Neutral Citation: [2024] UKFTT 00886 (TC)

Case Number: TC09306

FIRST-TIER TRIBUNAL
TAX CHAMBER

Edinburgh (George Street)

Appeal reference: TC/2021/01180

Inheritance Tax – Domicile – Foreign Property – Effect of notice of Determination – Exempt Property – Appeal Dismissed

Heard on: 7—8 August 2024
Further submissions: received by the Tribunal on 30 August and 6 September provided to the panel on 17 September.
Judgment date: 4 October 2024

Before

TRIBUNAL JUDGE BLACKWELL
CHARLOTTE BARBOUR

Between

MARISA LINCOLN
AS LEGAL PERSONAL REPRESENTATIVE OF
MARTIN FALZON

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Miss Lincoln, in person.

For the Respondents: Mr Bayo Randle, of counsel, instructed by the Advocate General

DECISION

Introduction

1. This is an appeal by Marisa Lincoln, the executrix of the estate of Mr Martin Falzon ("Martin") who died on 25 April 2015 (there was a reversion to the date of death, which HMRC initially understood to be 30 April 2015), his legal personal representative and his sister, against the Inheritance Tax ("IHT") determination of HMRC of 15 June 2020 (the "Determination").

2. The Determination specifies that:

> "The Commissioners for Her Majesty's Revenue and Customs have determined –
>
> **In relation to –**
>
> a. The transfer for the purposes of Inheritance Tax on the death of Martin Joseph Falzon ('the deceased') on 30 April 2015
>
> b. The jointly owned foreign properties in which the deceased held a share at the time of his death
>
> **That –**
>
> 1. The properties were not held by any form of trust settled by a person domiciled outside the UK
>
> 2. Having regard to section 5(1) of the Inheritance Tax Act 1984 these properties form part of the deceased's estate for the purposes of Inheritance Tax"

3. The Determination found that a 1/6 undivided share of properties located in Malta (the "foreign properties"), that were inherited by Martin together with his siblings from his parents, were subject to inheritance tax. The total inheritance tax due on Martin's estate is £125,867.40.

4. The basis of the Determination is that the foreign properties formed part of Martin's estate for inheritance tax purposes, under s. 5 Inheritance Tax Act 1984 ("IHTA 1984"), and that they were not excluded property pursuant to ss 6 or 48 IHTA 1984.

5. The Appellant bears the burden of proof in seeking to displace the Determination: section 224 IHTA 1984. In order to discharge the burden, it is for the Appellant to establish the facts to support her contentions that the property was not liable to IHT.

Evidence and the hearing

6. We have considered the following documentary evidence: a main bundle (616 pages), a supplementary bundle (29 pages) and the report of Dr Rita Mifsud which was served and filed at the hearing (5 pages).

7. We also heard the oral evidence of Miss Lincoln. We did not find her to be a reliable witness of fact. She rarely answered the questions directly, often answering the question she wished to answer rather than the question asked. This was despite several cautions given to her that this would diminish the weight given to her testimony. Further, as discussed below, she forcefully denied receiving the decision refusing permission to appeal (ref TC/2020/03085), even when faced with multiple documents which strongly suggested that she had received and commented on that refusal.

8. After the hearing was concluded, while writing this decision, the Tribunal requested further submissions on certain matters.[1] The directions specifically restricted these submissions to these narrow points. HMRC's additional submissions (3 pages) confined themselves to the points in issue. Miss Lincoln's submissions (cover letter of 1 page, response letter of 7 pages, comparison of relevant legal structures of 11 pages, further expert evidence of Dr Rita Mifsud of 2 pages) do little to engage with the issues identified in the directions, other than seeming to query the relevance of the questions on which the Tribunal sought submissions.[2] The bulk of Miss Lincoln's submissions either repeats arguments that were raised at the hearing or introduces new arguments or (in the case of the expert report) new evidence.

9. On 24 September 2024 HMRC wrote to the Tribunal objecting to any reliance on Miss Lincoln's further submissions that went beyond the Tribunal's request. If that was refused, they asked permission to respond. They cite *MH (Eritrea) v Secretary of State for the Home Department* [2022] EWCA Civ 1296; [2023] 1 WLR 482 in which Elisabeth Lang LJ noted (at [54]) that permission should be sought for raising new points post-hearing and that "[a]n advocate will, however, rarely be given permission to file a document which puts forward arguments which could and should have been made during the hearing". HMRC further rely on *Wilson v McNamara* [2022] EWHC 243 (Ch) in which (at [77]) Nugee LJ emphasised

[1] The directions requesting the further submissions stated:

> "Judge Blackwell wished for submissions on the following points:
>
> HMRC suggested that legally and equitably the foreign property at the time of Martin's death be held as joint tenants, so there would be no trust. But if the relevant disposition were under English law would not a statutory trust be created, as a consequence of the changes to the Law of Property Act 1925 ("LPA 1925") as made by the Trusts of Land and Appointment of Trustees Act 1996 ("TLATA 1996"): section 36(1) LPA 1925.
>
> Further, the number of legal (and opposed to beneficial) owners of land in England is restricted to four people: Trustee Act 1925 s.34(2). So only the first four named would be trustees. Hence legal and beneficial title would be separate: because at the time of Martin's death there were six siblings who were beneficially entitled.
>
> As noted HMRC suggest in their skeleton argument that the property is held jointly. However, could it be said that were the disposition under English law a tenancy in common exists. Martin bequeathed his share in his will. In evidence before us Miss Lincoln told us that she had suggested to her siblings that survivorship (a characteristic of English joint tenancy) should apply, but they had all rejected that on the basis that women tend to live longer and it would advantage Miss Lincoln over her siblings.

