



Neutral Citation: [2024] UKFTT 00101 (TC)

Case Number: TC09052

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video

Appeal reference: TC/2023/08115

LATE APPEAL – STAMP DUTY LAND TAX – Appellant had claimed multiple dwellings relief from SDLT – local council charged council tax on basis that there was a separate annex, such that there was one residence in Band A and one in Band E – HMRC decided multiple dwellings relief was not available – appeal against that decision was made late, and HMRC objected to permission being given for the making of a late appeal – held – permission refused

Heard on: 11 December 2023
Judgment date: 26 January 2024

Before

TRIBUNAL JUDGE JEANETTE ZAMAN

Between

KEVIN SMITH

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Appellant in person, with Mrs Smith

For the Respondents: Fiona Man, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. Mr Smith gave notice of appeal to the Tribunal on 17 May 2023 against HMRC's decision that his acquisition of a property in Walsall (the "Property") did not qualify for multiple dwellings relief ("MDR") from stamp duty land tax ("SDLT"). HMRC had, following a review, confirmed their decision in a review conclusion letter dated 10 June 2022. The appeal to the Tribunal was thus made late, and HMRC objected (in a notice of objection to the late appeal application dated 26 August 2023 (the "Notice of Objection")) to permission being given for the appeal to be made late.

2. The matter was listed before me to decide whether to give permission for a late appeal to be made. As I explained at the hearing, whilst Mr Smith's notice of appeal stated as the "desired outcome" that the SDLT be reimbursed or the council tax banding for the annex be removed, the hearing was only to hear and determine the application to make a late appeal to the Tribunal against HMRC's decision in relation to SDLT; if permission were granted, the substantive hearing would be listed on a subsequent date. Furthermore, the Tribunal does not have jurisdiction to hear appeals in relation to the decision of the Valuation Office Agency (the "VOA").

3. For the reasons set out below, I refuse to give permission for a late appeal to be made.

HEARING

4. With the consent of the parties, the form of the hearing was a remote video hearing on the Tribunal video hearing platform. A face-to-face hearing was not held because it was considered expedient not to do so.

5. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

6. Mr Smith attended the hearing and gave evidence. I found him to be an honest and credible witness.

7. HMRC had prepared a hearing bundle of 294 pages. Whilst I have, in making my findings of fact and reaching my decision, only referred to some of the documentation in the hearing bundle, I have taken account of all of the correspondence to which I was referred (including not only documents referred to during the hearing but also those referred to by Mr Smith in his notice of appeal and by HMRC in their objection notice).

FACTS

8. I make the following findings of fact based on the documentary evidence and the evidence given by Mr Smith at the hearing.

9. Mr and Mrs Smith bought the Property in February 2020, and paid SDLT of £21,000, which was calculated at the residential rate for a single dwelling. The Property is a detached house and includes an annex. Mrs Smith's parents later moved into the annex, in February 2021.

10. The Property has two front doors and two kitchens, but a single supply for each of the utilities, a single boiler, and the annex does not have a separate house number (or postcode). Mr Smith, HMRC and the VOA have each set out their detailed position in relation to the characteristics of the Property in the correspondence; whilst this would be relevant to determination of the substantive dispute between the parties, I have not considered it

appropriate or necessary to make detailed findings in relation to these matters for the purpose of the application to make a late appeal.

11. In June 2020 the VOA contacted the council taxpayer at the “Annexe at” the Property address, and said that they had made a new entry on the council tax list for the annex. The VOA’s approach was that the Property comprised two dwellings for council tax purposes, the “main house” within Band E and the annex within Band A.

12. A firm of property tax accountants, Relatus Limited (“Relatus”), contacted Mr and Mrs Smith and informed them that as the Property had an annex they were entitled to claim MDR from SDLT and could obtain a refund from HMRC of overpaid SDLT. Mr and Mrs Smith instructed Relatus as their agent to make this claim.

13. Relatus submitted an amended SDLT return, which included a claim for a refund of overpaid SDLT, on 10 February 2021 (claiming that the revised SDLT should be £11,000), following this up with a copy of their appointment as agents (and re-submitting the claim for a refund of £10,000) on 18 February 2021.

