:

> "[The Tribunal] was careful to make it clear that her consideration of the same was limited to whether the guidance contained in them was relevant by analogy to the application of the overriding objective in the tax tribunal rules. She was careful to distinguish the nature of the application before her from one under CPR 3.9. Most importantly, she distinguished the guidance before applying a nuanced version of it to the overriding objective in the tax tribunal rules. In the circumstance that the tax tribunal rules are silent on the question, did she make an error in law in according the efficient conduct of litigation at a proportionate cost and compliance with rules, practice directions and orders significant weight as part of her consideration of the overriding objective?
>
> For the reasons I set out below, I do not think that she did …"

22. At [37] and [38] of *BPP*, the Senior President stated:

> "37. There is nothing in the wording of the relevant rules that justifies either a different or particular approach in the tax tribunals of FtT and the UT to compliance or the efficient conduct of litigation at a proportionate cost. To put it plainly, there is nothing in the wording of the overriding objective of the tax tribunal rules that is inconsistent with the general legal policy described in *Mitchell* and *Denton*. As to that policy, I can detect no justification for a more relaxed approach to compliance with rules and directions in the tribunals and while I might commend the Civil Procedure Rules Committee for setting out the policy in such clear terms, it need hardly be said that the terms of the overriding objective in the tribunal rules likewise incorporate proportionality, cost and timeliness. It should not need to be said that a tribunal's orders, rules and practice directions are to be complied with in like manner to a court's. If it needs to be said, I have now said it.
>
> 38. A more relaxed approach to compliance in tribunals would run the risk that non-compliance with all orders including final orders would have to be tolerated on some rational basis. That is the wrong starting point. The correct starting point is compliance unless there is good reason to the contrary which should, where possible, be put in advance to the tribunal. The interests of justice are not just in terms of the effect on the parties in a particular case but also the impact of the non-compliance on the wider system including the time expended by the tribunal in getting HMRC to comply with a procedural obligation. Flexibility of process does not mean a shoddy attitude to delay or compliance by any party."

23. I turn now to consider the guidance given by the Court of Appeal in *Mitchell*, as explained by the Court in *Denton*, on how the courts should approach applications

under CPR 3.9 for relief from sanctions. I consider that such guidance is relevant in a case such as this where a party has failed to comply with a time limit and the Tribunal must consider whether to apply the sanction of striking out the appeal. In considering that I bear in mind that, as the Senior President noted at [29] of *BPP*, the relevance of the guidance given in the authorities is constrained to how the Tribunal should apply the overriding objective in the FTT Rules.

24. In *Denton*, the Court of Appeal gave guidance at [24] to [38] as to the approach. As relevant to this case, it may be summarised as follows. I should address an application to strike out an appeal for failure to comply with a direction in three stages. The first stage is to identify and assess the seriousness and significance of the failure to comply with the direction. If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider the reason for the failure to comply. The third stage is to consider all the circumstances of the case, bearing in mind the overriding objective of the FTT Rules.

Summary of submissions

25. At the hearing, Mr Bremner acknowledged that the Appellants had belatedly served their replies two days previously. He stated that the replies were largely identical save as to amounts and dates and did not comply with the direction. He contended that the replies failed to provide sufficient details to enable HMRC to understand how the Appellants put their cases. He referred to Mr Grindley's reply which simply asserted that the propositions in HMRC's statement case are wrong and stated in numerous places (e.g. paragraphs 2, 6, 17, 21 and 25) that various matters of evidence and legal submissions were reserved for the hearing. Mr Bremner submitted that, even if the Tribunal accepted that the Appellants had belatedly complied with the direction, the failure to do so within the time limit specified justified the appeals being struck out under rule 8(3)(a) and (b) of the FTT Rules. He contended that *BPP* and *Denton* showed that the Tribunal should require parties to an appeal to comply with the directions and rules to ensure the efficient conduct of proceedings at proportionate cost. He submitted that the hearing of this application was (or should be) unnecessary. The only explanation given by the Appellants for their repeated failure to comply with the direction and provide further and better particulars of their cases was that they were trying to settle the appeals and did not wish to incur costs which was not a good reason for non-compliance. Even in the case of Mr Lynch, who is now seriously ill, there was no explanation for why no reply had been prepared between the first date for compliance in November 2015 and the end of February 2016 when it appears that his ill-health began. Mr Bremner said that, in all the circumstances, the appeals should be struck out.

