



[2022] UKFTT 00096 (TC)

TC 08426/V

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/09402

STAMP DUTY LAND TAX – application to strike out – whether Tribunal has jurisdiction to consider an appeal on the basis of the procedural validity of a Revenue determination – no – application granted and proceedings struck out

BETWEEN

A EBRAHIM

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The hearing took place on 4 November 2021. The hearing was heard via the Tribunal video hearing platform as a result of restrictions arising from the COVID-19 pandemic.

Mr M Allen, accountant, for the Appellant

Miss M Poulter, litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents

DECISION

Introduction

1. The appellant (Mrs Ebrahim) has appealed against Revenue Determinations made under paragraph 25 of Schedule 10 of Finance Act 2003 in respect of an additional stamp duty land tax (SDLT) liability in relation to the purchase of a residential property.
2. HMRC applied to strike out the appeal on the basis that the Tribunal has no jurisdiction to consider the appeal and that there is no reasonable prospect of success in relation to the stated grounds of appeal, which relate to an alleged failure to serve an enquiry notice.

Background

3. The background to the substantive appeal relates to the purchase of a residential property on 18 August 2011, involving three transactions.

- (1) First, the property was purchased by an unlimited company formed approximately five weeks earlier.

- (2) Second, on the same day as the purchase, the directors of the unlimited company resolved to repay shareholders by an in-specie transfer of the property to them. The directors and shareholders of the unlimited company were Mrs Ebrahim and her husband.

- (3) Third, also on the same day, following the transfer from the unlimited company, Mr and Mrs Ebrahim transferred the title to Mrs Ebrahim.

4. An SDLT return was filed for the purchase by the unlimited company. HMRC opened an enquiry into that return and sent a notice to the company at its principal place of business with a copy to the agents. The enquiry notice was replied to by the company's agents. No SDLT returns were filed by Mr and Mrs Ebrahim for the second and third transactions.

Stated grounds of appeal

5. Mrs Ebrahim's original notice of appeal to the Tribunal, dated 19 November 2019 appealed against an Accelerated Payment Notice (APN) and referred to a Follower Notice (FN). The notice of appeal stated that the grounds of appeal were (in summary) that HMRC had not served an enquiry notice in the appropriate time scale.

6. HMRC applied to the Tribunal for a direction for further and better particulars of the grounds of appeal as the APN and FN referred to in the appeal had been cancelled.

7. On 20 August 2020 the Tribunal noted that Revenue Determinations had been issued and further noted that no notice of enquiry was required before a Revenue Determination could be issued and directed that the appellant provide a clear statement of the liabilities appealed and the legal grounds for the appeal and an outline of the facts relied on in support of those grounds.

8. On 11 September 2020, the appellant provided a "skeleton statement of case" which stated that the appellant was appealing the Revenue Determinations on that basis that neither she nor her husband had been served the notice of determination or, in the alternative, that the notices had been served incorrectly.

9. The "skeleton statement of case" also included information on the law relating to the making and issuing of assessments and discovery assessments, and the further ground of appeal that HMRC had failed to complete the assessment procedure as assessments had not been issued and served.

10. HMRC again requested further and better particulars as the references to discovery assessments were confusing, as they were not relevant to the Determinations under appeal.

11. On 26 November 2020, the Tribunal directed that the appellant should submit amended grounds of appeal to make them relevant to the issues in the case. The Tribunal also explained that the legislation relating to discovery assessments is not relevant where a Revenue Determination has been made, as Determinations are issued under completely different rules.

12. On 18 December 2020, the appellant confirmed that she was appealing on the grounds that no notice of enquiry was served within the required statutory time limits. Further, if a notice was deemed to have been issued, then she contended that it was not properly authorised and sent by an appropriate HMRC Officer.

HMRC's case

13. The Revenue Determinations were made under para 25 Schedule 10 Finance Act (FA) 2003. Such determinations are made where no SDLT return has been delivered and must be made within four years of the effective date of the transaction. HMRC submitted that the Determinations were made and sent on 1 July 2015, which was within four years of the effective date of the transactions (18 August 2011).