Judge Blackwell directs:

> (1) that HMRC are to file and serve any additional submissions, **only** on these points, by 9am on 23 August;
>
> (2) that Miss Lincoln is to file and serve additional submissions, **only** on these points and in response to HMRC's additional submissions, by 9am on 6 September."

[2] Paragraph [23] of Miss Lincoln's submissions states:

> "23. An attempt to morph a foreign settlement into some entity which can be recognized by UK legislation may be interesting, but it is ultimately an inauthentic exercise resulting in fictional modifications. It is not conceptually or legally possible to envisage Martin's death as having the power to change the real nature of this settlement with its multiple properties and multiple co-inheritors. Persisting with this kind of fictitious exercise discourages honest discourse; and diminishes trust between the tax authority and the taxpayer because the justification for tax collection is called into question."

"that parties are expected to deploy all their arguments at a hearing and not supplement them with further thoughts afterwards."

10. We have come to the conclusion that it would be unfair to admit the new evidence or consider the new arguments in Miss Lincoln's further submissions that go beyond those sought by our directions. Specifically, we exclude the additional evidence under r.15(2)(b)(ii) since "the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction". In making this decision we have regard to the overriding objective, of dealing with cases fairly and justly. We are conscious that Miss Lincoln is a litigant in-person: in those circumstances we are especially conscious of the need to show flexibility and ensure she can fully participate in proceedings. We consider she was given the opportunity to fully participate in proceedings at the hearing where she was able to present all arguments she wished to deploy and to submit evidence (including the expert report, which we admitted into evidence on the day of the hearing, despite the deadline for filing new evidence having passed). Flexibility must be balanced against the avoidance of delay, so far as compatible with proper consideration of the issues. With regard to the *proper* consideration of the issues, no explanation was provided why the new evidence and new arguments were not raised at the hearing. Further, having read those arguments (as we must to determine what is relevant to the issues on which we sought submissions) there is nothing in those arguments that would result in our departing from the reasoning in this Decision. Responding to those arguments would place an additional cost on HMRC.

Summary of the Appellant's arguments and our conclusions

11. Miss Lincoln's arguments were somewhat diffuse. We set these out below. We do not set out separately HMRC's arguments as, following careful consideration of the matter, we are broadly in agreement with those arguments.

12. Before us Miss Lincoln's primary case appeared to be that the provisions of IHTA 1984 were inappropriate to apply to her case, as they are designed to apply to UK situs property and are unsuited to apply to real property in Malta, which is governed by a very different legal code. She said that applying the provisions of IHTA 1984 to her case was like "trying to eat soup with a fork".

13. However we are bound to apply the law as Parliament has enacted. Further, we disagree with Miss Lincoln's proposition that IHTA 1984 did not contemplate situations such as hers. It is apparent from the "tail-end" of section 43 IHTA 1984 that it contemplates IHT applying to property governed by non-UK law.

14. Miss Lincoln argued that Martin was domiciled in Malta and that he was "trapped" in the UK; she did not agree that he had a deemed domicile in the UK despite having lived there for the last 37 years. Martin had wished to emigrate to Australia, but was prevented from doing so by Australian immigration policy, that prevented him from doing so due to an illness he contracted whilst in the UK. He was prevented from returning to Malta due to what she described as an island culture that was intolerant of his sexuality. We are sympathetic to this situation but we must apply the law. For the reasons we set out below, we consider the issue of domicile is not relevant to this appeal, as it was settled by an earlier determination, which was not successfully appealed in time.

15. Miss Lincoln also argued before us that it could not be intended that the provisions of IHTA 1984 would apply to Martin's estate, as he had worked in the UK and contributed to and accrued entitlement to a full state pension, but died before he was entitled to draw on it. We consider this irrelevant to the task we must undertake, which is to decide the matter according to the statutory framework.

16. Miss Lincoln's written arguments had a greater focus on the statutory code set out in IHTA 1984. Specifically, she argues that:

(1) Martin was not beneficially entitled to the properties so they did not form part of his estate (s.5 IHTA 1984). For the reasons set out in paragraphs [52] to [58] below, we reject this argument.

(2) The foreign properties constituted an interest in possession in settled property so they did not form part of Martin's estate (s.5 IHTA 1984). However, we do not consider the foreign properties form "settled property" for the reasons set out at [59] to [75] below. We therefore reject this argument.

(3) The foreign properties were excluded property because they were situated outside the UK and Martin was domiciled outside the UK (s. 6(1) IHTA 1984). However, for the reasons set out at [48] to [51] below, we accept that Martin had a deemed domicile in the UK. We therefore reject this argument.

(4) The foreign properties were excluded property because they were comprised in a settlement situated outside the UK and the settlor was domiciled outside the UK at the time the settlement was made (s.48(3) IHTA 1984). However, we do not consider the foreign properties form "settled property" for the reasons set out at [59] to [75] below. We therefore reject this argument.

(5) The foreign properties were excluded property because they were a reversionary interest. We do not find the foreign properties to be a reversionary interest for the reasons set out at [76] to [80] below.