14. Shortly afterwards, Mr Smith challenged the local authority decision on council tax banding. He wrote to the VOA on 20 March 2021, and the VAO responded on 1 April 2021 with information about how they assess council tax bands and additional information that could be provided as to alterations that have taken place to them to enable them to determine the position. The VOA referred to the test being whether a property contains more than one “self-contained unit”, and the definition means “a building or part of a building which has been constructed or adapted for use as separate living accommodation. They said that the Property was originally a much smaller detached bungalow, and that following extensions and alterations by a previous owner, it was now a three-bedroom house with an annex. The VOA decision notice (which was issued on 1 April 2021) confirms that the annex provides self-contained living and has to retain a separate council tax banding from the main house.

15. The SDLT which was claimed to have been overpaid was repaid by HMRC to Relatus as agent. Relatus retained a fee or commission from this, and the balance was paid to Mr Smith. Mr Smith’s evidence was that HMRC had agreed at this time that the SDLT had been overpaid by them. I accept that this was his honest understanding; this was, in fact, not correct, and did not reflect HMRC’s approach of processing returns, including amended returns, and checking such amendments subsequently.

16. On 26 October 2021, HMRC sent letters to Relatus and Mr and Mrs Smith to inform them that they were checking the amended SDLT return. HMRC requested information in relation to the Property, with questions about the main house and the annex. There was then various correspondence, including an email from Mr Smith to HMRC on 29 October 2021, and letters from Relatus to HMRC on 10 November 2021 and 24 November 2021.

17. On 10 January 2022, HMRC sent “pre-closure” letters to Relatus and Mr and Mrs Smith, informing them that HMRC considered that neither the main house nor the annex were suitable for use as a single dwelling, MDR was not available, and SDLT of £21,000 should have been paid. Relatus sent a response on 28 January 2022, addressing the points made by HMRC, including in relation to shared utilities, access and the shared garden.

18. HMRC issued closure notices showing additional SDLT due of £10,000 on 21 February 2022, sending them to Relatus and Mr and Mrs Smith. The closure notices provided an explanation of how to appeal:

“If you disagree with my decision, you can appeal. If you want to appeal, you must write to me by 23 March 2022 telling me why you disagree.”

19. On 11 March 2022 Relatus appealed to HMRC on behalf of Mr and Mrs Smith.
20. HMRC sent their view of the matter to Mr and Mrs Smith, copied to Relatus, on 8 April 2022. That letter set out that HMRC’s current view had not changed, and MDR was not due, and included the following:

“What you can do if you disagree

I am now offering you a review of my decision.

This means that if you do not agree with my view

- I can arrange for my decision to be reviewed by an HMRC officer not previously involved in the matter, or
- you can appeal to an independent tribunal.

You can do either of these within 30 days from the date shown on this letter.”

21. On 6 May 2022 Relatus requested a review on behalf of Mr and Mrs Smith. They also set out details of amounts that had already been repaid and asked to set up a payment plan for the balance remaining.

22. On 10 June 2022, the reviewing officer upheld the closure notice issued on 21 February 2022. The review conclusion letter was sent to Relatus and Mr and Mrs Smith, and it included the following information:

“What happens next

53. If you do not agree with my conclusion you can ask an independent tribunal to decide the matter. You must notify your appeal to the Tribunal in writing. The statutory appeal period is 30 days from the date of this letter.

54. If you choose to appeal to HM Courts and Tribunal Service, you will need to attach a copy of this letter with your appeal. If you do not, then they may reject your appeal. You can find out how to do this on the Tribunals Service website <https://www.gov.uk/tax-tribunal/appeal-to-tribunal> or you can phone them on 0300 123 1024.

55. If you do not notify the appeal to the tribunal within 30 days of the date of this letter, the appeal will be determined in accordance with my conclusion, by virtue of paragraph 36F Schedule 10 to the Finance Act 2003.”

23. On 1 July 2022, Relatus emailed HMRC and asked that the matter be closed:

“In light of the conclusions of the reviewing officer the Taxpayers no longer wish to pursue the appeal against your Closure Notice.

Can you please therefore close the case so that the Taxpayers can set up a formal payment plan for the outstanding amounts of SDLT.”

