



**TC03738**

**Appeal number: TC/2012/06086**

*CAPITAL GAINS TAX – husband and wife – dissolution of partnership – whether appellant retained a beneficial interest in partnership land following dissolution – subsequent disposal of the land – whether gain properly assessed on the appellant – appeal allowed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LORNA WATSON**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S    Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE JONATHAN CANNAN  
MR DAVID MOORE**

**Sitting in public in Belfast on 15 May 2014**

**Mr Mark Orr QC instructed by Fisher & Fisher Solicitors appeared for the  
Appellant**

**Mr John Corbett of HM Revenue & Customs appeared for the Respondents**

## DECISION

### *Background*

5 1. This is an appeal against an assessment to capital gains tax (“CGT”) said to arise on the disposal of land. The land in question is at 2-4 Main Street, Clough, County Down (“the Land”). The sole issue we have to determine is whether the appellant, Mrs Watson, had a beneficial interest in the Land at the time of disposal in 2005.

10 2. The assessment under appeal was made on 16 September 2010. It brought into charge a taxable gain of £426,997 resulting in an increased CGT liability for the appellant of £145,430.

15 3. Mr Mark Orr QC who appeared for Mrs Watson submitted that on the evidence the Land was owned beneficially by her husband, Mr William J Watson. As such there should have been no assessment on Mrs Watson.

4. Mr John Corbett who appeared for the respondents submitted that Mrs Watson was beneficially entitled to a half interest in the Land at the time of disposal. As such the assessment was properly made.

20 5. We set out below our findings of fact based on the evidence before us. The evidence comprised certain documentary evidence together with the oral evidence of Mr Watson. We record for the sake of completeness that Mrs Watson, who suffers from multiple sclerosis, did not give evidence before us. Quite properly Mr Corbett did not take any point from the fact that Mrs Watson did not give evidence.

### *Findings of Fact*

25 6. Mrs Watson’s tax return for 2005-06 identified disposals of 2 Main Street, Clough and 4 Main Street, Clough. The disposal proceeds were identified as £79,086 and £316,344 respectively. Rollover relief was claimed in relation to each disposal.

30 7. We were provided with the first page of the contract for the sale of the Land. This showed a sale price of £1,600,000. The contract was signed by Mr and Mrs Watson as vendor and it described the capacity in which they sold as “Beneficial Owner”. The contract was signed by the purchaser on 19 May 2004 and by Mr and Mrs Watson on 24 June 2004. The date for completion was 3 May 2005. We assume that the contract was in some way conditional so that the date of disposal fell into tax year 2005-06 (cp section 28 Taxation of Chargeable Gains Act 1992).

35 8. It is not clear on what basis the disposal proceeds were allocated to Mrs Watson on her tax return. In a letter to HMRC dated 19 September 2008 the accountants acting for Mr and Mrs Watson said:

*“...this split was on the basis of the person having more control over the use of the property – that person being Mr Watson. He had been the dominant personality in developing the use of the property and we deemed this to be an equitable way to assess the transaction.”*

5 9. Both parties agreed that on her original tax returns for 2005-06 Mrs Watson was treated as being entitled to approximately 25% of the disposal proceeds. A claim for rollover relief by her was disallowed by HMRC. We are not concerned with the claim for rollover relief. Mr Watson was treated as being entitled to approximately 75% of the disposal proceeds and a claim for rollover relief by him was only partly allowed.  
10 We are not concerned with Mr Watson’s tax position, save in so far as the way in which the disposal was treated on Mr and Mrs Watson’s tax returns might shed light on what interests they believed they had in the Land.

10. Both parties agreed that the real issue involved identifying the beneficial interests in the Land. With that in mind we set out the circumstances in which the  
15 Land came to be purchased and sold.

11. Apart from documentation, the evidence before us came from Mr Watson. We are satisfied that Mr Watson was an honest and reliable witness and Mr Corbett did not suggest otherwise. We accept his evidence.

12. The land at 2-4 Main Street was comprised in three separate titles as follows:

- 20 4 Main Street - Looking from Main Street, this comprised a narrow strip of land and buildings fronting on to Main Street. It was registered at the Land Registry under folio 31290.
- 25 2 Main Street - This was to the left of 4 Main Street and comprised a larger parcel of land and buildings on the corner of Main Street and Downpatrick Road.
- Forecourt - This was to the right of 4 Main Street and comprised land used as a petrol forecourt. It was leased from the National Trust.

13. Mr Watson comes from a farming family. He was born in 1951 and was 63  
30 years old at the time of the hearing. He purchased 4 Main Street, including a convenience store, post office, petrol station and garage, in July 1975. The purchase was in his sole name. It was intended that Mrs Watson would run the business and Mr Watson would work on the family farm. Within a matter of weeks it became apparent that Mrs Watson could not cope. Mr Watson therefore decided to quit the farm and  
35 work in the business full time.