Statutory framework

17. By virtue of sections 1 and 2 IHTA 1984, inheritance tax is charged on the value transferred by a chargeable transfer. A chargeable transfer is a transfer of value that is made by an individual but which is not an exempt transfer; there is no suggestion in this case that there has been any transfer of value that is a potentially exempt transfer (see section 3A IHTA 1984).

18. Section 3(1) IHTA 1984 provides that a transfer of value is a disposition made by a person as a result of which the value of his estate immediately after the disposition is less than it would be but for the disposition; and the amount by which it is less is the value transferred by the transfer. Section 3(2) provides that for the purposes of section 3(1) no account shall be taken of the value of excluded property which ceases to form part of a person's estate as a result of a disposition.

19. Section 4(1) IHTA 1984 provides that on the death of any person tax shall be charged "as if, immediately before his death, he had made a transfer of value and the value transferred by it had been equal to the value of his estate immediately before his death".

Estate

20. The meaning of "estate" is set out at section 5 IHTA 1984 and is as follows:

> "5. Meaning of estate.
>
> (1) For the purposes of this Act a person's estate is the aggregate of all the property to which he is beneficially entitled, except that–
>
> (a) the estate of a person–
>
> (i) does not include an interest in possession in settled property to which section 71A or 71D below applies, and

(ii) does not include an interest in possession that falls within subsection (1A) below unless it falls within subsection (1B) below, and

(b) the estate of a person immediately before his death does not include excluded property or a foreign-owned work of art which is situated in the United Kingdom for one or more of the purposes of public display, cleaning and restoration (and for no other purpose).

(1A) An interest in possession falls within this subsection if–

(a) it is an interest in possession in settled property,

(b) the settled property is not property to which section 71A or 71D below applies,

(c) the person is beneficially entitled to the interest in possession,

(d) the person became beneficially entitled to the interest in possession on or after 22nd March 2006, and

(e) the interest in possession is–

(i) not an immediate post-death interest,

(ii) not a disabled person's interest, and

(iii) not a transitional serial interest.

(1B) An interest in possession falls within this subsection if the person—

(a) was domiciled in the United Kingdom on becoming beneficially entitled to it, and

(b) became beneficially entitled to it by virtue of a disposition which was prevented from being a transfer of value by section 10 below.

(2) A person who has a general power which enables him, or would if he were sui juris enable him, to dispose of any property other than settled property, or to charge money on any property other than settled property, shall be treated as beneficially entitled to the property or money; and for this purpose 'general power' means a power or authority enabling the person by whom it is exercisable to appoint or dispose of property as he thinks fit."

Interest in possession

21. In order for there to be an interest in possession the person must have had a present right of present enjoyment or an immediate right to the income or enjoyment of property (irrespective of whether the property produces income: *Pearson v IRC* [1980] STC 318.

Settled property

22. "Settled property" is defined by section 43 IHTA 1984:

"43. Settlement and related expressions.

(1) The following provisions of this section apply for determining what is to be taken for the purposes of this Act to be a settlement, and what property is, accordingly, referred to as property comprised in a settlement or as settled property.

(2) 'Settlement' means any disposition or dispositions of property, whether effected by instrument, by parol or by operation of law, or partly in one way and partly in another, whereby the property is for the time being—

(a) held in trust for persons in succession or for any person subject to a contingency, or

(b) held by trustees on trust to accumulate the whole or part of any income of the property or with power to make payments out of that income at the discretion of the trustees or some other person, with or without power to accumulate surplus income, or

(c) charged or burdened (otherwise than for full consideration in money or money's worth paid for his own use or benefit to the person making the disposition) with the payment of any annuity or other periodical payment payable for a life or any other limited or terminable period,

or would be so held or charged or burdened if the disposition or dispositions were regulated by the law of any part of the United Kingdom; or whereby, under the law of any other country, the administration of the property is for the time being governed by provisions equivalent in effect to those which would apply if the property were so held, charged or burdened."

Excluded property

23. "Excluded property" is, so far as relied on by the Appellant, defined as follows by virtue of sections 6 and 48 IHTA 1984:

"6. Excluded property.

(1) Property situated outside the United Kingdom is excluded property if the person beneficially entitled to it is an individual domiciled outside the United Kingdom.

…

48. Excluded property.

(1) A reversionary interest is excluded property unless—

(a) it has at any time been acquired (whether by the person entitled to it or by a person previously entitled to it) for a consideration in money or money's worth, or

(b) it is one to which either the settlor or his spouse or civil partner is or has been beneficially entitled, or

(c) it is the interest expectant on the determination of a lease treated as a settlement by virtue of section 43(3) above or,

(d) in a case where paragraphs (a), (b) and (d) of section 74A(1) are satisfied—

(i) it is a reversionary interest, in the relevant settled property, to which the individual is beneficially entitled, and

(ii) the individual has or is able to acquire (directly or indirectly) another interest in that relevant settled property.

Terms used in paragraph (d) have the same meaning as in section 74A.

(2) In relation to a reversionary interest under a settlement made before 16th April 1976, subsection (1) above shall have effect with the omission of paragraph (b); and, if the person entitled to a reversionary interest under a settlement made on or after 16th April 1976 acquired the interest before 10th March 1981, that subsection shall have effect with the omission of the words 'or has been' in paragraph (b).

(3) Where property comprised in a settlement is situated outside the United Kingdom—

(a) the property (but not a reversionary interest in the property) is excluded property unless the settlor was domiciled in the United Kingdom at the time the property became comprised in the settlement (but see also subsection (3F)), and

(b) section 6(1) above applies to a reversionary interest in the property but does not otherwise apply in relation to the property;

but this subsection is subject to subsections (3B) and (3D) below.