14. HMRC noted that para 36(5A) Schedule 10 FA 2003 sets out the grounds on which a taxpayer can appeal against a Revenue determination as being only that:

- (1) the purchase did not take place, or
- (2) an interest in land was not purchased, or
- (3) the contract was not substantially performed. or
- (4) the land transaction was not notifiable.

15. HMRC submitted that these grounds are exhaustive and that, as the appellant was not appealing on the basis of any of these grounds, the Tribunal had no jurisdiction to consider the appeal. A Revenue Determination can be displaced by filing an SDLT return, and the grounds on which an appeal can be based cover only those situations where an SDLT return cannot be filed.

16. The decision of *Crest Nicholson (Wainscott) & Ors* [2017] TC 05628 UKFTT 134 (TC) stated that there was no right of appeal outside of the grounds set out in para 36(5A) and this was more recently confirmed by the decision in *Said Mashoof* [2020] UKFTT 00166 (TC) (*Mashoof*).

17. HMRC therefore submitted that the Tribunal had no jurisdiction to consider an appeal against the Determinations as, even if Mrs Ebrahim's grounds of appeal were interpreted to mean her appeal was based on not having received the Revenue Determination in time, the legislation does not allow for an appeal on that basis.

18. With regard to the appellant's reliance on *Kothari* and others [2019] UKFTT 0423 (TC) (*Kothari*), HMRC submitted that this decision was not relevant as it related to discovery assessments where the permissible grounds of appeal are not constrained as they are in relation to determinations.

19. HMRC contended further and in the alternative that the appellant's grounds of appeal, that no notice of enquiry was served or that such notice was not properly authorised, also had no reasonable prospect of success. This was because HMRC cannot give a notice of enquiry where no SDLT return has been submitted. As no SDLT returns were submitted for the second and third transactions, no notice of enquiry could be given in respect of those transactions.

20. To the extent that Mrs Ebrahim's grounds of appeal were intended to mean that a notice of enquiry should have been sent to her (and her husband) as well as the unlimited company,

HMRC submitted that the land transactions involved different parties and HMRC were not able to notify a person about an enquiry into a third party's tax affairs.

21. HMRC submitted that an appeal on the grounds of not having received a notice of enquiry had no reasonable grounds of success as the legislation does not permit an enquiry notice to be given where no SDLT return has been submitted.

Appellant's case

22. For Mrs Ebrahim, it was submitted that neither she nor her husband had received the Determinations in July 2015. However, the Determinations were received by the solicitor who had undertaken the conveyancing on the transaction.

23. It was contended that the key question was whether the HMRC postal system had failed and, to this effect, it was contended that the case of *Kothari* was relevant. The decision in that case was that the assessment process had not been completed, as the Tribunal was not satisfied that the assessments had been served within the time limits required by the legislation.

24. It was also submitted that HMRC had not provided any information as to service of the enquiry notice, and that HMRC had confirmed that a notice of enquiry into the unlimited company SDLT return had not been sent to Mrs Ebrahim or her husband. It was also confirmed that no SDLT return had been submitted by Mrs Ebrahim or her husband in respect of the second and third transactions.

25. It was submitted that case law made it clear that enquiry notices had to be served correctly in order to be validly made, quoting the decisions in *Hicks* [2018] UKFTT 22 (TC), *Kothari*, and *Troy Homes* [2020] UKFTT 174 (TC). It was also submitted that the decision in *Kothari* concluded that the assessment process could only be satisfied once the notice of assessment had been served and that such notice was required to be made reasonably proximate to the making of the assessment.

26. It was submitted that *Kothari* supported the contention that the Determinations could only be effective where shown to have been served within the time limits set out in the legislation. HMRC had only provided relevant metadata for the documents shortly before the hearing and there had not been enough time to review that information. Such metadata could also not provide any information as to whether the notices had been posted within the time limits.

Legislation

Strike out

27. The Tribunal's power to strike out a party's case is set out at Rule 8(1) of the FTT Rules which provide as relevant:

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings if—

...(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 paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

28. The powers under Rule 8 must be exercised in accordance with the overriding objective in Rule 2 of the FTT Rules which reads:

(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.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and (b) co-operate with the Tribunal generally.