24. Whilst the above email was sent by Relatus, and not by Mr or Mrs Smith, I find that Mr Smith knew at the time that Relatus had sent this email to HMRC.

25. HMRC acknowledged this email that same day, and said they would progress the case for closure and send a letter to Mr and Mrs Smith confirming these actions. Such letter was sent to Mr and Mrs Smith on 4 July 2022, and includes:

“I have received an email from your agent informing me that you no longer wish to pursue your appeal against the closure notice...”

26. Relatus emailed HMRC on 19 August 2022 in relation to repayment of the refunded SDLT, and an error which had meant that a payment by Relatus had been sent twice.

27. Mr Smith emailed the VOA on 24 August 2022, challenging the VOA's decision that the annex should have a separate banding for council tax. That email refers to HMRC's decision for SDLT purposes, and questions the difference between the decision of HMRC and that of the VOA.

28. Mr Smith later asked his local councillor for assistance in the light of the different conclusions being reached by HMRC and the VOA. On 31 March 2023 the councillor wrote to HMRC, copied to the VOA, and asked for ADR on the basis that the two parts of government were not synchronised.

29. The VOA replied on 21 April 2023, stating that the statutory responsibilities of the VOA and HMRC are completely separate, referring to the terms of The Council Tax (Chargeable Dwellings) Order 1992, and setting out that there had been a right to appeal the VOA decision to the Valuation Tribunal within three months of the VOA decision of 1 April 2021, and recommending that Mr Smith approach the Valuation Tribunal and ask them to consider an out-of-time appeal.

30. HMRC replied on 5 May 2023, explaining that there were differences in the legislation applicable to SDLT and council tax, so there will be situations where the circumstances result in different outcomes.

31. Mr Smith notified his appeal to the Tribunal on 17 May 2023.

RELEVANT LAW

32. Paragraph 36 G Schedule 10 Finance Act 2003 provides that if HMRC have given notice of the conclusion of a review, the appellant may notify the appeal to the Tribunal within the post-review period, which is 30 days beginning with the date of the document in which HMRC give notice of the conclusions of the review. If the post-review period has ended, the appellant may notify the appeal to the Tribunal only if the Tribunal gives permission.

DISCUSSION

33. HMRC's review conclusion letter was dated 10 June 2022. Mr Smith had 30 days beginning on that date to notify an appeal to the Tribunal. Mr Smith only notified his appeal to the Tribunal on 17 May 2023. This appeal may only proceed if the Tribunal gives permission.

34. The Upper Tribunal set out in *Martland v HMRC* [2018] UKUT 178 (TCC) at [44]-[45] that when the Tribunal is considering an application for permission to appeal out of time, the starting-point is that permission should not be granted, unless the Tribunal is satisfied on balance that it should be. In considering that question, the Tribunal can follow this three-stage process:

(1) Establish the length of the delay – If it was very short, then the Tribunal is unlikely to need to spend much time on the second and third stages, but this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason(s) for the default should be established.

(3) The Tribunal should evaluate all the circumstances of the case. This will involve a balancing exercise which will assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.

35. I have followed that process in relation to Mr Smith's application.

Establish the length of the delay

36. The appeal was made to the Tribunal ten months after the expiry of the statutory time limit. This is clearly a serious and significant delay.

Establish the reasons for the delay

37. Mr Smith's notice of appeal to the Tribunal gave as "Reason for late appeal" (in summary) that the SDLT claim and VOA local tax banding issue had been going on for some time and were saying the opposite of each other. He provided further details of the banding issue, the repayment of SDLT, HMRC's subsequent decision that the annex was not a separate dwelling, and the appeal to HMRC. He considered the outcome very unfair, and wanted "common sense to prevail".

38. At the hearing, Mr Smith explained further:

(1) He did not know of the process to appeal to the Tribunal; once they received the review conclusion letter, Relatus was telling them they couldn't do anymore.

(2) He was frustrated with the situation, and tried to persuade the VOA to follow HMRC's approach.

(3) They suffered a family bereavement in November 2022, after a period of illness, and this had been very difficult for them.

39. HMRC submitted that:

(1) the explanation provided as "Reason for late appeal" in the notice of appeal does not explain why Mr Smith did not appeal within the prescribed time period.