…

(3B) Property is not excluded property by virtue of subsection (3) or (3A) above if–

(a) a person is, or has been, beneficially entitled to an interest in possession in the property at any time,

(b) the person is, or was, at that time an individual domiciled in the United Kingdom, and

(c) the entitlement arose directly or indirectly as a result of a disposition made on or after 5th December 2005 for a consideration in money or money's worth.

(3C) For the purposes of subsection (3B) above–

(a) it is immaterial whether the consideration was given by the person or by anyone else, and

(b) the cases in which an entitlement arose indirectly as a result of a disposition include any case where the entitlement arose under a will or the law relating to intestacy.

(3D) Where paragraphs (a) to (d) of section 74A(1) are satisfied, subsection (3)(a) above does not apply at the time they are first satisfied or any later time to make the relevant settled property (within the meaning of section 74A) excluded property."

Reversionary interest

24. "Reversionary interest" is defined in section 47 IHTA 1984

"47. Reversionary interest.

In this Act "reversionary interest" means a future interest under a settlement, whether it is vested or contingent (including an interest expectant on the termination of an interest in possession which, by virtue of section 50 below, is treated as subsisting in part of any property) and in relation to Scotland includes an interest in the fee of property subject to a proper liferent."

Notices of determination

25. Section 221 IHTA 1984 specifies that:

"221. Notices of determination.

(1) Where it appears to the Board that a transfer of value has been made or where a claim under this Act is made to the Board in connection with a transfer of value, the Board may give notice in writing to any person who appears to the Board to be the transferor or the claimant or to be liable for any of the tax chargeable on the value transferred, stating that they have determined the matters specified in the notice.

…

(4) A notice under this section shall state the time within which and the manner in which an appeal against any determination in it may be made.

(5) Subject to any variation by agreement in writing or on appeal, a determination in a notice under this section shall be conclusive for the purposes of this Act against the person on whom the notice is served; and if the notice is served on the transferor and specifies a determination of the value transferred by the transfer of value or previous transfers of value, the determination, so far as relevant to the tax chargeable in respect of later transfers of value (whether or not made by the transferor) shall be conclusive also against any other person, subject however to any adjustment under section 240 or 241 below."

Domicile

26. Section 267 IHTA 1984 (as in force at the date of Martin's death) specifies that:

> "267. Persons treated as domiciled in United Kingdom.
>
> (1) A person not domiciled in the United Kingdom at any time (in this section referred to as "the relevant time") shall be treated for the purposes of this Act as domiciled in the United Kingdom (and not elsewhere) at the relevant time if—
>
> (a) he was domiciled in the United Kingdom within the three years immediately preceding the relevant time, or
>
> (b) he was resident in the United Kingdom in not less than seventeen of the twenty years of assessment ending with the year of assessment in which the relevant time falls."

Findings of Fact: the documents

27. Martin was born in Malta on 18 November 1957. His parents – Francis and Esther Falzon – owned the foreign properties. Francis Falzon died on 18 March 2006 and Esther Falzon died on 31 December 2010.

Wills of Martin's parents

28. Martin's parents had two joint wills, dated 22 December 1980 (the "First Will") and 10 January 1995 (the "Second Will"). It is common ground that only the First Will is relevant to this case, as the Second Will dealt with family graves. The First Will provided as follows:

> "Article One.
>
> The testators cancel and revoke all previous Wills they may have made before today both in public and in secret form.
>
> Article Two.
>
> The testators bequeath unto one another in full absolute ownership:
>
> a) all credits against third parties, all monies in banks, that is, both in local and in foreign banks abroad, both those in the name of Francis Anthony Falzon and those in the name of Esther Falzon and those owned jointly.
>
> b) everything that on the day [illegible] be found in their house of residence and in their summer or vacation house from the threshold inwards ('a limine intus') including liquid cash and articles of gold and silver and of other precious metals and/or precious stones, everything included and nothing excluded.
>
> c) their personal car or cars.
>
> Article Three.

Saving the above dispositions the testators bequeath unto one another the usufruct, use and enjoyment of everything they will be possessing and owning on the day of their death. They:

i) except one another from the obligations of making inventory and of giving the security required by Law;

ii) decree and order that the surviving spouse who remarries will not forfeit any benefit deriving to him or her under this Will; and

iii) give unto one another the right that the surviving spouse will be able to change this Will without forfeiting any benefit deriving to him or her.

Article Four.

Saving the above dispositions the testators nominate and appoint as their sole universal heirs and successors their only six (6) children Michael Francis, George Frederick, John Wilfred, Mary Rose known as Marisa, Alexander Maurice and Martin Joseph, in equal shares between them, with the right of substitution in favour of their children and children's children and in default of children with the right of accretion between them and they exempt them all from the obligations of [illegible]."

Declarations of causa mortis of Martin's parents

29. Declarations of causa mortis were published and enrolled in the Public Registry of Malta on the deaths of Martin's parents.