Revenue determinations

29. Schedule 10 FA 2003 provides as relevant:

Making of a determination

25(1) If in the case of a chargeable transaction no land transaction return is delivered by the filing date, the Inland Revenue may make a determination (a “Revenue determination”) to the best of their information and belief the amount of tax chargeable in respect of the transaction.

25(2) Notice of the determination must be served on the purchaser, stating the date on which it is issued.

25(3) No Revenue determination may be made more than 4 years after the effective date of the transaction.

Rights of appeal

35(1) An appeal may be brought against—

... (e)a Revenue determination under paragraph 25 (determination of tax chargeable if no return delivered).

...

36(5A) The only grounds on which an appeal lies under paragraph 35(1)(e) are that—

(a) the purchase to which the determination relates did not take place,

- (b) the interest in the land to which the determination relates has not been purchased,
- (c) the contract for the purchase of the interest to which the determination relates has not been substantially performed, or
- (d) the land transaction is not notifiable (for example, because the land transaction is exempt from charge under Schedule 3).

Decision

30. The submissions for Mrs Ebrahim in the hearing as to the grounds of appeal were that no notice of Determination was received by Mrs Ebrahim (nor had her husband received such a notice) until the appeal process had started, and therefore contended that the Determination should be regarded as improperly or incompletely made and therefore invalid.

31. Having considered the arguments, the legislation, and the case law, I agree with the decision of Judge Vos in the case of *Mashoof* that Schedule 10 FA 2003 does not provide any jurisdiction for the Tribunal to decide whether a determination has been validly made, issued and served. Judge Vos helpfully sets out a clear analysis of the history of the legislation in his decision such that I do not need to repeat that history here.

32. I note, in particular, that the limited permissible grounds of appeal which do exist in respect of SDLT Revenue determinations were specifically introduced by Parliament a year after the original legislation was enacted. It is therefore clear that Parliament has specifically considered what should be permissible grounds of appeal in respect of Revenue determinations and has not included appeal rights in relation to procedural irregularity. I also note that there is no right of appeal at all against income tax Revenue determinations, which are based on similar legislation.

33. The references made on Mrs Ebrahim's behalf to cases involving assessments do not assist as there is no similar restriction on the rights of appeal in respect of assessments.

34. I therefore consider that it is not possible to construe the legislation as including a right to appeal (inferred or otherwise) on the basis of the validity of an SDLT Revenue determination. It is also well established in case law such as *Hok Limited* [2012] UKUT 363 (TCC) that this Tribunal has no general supervisory jurisdiction which can override the clear words of a statute.

35. The submissions made in the hearing as to the grounds of appeal were rather different to the grounds of appeal provided to the Tribunal on 18 December 2020. Those grounds of appeal were that no notice of enquiry was served within the statutory time limits or, in the alternative, that any such notice of enquiry was not properly authorised and sent.

36. For completeness, I find that such grounds of appeal would have no reasonable prospects of success. Mrs Ebrahim did not submit an SDLT return, nor did her husband, in respect of either of the second or third transactions. The legislation is clear that, where no SDLT return is submitted, HMRC cannot open an enquiry. The lack of a notice of enquiry cannot provide successful grounds for an appeal against a Revenue determination.

37. To the extent that this argument was intended to refer to the notice of enquiry given in respect of the unlimited company transaction, it is clear that this notice of enquiry was received by the unlimited company, to which it applied, as the Tribunal bundle contained evidence (which was not disputed) that this notice had been received and responded to. The evidence also showed that Mrs Ebrahim had authorised the appointment of the agents who had responded to the enquiry notice. No reference was made to any statutory requirement to also serve such notices on the directors and shareholders of a company.

Conclusion

38. For the reasons set out above, I have concluded that the Tribunal has no jurisdiction to hear the appeal and in the alternative that there would be no reasonable prospect of success in relation to the grounds of appeal provided to the Tribunal.

39. HMRC's application to strike out the appeal is granted and the proceedings are struck out in accordance with Rule 8(2)(a) of the Tribunal Rules.

Right to apply for permission to appeal

40. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**ANNE FAIRPO
TRIBUNAL JUDGE**

Release date: 14 MARCH 2022