(2) Mr Smith had been represented throughout the enquiry, and until 1 July 2022.

(3) The review conclusion letter had been sent to Mr and Mrs Smith as well as to their agent and that letter set out the right to appeal to the Tribunal and the time limit for doing so. They could have checked the position themselves.

(4) Mr Smith had not previously told them of the family bereavement.

40. I accept Mr Smith's explanation at [38] above.

41. It is evident from the correspondence that, having received the review conclusion letter, Mr Smith subsequently re-started communications with the VOA in relation to the council tax banding decision, to try to obtain an outcome where both HMRC and the VOA proceeded on the basis that the Property was a single dwelling. The appeal to the Tribunal in May 2023 was ultimately prompted by responses received to the local councillor's letter in March 2023.

42. I assess this explanation in the context of evaluating all the circumstances of the case.

All the circumstances

43. In *Martland* the Upper Tribunal said at [45] to [46] that the balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost and for statutory time limits to be respected. The Tribunal can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice.

44. HMRC submitted that allowing Mr Smith to make a late appeal:

(1) would prejudice HMRC in that they will have to divert resources to defend an appeal which they were entitled to consider closed, especially given the email from Relatus in July 2022 informing them that Mr and Mrs Smith did not wish to pursue an appeal and the significant length of the delay since then;

(2) would prejudice other taxpayers as HMRC and this Tribunal's resources, which would otherwise have been used in respect of those who have made appeals in accordance with statutory time limits, will be diverted to consider Mr Smith's appeal; and

(3) is inconsistent with the principles of good administration of justice which require litigation to be conducted efficiently and at proportionate cost.

45. I agree with these submissions. However, I also take account of the explanation provided by Mr Smith and the fact that, if I refuse permission, he will be prejudiced as he will not be able to pursue his appeal against HMRC's refusal of MDR.

46. As to the reasons for not appealing in time to the Tribunal, I have considerable sympathy with the position in which Mr Smith found himself, both as regards the distressing period of family illness but also being faced with inconsistent decisions from HMRC and the VOA. He does not appear to have been helped by the advice received from Relatus in this regard, which he understood to be telling him that there was nothing further that could be done. However, I consider it is significant that Mr and Mrs Smith received from HMRC the key correspondence in this matter; they had seen throughout the arguments being advanced, received the review conclusion letter (which sets out the right to appeal to the Tribunal and the relevant time limit) and also HMRC's response on 4 July 2022 to Relatus' email which set out that HMRC had been told they no longer wished to pursue their appeal. It should have been clear from this correspondence that there was in fact an appeal right which remained open to them. Instead, Mr Smith chose to re-start communications with the VOA (in August 2022). This was pragmatic, but he could have kept both routes open. Overall, I am not persuaded that he had a good reason for failing to notify his appeal to the Tribunal within the required time limit.

47. HMRC submit that Mr Smith's case on the merits of the substantive appeal is weak. My view was that the papers and evidence before me presented a mixed picture. Mr Smith's starting-point had effectively been to agree with HMRC; he described the Property as a single detached, five-bedroom house, and considered the VOA approach incorrect. Yet there were aspects of the descriptions relied upon, including the separate entrances, separate bathroom and kitchen (which were in existence before completion) and lockable door separating the annex from the main house, that suggest there is at least an arguable case for the purchase qualifying for MDR. Nevertheless, this is not to say that Mr Smith's case is strong such that there would be obvious prejudice in refusing to allow him to pursue his appeal. I place little weight on the merits when evaluating all the circumstances.

48. Having considered all the circumstances, I place particular weight on the importance of the need for litigation to be conducted efficiently and at proportionate cost, for statutory time limits to be respected and on the prejudice which would be caused to HMRC if I grant permission. I consider these outweigh the prejudice to Mr Smith, particularly in circumstances where, although he has been able to explain the delay, I am not satisfied that this was a good reason but instead represented a choice he made at the time to try to resolve matters by alternative steps.

49. I have therefore decision to refuse permission for Mr Smith to make a late appeal to the Tribunal.

DECISION

50. Permission to appeal to the Tribunal late is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

51. 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.

**JEANETTE ZAMAN
TRIBUNAL JUDGE**

Release date: 26th JANUARY 2024