30. The declaration causa mortis of Martin's father was published and enrolled in the Public Registry of Malta on 10 August 2006 after his death. It recorded the information set out in the First Will, including the usufruct bequeathed to Esther Falzon (as the surviving spouse) and the nomination and appointment of Martin and his siblings as universal heirs, inheriting one half undivided shares of the immovable property (the foreign properties) subject to Esther Falzon's usufruct, with the other half being retained by Esther Falzon. The declaration provided particulars of the individual foreign properties inherited by Martin and his siblings, including any rent due. By way of example, of one such foreign property:

> "14. The one half (1/2) undivided share of the perpetual sub-directum dominium and the relative annual and perpetual subgroundrent of one hundred and one Maltese Liri and forty five cents (Lm101.45) burdening the divided portion of land known as 'Tal Ballut' in Triq Andre Maurais, Saint Julians, having a superficial area of approximately one thousand three hundred and two point four square metres (1302.4sq.m), bounded the said land on the west by a public lane, on the north by property of Giuseppe Borg or his successors in title, on the east in part by property of the Government of Malta or its successors in title and in part by property of Giovanni Debona or his successors in title and on the south in part by property of Giovanni Debona or his successors in title and in part by property of Peter Azzopardi or his successors in title, with all its rights and appurtenances, subject this land to the annual and perpetual groundrent of twenty nine Maltese Liri and sixty cents (Lm29.60); valued this one half (1/2) undivided share at six hundred and thirty four Maltese Liri and six cents (Lm634.06)"

31. The declaration causa mortis of Martin's mother was published and enrolled in the Public Registry of Malta after her death. The full declaration was not provided to the Tribunal, but from the extracts that were before us it appears that it was produced on or around 26 April 2011. This declaration confirmed that Martin and his siblings had inherited one half undivided shares in the foreign properties. The declaration provided particulars of

the individual foreign properties inherited by Martin and his siblings, including any rent due. By way of example, of one such foreign property:

> "13.5) The grocery store without official number and named 'Orion Store' in Depiro Street, Sliema, which store consists of a retail area at the front of the said property, and a lavatory at the back of the of the property, underlying part of the abovementioned and described building named 'Hibernia House', bounded on the North by Depiro Street, on the East by property of the Heirs and on the West by Saint Ignatius Junction, with all its rights and appurtenances, which store is rented to third parties for the annual rent of two thousand three hundred and seventy five Euros and ninety six cents (€2,375.96) valued this one half (1/2) undivided share at twenty three thousand two hundred and fifty Euros (€23,250) as results from the valuation drawn up by Architect Anthony Fenech Vella on the fourth (4th) of Sliema, bounded the said block on the North by Depiro Street, on the West by property of Carmelo Mallia or his successors in title and on the East by property of Paolo Mamo, Francesco Mifsud Gio Batta Mifsud and others or their successors in title, with all its rights and appurtenances as subject the said block to one hundred and forty two Euros and fifty six cents (€142.56) annual and perpetual groundrent, valued this one half (1/2) undivided share at one hundred and fifty eight Euros and thirty eight cents (€158.38)"

Special power of attorney

32. Martin gave his brothers, Alexander and Michael Falzon, a special power of attorney ("SPA") in respect of his share of the foreign properties on 22 May 2014, valid until 31 December 2017. The SPA authorised Alexander and Michael Falzon, acting jointly, to:

> "1. To appear in my name and on my behalf on any notarial deed of redemption of groundrent, whether temporary or perpetual, to withdraw any money from the Registry of the Superior Courts or any other authority deposited pursuant to a schedule of redemption of groundrents burdening immovable property I inherited from my parents the late Francis Anthony Falzon who passed away on the eighteenth (18th) of March of the year two thousand and six (2006) and the late Esther Falzon who passed away on the thirty first (31st) December of the year two thousand and ten (2010).
>
> 2. To carry out ordinary administration of the immovable properties I inherited from my parents the late Francis Anthony Falzon who passed away on the eighteenth (18th) of March of the year two thousand and six (2006) and the late Esther Falzon who passed away on the thirty first (31st) December of the year two thousand and ten (2010), including the power to renew the leases of the said properties, to evict tenants, to commence judicial proceedings or any other judicial action against the tenants or occupiers under any title of the said properties, the carrying out of ordinary repairs and in cases of emergency also extraordinary repairs, but expressly excluding the power to sell or otherwise transfer by any title (except lease) the said properties. This is without prejudice to any deed of redemption of groundrent above mentioned.
>
> 3. To do all such acts or things which may be necessary for or conducive towards attaining the above."

The SPA continued:

> "We hereby fully ratify and confirm all and whatsoever the said Attorney shall legally have done or have caused to be done, or legally do or cause to be done by virtue of these presents and on our behalf and we hereby undertake to indemnify the said Attorney in respect of all costs, charges and

> damages which he may sustain in the exercise of the powers and functions conferred hereby."

33. The Appellant contends that there was an earlier special power of attorney from 2011-2014, but the Tribunal have not been provided with a copy.

34. Martin died on 25 April 2015. His last will and testament, dated 22 December 2010, appointed Marisa Lincoln and George Falzon as his executors and trustees (therein defined as "Trustees"). The will directed the Trustees to "pay any debts funeral and testamentary expenses" and then divided the residuary estate between such of his five siblings (Michael, George, John, Marisa and Alex) that survived him, in equal shares.