26. Mr Haft frankly acknowledged that the replies been submitted late. He said that Ms Bradshaw had served them as soon as she could and referred to the fact that she had experienced serious ill health. He and Ms Bradshaw had settled more than half of all the appeals involving the Scheme since November 2015. In relation to these appeals, Mr Haft submitted that it was relevant that the Appellants were all in financial difficulties. He said that he and Ms Bradshaw always thought that the appeals would be settled and did not want the Appellants to incur unnecessary costs. He and Ms Bradshaw had been trying to agree substandard offers (ie offers to pay less than the amount of tax, interest and penalties due) with HMRC. He stated that they had pursued the negotiations with expediency and vigour and had not intended to waste anyone's time. They had made good offers to settle which were not accepted by HMRC. Mr

Haft said that, on 29 February, he and Ms Bradshaw knew that the replies were due to be served on 3 March and Mr Ferguson had said he would try to help them to meet the time limit. In the event, the deadline of 3 March was missed because the Appellants were waiting for HMRC to respond. They assumed that the Tribunal would be told that they were waiting HMRC to respond. Mr Haft told me that the consequence of striking out the appeals would be that the Appellants would be made bankrupt.

Discussion

27. I do not consider that rule 8(3)(b) of the FTT Rules is relevant in this case. That rule provides that the Tribunal may strike out an appeal where the appellant has failed to cooperate with the Tribunal to such an extent that the tribunal cannot deal with the proceedings fairly and justly. I would have considered rule 8(3)(b) if the Appellants had not belatedly served their replies on 18 May 2016. Without those replies, it seems to me that the Tribunal would not have been able to deal with the proceedings fairly and justly. However, now that the Appellants have served the replies, it seems to me that the Tribunal is able to deal with the appeal fairly and justly.

28. In my view, the relevant rule in this case is rule 8(3)(a) of the FTT Rules under which the Tribunal may strike out the appeals where an appellant has failed to comply with a direction which stated that such failure could lead to the striking out of the proceedings. I approach the issue of whether to strike out the appeals in this case by considering the three stages adopted by the Court of Appeal in *Denton* in the light of the comments of the Senior President in *BPP*.

29. In relation to the first stage, I consider that the failure to comply with the direction issued by the Tribunal on 18 February 2016 to provide replies setting out further and better particulars of the Appellant's cases, which were required to be served on or before 3 March, until 18 May was serious and significant.

30. Having read Ms Bradshaw's letter of 18 May and heard Mr Haft's submissions at the hearing, I do not consider that the Appellants have any good reason for the failure to comply with the Direction until immediately before the hearing of the application to strike out their appeals. It was frankly acknowledged by Mr Haft that he and Ms Bradshaw were aware of the 3 March deadline and that the reason for not complying with the direction was that the Appellants were engaged in negotiations with HMRC to try to settle these appeals. I do not regard that as a good reason for non-compliance. The appeals were still ongoing and the parties were required to comply with the Tribunal's directions and conduct the proceedings properly in accordance with those directions. There was no reason why the negotiations should prevent the replies being served in accordance with the tribunal's directions. Further, I do not accept that the failure to comply was in any way caused by HMRC not responding to offers made during or after the telephone conference call on 29 February. That was only three days before the time limit for providing the replies and it was, in my view, not reasonable for Ms Bradshaw and Mr Haft to assume that HMRC would have accepted the substandard offers by 3 March and thus have relieved them from the obligation to serve replies.