35. A declaration of causa mortis, was issued on or around 13 July 2016 after Martin's death and confirmed his nomination and appointment of his siblings as his sole universal heirs, inheriting his share of the foreign properties. The declaration provided particulars of the individual foreign properties inherited by the siblings, including any rent due. By way of example, of one such foreign property:

> "1. One sixth (1/6) undivided share of the shop without name, numbered four (4) formerly numbered one letter E (1E) in Old Church Street, formerly Strada Vecchia Chiesa Mollino , Birkirkara, which underlies property of Lawrence, John, Salvatore, Carmelo Helen and Agnes brothers and sisters Fenech and of Judith Gwynne Thomas, Alfred, Emmanuel, Teresa, Annunziata, Tarcisio, Josephine and Pauline brothers and sisters Calleja or their successors in title, as subject to the annual and perpetual groundrent of one Euro and ninety five cents (€1.95), with all its rights and appurtenances, which shop is rented to third parties for the annual rent of one thousand three hundred and thirty nine Euro and thirty eight cents (€1,339.38), valued this one sixth (1/6) undivided share at seven thousand Euro (€7,000) as results from the valuation drawn up by Architect Anthony Fenech Vella on the twentieth (20th) of July of the year two thousand and fifteen (2015), which valuation is being annexed to this deed and marked Document letter 'G'"

Maltese Law regarding the Foreign Properties

36. On the day of the hearing Miss Lincoln sought to adduce expert evidence on Maltese law. We allowed a short adjournment for HMRC to review the evidence. HMRC did not object, so I consented to include the expert evidence. The expert evidence is a five page letter from a Maltese lawyer, Dr Rita Mifsud, on "IRIS" headed notepaper.

37. In summary, Dr Mifsud explains that a form of rent control applies to properties leased on or before 30 April 2015. Such leases are automatically renewed upon their expiry subject to the same rent and conditions. The rights under the lease can be passed, after the death of the original tenant, to certain other individuals.

38. These provisions have been successfully challenged, on multiple occasions, as a breach of Article 1 Protocol 1 of the European Convention on Human Rights.

39. With regard to co-ownership she says:

> "In terms of article 495 of the Civil Code, each co-owner has full ownership of his respective share and can therefore alienate, assign or hypothecate his share without the consent of the other co-owners. He may also substitute for himself someone else in the enjoyment of his right."

40. She says that this is the same for co-heirs, except there exists a right of pre-emption by the other co-heirs:

> "This article is also applicable in situations involving co-heir[s] who inherit property when it comes to the shares of those co-heirs, in that each co-heir

has full ownership of his share from the entire estate/succession of the person and can thus dispose of it in the same manner. However, the same article provides for a limitation when it comes to the transfer of one's share from that inheritance to non-heirs. In the case that a co-heir transfers his share from the inheritance as a whole to a third party (not being a co-heir and such a transfer is made under an onerous title, the other co-heirs can demand that the said third party is reimbursed for that transfer so that the rights transferred to him be divided in the partition between the co-heirs.

41. A further difference with co-ownership and co-heirs is that under Maltese law, a co-heir is not deemed to have a share from each property of the estate of the deceased, but an undivided share from the inheritance as a whole. An exception is where the co-heirs are left equal portions from the inheritance and ten years pass from the opening of succession without any of the heirs filing an action for division.

42. We consider this report has evidential weight, but we approach it with some caution for the following reasons. It was only provided on the day of the hearing. No reason for the delay was given and it might reasonably have been expected earlier, given the drawn-out history of this litigation. We do not have the instructions to the expert and it does not appear that she has seen any of the documents relevant to the case. There is no statement of truth as one would normally expect to see in an expert report.

Earlier litigation

43. HMRC issued a notice of determination to Miss Lincoln on 13 March 2019 stating:

> "The Commissioners for Her Majesty's Revenue and Customs have determined -
>
> **In relation to -**
>
> A. the deemed transfer for the purposes of inheritance tax on the death on 30 April 2015 of **Martin Joseph Falzon** ('the Deceased');
>
> That –
>
> 1. The Deceased was resident in the United Kingdom for not less than 17 of the 20 tax years of assessment ending with the year of assessment in which he died.
>
> 2. The Deceased was domiciled in the United Kingdom for the purposes of section 267 Inheritance Tax Act 1984.
>
> Chris Foulds
>
> For the Commissioners for Her Majesty's Revenue and Customs
>
> **Right of appeal**
>
> If you wish to appeal against this determination (or any part of it), you should within 30 days after service of this notice give notice of appeal in writing, specifying the grounds of appeal, to:
>
> Chris Foulds
>
> WMBC
>
> HM Revenue & Customs
>
> BX9 1LH
>
> You need to quote the case reference CFS-1345921 and the Inheritance Tax (IHT) reference shown above when writing to us at the above address. If you

> send any documents to us you must tell us if you want them returned as we may securely destroy them after 90 days.
>
> **If you do not appeal the determination will be conclusive in accordance with Section 221(5) of the Inheritance Tax Act 1984.**"

44. This was confirmed by a statutory review conclusion letter, dated 2 August 2019. The Appellant submitted a late appeal against this determination, however Judge Scott of the First-tier Tribunal refused permission for the Appellant to pursue this appeal, providing a summary of findings of fact and reasons on 4 October 2022, with a full decision on 2 November 2022: *Marisa Lincoln as LPR of Martin Falzon v HMRC* (unpublished, TC/2020/03085)

45. The Appellant was refused permission to appeal to the Upper Tribunal by the First-tier Tribunal (Judge Scott) on 4 April 2023.

46. In her skeleton argument and before us Miss Lincoln forcefully denied receiving the refusal of permission to appeal: she claimed that she was still awaiting the decision. She said the first occasion on which she had seen the decision refusing permission was as part of the bundle for this case.

47. However it is clear to us, from the documents that were before us, that Miss Lincoln had indeed received the refusal. Specifically, she quoted from the refusal decision in subsequent correspondence with HMRC on 1 May 2023. She will also have been aware of the refusal as it was mentioned in the recitals for the directions, in this case, issued by Judge Aleksander on 12 September 2023.

Domicile

48. Because the notice of determination of 13 March 2019 has not been successfully appealed, it is conclusive that Martin was deemed domiciled in the UK for IHT purposes. That, effectively, binds us and determines the matter: section 221 IHTA 1984.

49. Whilst it is not, therefore, necessary for us to consider the matters below, we do so briefly as a substantial part of Miss Lincoln's argument was devoted to this.

50. Much of Miss Lincoln's evidence focused on whether Martin was – disregarding section 221 IHTA 1984 – domiciled outside the UK as at the date of his death (with reference to his "domicile of origin" or "domicile of choice"). However, this would appear to be accepted by HMRC as section 267 IHTA 1984 only applies to "a person not domiciled in the UK".

51. Miss Lincoln suggested that section 267 IHTA 1984 was only one thing to take into account when determining domicile for the purposes of IHT. She submitted that the deemed domicile should not apply in Martin's case, as he was "trapped" in the UK. We disagree. Section 267 IHTA 1984 is a prescriptive rule. Where it applies a person is treated as domiciled in the UK for IHT purposes. We note that Martin came to the UK in 1978 and had sufficient NI contributions to demonstrate that he had worked in the UK for at least 35 out of the following 37 years.

Beneficial entitlement

52. Miss Lincoln sought to suggest that Martin was not beneficially entitled to the foreign properties, as section 5(2) IHTA 1984 was not met.

53. However, section 5(2) IHTA 1984 extends the meaning of beneficial entitlement. It does not define it. This is shown by the use of the phrase "shall be treated as", in section 5(2) IHTA 1984.

54. The starting point is that beneficial entitlement is determined by ordinary principles, and includes any situation in which a person has the use of and/or benefit of "property" (which includes "rights and interests of any description" – see s.272 IHTA 1984).

55. It is clear from the expert evidence on Maltese law that Martin enjoyed "full ownership of his share from the entire estate" and could "dispose of it", subject to the right of pre-emption.

56. Further in the SPA Martin refers to "the properties I have inherited" – this shows that Martin considered he enjoyed beneficial entitlement to the foreign properties.

57. The rent control restrictions did not deprive Martin of beneficial entitlement: they only will have diminished the value of that entitlement.

58. We therefore find that Martin had beneficial entitlement to the foreign properties.

Settled property

59. For the reasons below we do not accept the foreign properties were settled property. While we accept HMRC's argument that there was no trust under Maltese law (below at [60] to [66]), we differ from HMRC in finding that there would have been a trust under UK law (below at [67] to [68]). However, such a trust would not be one that met the definition of settlement (below at [69] and [70]). Neither was the foreign property charged or burdened in a way that would create a settlement (below at [71] to [75]).

Trust

60. It is Miss Lincoln's contention that Martin's share of the foreign property was held on trust. Miss Lincoln articulated various theories as to how the trust came into existence. In her skeleton argument she stated that the trust was "formally established" on 10 August 2006 by the declaration causa mortis of Martin's father. In her oral evidence she suggested that the trust had been established during her father's lifetime, by her and her siblings helping to administer the property business of her father and that the declaration causa mortis only "formally established" the trust.

61. The (Malta) Trust and Trustees Act 1988 specifies that:

> "3. (1) A trust exists where a person (called a trustee) holds, as owner or has vested in him property under an obligation to deal with that property for the benefit of persons (called the beneficiaries), whether or not yet ascertained or in existence, which is not for the benefit only of the trustee, or for a charitable purpose, or for both such benefit and purpose aforesaid.
>
> (2) The trust property shall constitute a separate fund owned by the trustee, distinct and separate from the personal property of the trustee and from other property held by the trustee under any other trust."

62. There is nothing on the face of the declaration causa mortis of Martin's father, or any other document, which suggests that Martin held his share in the foreign property for anyone other than himself, as section 3(1) of the Trust and Trustees Act 1988 would require for there to be a trust.

63. Furthermore, there is nothing on the face of the declaration causa mortis to suggest there is any intention to create a trust. Nor is there anything on the face of any other document that was before the Tribunal that suggests an intention to create a trust.

64. It is notable that the Maltese legal advice that we have been provided with does not suggest that there is a trust.

65. In oral evidence Miss Lincoln was asked whether it was her case that any property inherited by multiple individuals would cause there to be a trust under Maltese law. She said this was not so. However, in the instant case, it did because of both the large number of properties and the large number of beneficiaries. We do not accept this as there is no objective evidence to support this theory. We regard it as speculative.