31. The third stage is to consider all the circumstances of the case, in light of the overriding objective, in deciding whether, notwithstanding that there is a serious and significant failure to comply and no good reason for it, the application to strike out the appeals should not be granted. I have regard to the fact that the Appellants have now complied albeit only two days before the hearing of this application. I also bear in mind the need for compliance with rules, practice directions and orders because, as shown by

Denton and *BPP*, the former relaxed attitude to compliance, if it existed, is no to be longer tolerated.

32. The Appellants were first directed to provide replies in August 2015. Bradshaw Tax Services made applications for an extension of time to provide the replies on two occasions before the last application on 3 March 2016. All of the applications for an extension of time were made on or immediately before the date for compliance. The directions of 18 February specified that failure to file and serve the replies by 3 March may lead to the appeals being struck out. In the event, the replies were not served until 18 May, more than six months after the 30 November date originally specified by the Tribunal for compliance.

33. I consider that the failure to comply and provide the replies disrupted the efficient conduct of the proceedings and resulted in time and resources being wasted unnecessarily. The Appellants' continued non-compliance with the directions has led to substantial (and unnecessary) delay in the proceedings to the prejudice of HMRC, other Tribunal users and the interests of justice. Without the replies, the appeals could not progress further and have not progressed since August 2015. Both HMRC and the Tribunal were unable to bring the appeals closer to a hearing until the appellants had complied and provided further details about their cases. Instead of working towards a hearing of the appeals, HMRC felt compelled to apply for the appeals to be struck out and the Tribunal was compelled to deal with that application. Such actions would have been unnecessary if the Appellants had served their replies as directed on 3 March rather than just two days before the hearing of the application.

34. It is clear to me that the Appellants do not have any serious intention of taking these appeals to a hearing. Ms Bradshaw and Mr Haft have been pursuing a settlement of the appeals. That is an entirely proper course of action and a laudable intention but it does not justify a failure to comply with directions. It will often be appropriate to stay proceedings to enable parties to discuss a possible settlement but where, for whatever reason, the proceedings have not been stayed then it is not acceptable for one party unilaterally to treat them as if they have been. Parties cannot be permitted to adopt an approach whereby they decide whether and when to comply with the Tribunal's directions. The Appellants could have prepared their replies while, at the same time, seeking to progress negotiations with HMRC. The only reason given for not doing so is that the Appellants were in financial difficulties and did not want to incur costs unnecessarily. I do not regard that as a reason not to comply and it is, in any event, misconceived as the consequence has been that the Appellants have been put to more expense than if they had complied.

35. I acknowledge that striking out the appeals is likely to have serious and adverse financial consequences for the Appellants but, in my view, that cannot be a reason for allowing non-compliance or forgiving a failure to comply. The fact that an appellant lacks resources may be a reason for modifying an obligation because the overriding objective requires the Tribunal to take account of the resources of the parties and to ensure, so far as practicable, that the parties are able to participate fully in the proceedings. In this case, the Appellants did not suggest that they should not be required to provide the replies because they lacked the financial resources to do so. Once the direction had been made then, unless it is waived or modified, the Appellants were obliged to comply with it. The possibility that the Appellants may be made bankrupt as a result of the appeals being struck out is due to their non-compliance. The Appellants cannot rely on the consequence of their own deliberate default as a reason

why the sanction for such non-compliance should not be imposed. I accept that there may be cases where striking out an appeal would not be a proportionate response to the breach or failure to comply but, in my view, striking out the appeals is proportionate in this case given the seriousness of the failure and the fact that the appeals are, in my assessment, unlikely to proceed to a hearing in any event.

Decision

36. For the reasons set out above, I have concluded that the appeals should be struck out. Accordingly, I direct under rule 8(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 that these proceedings are now STRUCK OUT.

Right to apply for permission to appeal

37. 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.

GREG SINFIELD
TRIBUNAL JUDGE

RELEASE DATE: 2 JUNE 2016