66. We therefore are in agreement with HMRC that there is no trust as a matter of Maltese law.

67. However, under the tail end of section 43 IHTA 1984 ("or would be so held or charged or burdened if the disposition or dispositions were regulated by the law of any part of the United Kingdom") we must consider the position under UK law. Whilst the matter was not raised before us at the hearing, on reflection, on writing the judgment, we have realised that such a gift would create a trust under English law. As the point was not argued before us we asked for further written submissions on this point from both parties following the hearing. We have taken account of these in reaching our view. HMRC suggested in their original skeleton argument that legally and equitably the property would be held as joint tenants, so there would be no trust. However this is incorrect. This is because a statutory trust would be created, as a consequence of the changes to the Law of Property Act 1925 ("LPA 1925") as made by the Trusts of Land and Appointment of Trustees Act 1996 ("TLATA 1996"): section 36(1) LPA 1925. Further, while the will trust, after the death of Martin's mother, had six beneficiaries the number of legal (and opposed to beneficial) owners of land in England is restricted to four people: Trustee Act 1925 s.34(2). So only the first four named would be trustees. A further issue with HMRC's argument on this point is they suggest in their skeleton argument that the property is held jointly. However, it would appear that a tenancy in common would have existed under English law. We consider the reference in the will to "equal shares between them" to be words of severance that would have created: *Payne v Webb* (1874) L.R. 19 Eq. 26; see Megarry & Wade, *The Law of Real Property* (2024, 10th Ed) at [12-017]. In this context we also note that rights of survivorship did not appear to have applied. Martin bequeathed his share in his will. In evidence before us Miss Lincoln told us that she had suggested to her siblings that survivorship (a characteristic of English joint tenancy) should apply, but they had all rejected that on the basis that women tend to live longer and it would advantage her.

68. Therefore we find as a matter of English law the disposition would create a trust.

Held in trust for persons in succession or for any person subject to a contingency

69. Although we find the disposition would create a trust under English law, we find that the disposition would have given Martin an absolute beneficial entitlement. There would be no succession of interests or contingency. Accordingly section 43(2)(a) IHTA 1984 is not satisfied.

Held by trustees on trust to accumulate the whole or part of any income of the property or with power to make payments out of that income at the discretion of the trustees or some other person, with or without power to accumulate surplus income

70. Likewise, although we find the disposition would create a trust under English law, we find that it would not have given the trustees a power to accumulate. Nor would it have given the trustees a discretionary right to make payments out of income. Rather, Martin would have had a beneficial entitlement to income as it arose. Accordingly section 43(2)(b) IHTA 1984 is not satisfied.

Charged or burdened (otherwise than for full consideration in money or money's worth paid for his own use or benefit to the person making the disposition) with the payment of any annuity or other periodical payment payable for a life or any other limited or terminable period

71. Miss Lincoln argued this provision applies because the foreign properties included some properties which were charged with the payment of groundrents (i.e. Martin's parents, and subsequently their children, were obliged to pay ground rent to third parties).

72. However we do not accept this to be give the case. We have cited several of the relevant clauses of the declarations of causa mortis. There the groundrents are described as "perpetual": they are therefore not for a "limited or terminable period".

73. In response to this Miss Lincoln has argued that the groundrents may be redeemed: which is shown by how the SPA is for the purpose of "redemption of groundrent". However, we do not consider that Miss Lincoln has shown that this possibility makes perpetual groundrents for a "limited or terminable period". The fact that it may be possible to negotiate the redemption of a groundrent does not make the period which it is for terminable – which we consider would refer to a right to terminate it on the occurrence of a particular event.

74. Furthermore, we have not been provided with any evidence that the foreign properties were charged with the groundrent *otherwise than for full consideration in money or money's worth paid for his own use or benefit to the person making the disposition*. For this reason an ordinary commercial lease would not fall within the definition of settled property. It would be for Miss Lincoln to show that this criteria was not satisfied and she has not done so.

75. Accordingly section 43(2)(c) IHTA 1984 is not satisfied.

Reversionary interest

76. Miss Lincoln submitted that Martin had a future interest in the foreign properties by virtue of his mother's usufruct.

77. However, following his mother's death on 31 December 2010, Martin's interest in the foreign properties was no longer encumbered by the usufruct. Therefore, whatever the position prior to his mother's death, there was plainly no reversionary interest at the relevant point in time (immediately prior to Martin's death).

78. Miss Lincoln suggested that because there was a prolongation of the realization of the inheritance after her mother's death and not all of the foreign properties had been sold before Martin's death, his interest remained a future interest. Miss Lincoln has not set out any legal basis for this contention. The usufruct could be equated with an "interest in possession" or a life interest, and section 47 IHTA 1984 indicates that an interest that is fully realised after the termination of such an interest will not be a reversionary interest. This is shown by how section 47 IHTA 1984 states that a reversionary interest includes an "interest expectant on the termination of an interest in possession", so plainly once the interest in possession is terminated, there is no longer an "interest expectant", as after that point they will have fully realised their interest.

79. Furthermore, it is clear from section 91(1) IHTA 1984 that the fact an estate remains unadministered has no bearing on whether a person has become beneficially entitled to the underlying assets:

> "Where a person would have been entitled to an interest in possession in the whole or part of the residue of the estate of a deceased person had the administration of that estate been completed, the same consequences shall follow under this Act as if he had become entitled to an interest in possession in the unadministered estate and in the property (if any)

> representing ascertained residue, or in a corresponding part of it, on the date as from which the whole or part of the income of the residue would have been attributable to his interest had the residue been ascertained immediately after the death of the deceased person."

80. Accordingly, there was no reversionary interest in the foreign property at the time of Martin's death.

Conclusion

81. Accordingly, we find Martin was domiciled in the UK and that the foreign properties formed part of his estate and were not excluded property.

82. The appeal is therefore dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

83. 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.

MICHAEL BLACKWELL
TRIBUNAL JUDGE

Release date: 04th OCTOBER 2024