14. In or about 1979 Mr Watson took a lease of land to the right of 4 Main Street. The petrol station business was successful and he wanted to put in a tank with a larger capacity. The leased land became the Forecourt.

15. At some stage, probably before 1988, Mr and Mrs Watson became partners in the business. Also before 1988 they put 4 Main Street into joint names. Mr Watson could not remember why it had been put into joint names but it seems likely that it would have been done at or about the time when the partnership was established.
- 5 16. The partnership business included a coal merchants. In or about 1988 the partnership purchased 2 Main Street using partnership funds. At this time 2 Main Street was derelict land and Mr and Mrs Watson wanted to store coal so that the business could deal in larger loads.
- 10 17. Since 1988 the business has occupied a prominent corner site on what is a tourist route between Belfast and the Mourne Mountains.
- 15 18. In or about 1995 Mrs Watson and was diagnosed as suffering from multiple sclerosis. She had been seriously ill for sometime previously. Until then she had dealt with the paperwork and run the shop and post office. Mr Watson had dealt with all the manual work. From 1996 onwards Mrs Watson did not work in the business. Her involvement completely ceased. Their daughter left school in 1996 and took over Mrs Watson's role.
- 20 19. The partnership accounts for the year ended 31 August 1998 were prepared by the partnership accountants, M B McGrady & Co Chartered Accountants. They showed a net profit of £29,019 and net assets of £608,460. The net assets principally comprised the Land which was valued at cost at £487,343. There were also current assets of £185,189 including stock and trade debtors. The most significant current assets were fixed term deposits with the Bank of Ireland amounting to £137,419. The partners' capital account of £608,460 was shown as a joint account for Mr and Mrs Watson without any separate division of their interests.
- 25 20. By 1998 Mrs Watson wanted nothing more to do with the business. In Mr Watson's words "*she wanted to wash her hands of it*". Mrs Watson was however happy enough at that time for Mr Watson to run the business, essentially for the benefit of their family. They had 5 children and Mr Watson considered that he was working for the benefit of the family.
- 30 21. The accounts for the year ended 31 August 1999 were produced by McGrady & Co as sole trader accounts in the name of Mr Watson. The net profit for the year was £13,826 and this was allocated to a capital account in the sole name of Mr Watson. The balance brought forward on that capital account was the same as the balance carried forward on what had been the joint capital account at the end of the previous year. Current assets remained similar to the previous year, although the fixed term deposits had increased to £144,776.
- 35 22. Mr Watson told us that he thought the fixed term deposits would have been in joint names, although he could not be sure. We think it likely that as with other partnership assets including the Land they were in joint names. No steps were taken to put them into Mr Watson's sole name in 1998 or subsequently.
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23. Mr Watson accepted, as do we, that he would have had some discussion with the partnership accountants in relation to the change from a partnership business to a sole trader business. No doubt they gave advice at the time, but there is no evidence as to what that advice was.
- 5 24. By 2004 Mrs Watson wanted her husband to sell the business. The business was on a prominent site and Mr and Mrs Watson were living under threat. We do not need to set out the background to that threat but we were told that there were police stationed outside the door and their daughter had to be escorted to school. Mr Corbett on behalf of the respondents did not dispute this aspect of Mr Watson's evidence.
- 10 25. In 2004 the Land was sold as described above. Completion was fixed for 3 May 2005. The reason for a later completion date was because the purchaser intended to develop the site but not for another year or so. Mr Watson also had it in mind that he wanted to work in the business until 2005, which would be 30 years since he had first purchased it. Since 2005 the purchaser has developed a new petrol station on the  
15 Land.
26. The purchaser paid a deposit of £160,000. The amount due on completion was £1,440,000. This was paid to the Presbyterian Mutual Society ("PMS"). Whilst the documentation was not clear we find that £687,413 was paid into a joint account of Mr and Mrs Watson and the balance was used to pay off loans they had from PMS. In  
20 addition to the business Mr and Mrs Watson had various other property interests some of which were purchased with the benefit of loans from PMS. Some of these properties were in joint names and some were in the sole name of Mr Watson.
27. We are satisfied that Mr Watson considered in his own mind that the funds held at PMS and his dealings with PMS were on his own behalf. He did not consider that  
25 they were joint funds, indeed he was surprised to be told during the course of his evidence that the PMS account had been in joint names.
28. In the light of the threat they were under, Mr Watson wanted to move his wife and daughter away from Clough. Approximately £700,000 effectively from the proceeds of sale of the Land was used to buy a 70 acre farm and farmhouse at Finvoy  
30 Road, Ballymoney, County Antrim. Mr Watson intended to farm the land whilst Mrs Watson and their daughter would live in the farmhouse. Mr Watson bought animals to put on the farm. We accept that the choice of Finvoy Road was down to Mr Watson. Mrs Watson essentially went along with it against the background of being desperate to move away from Clough.
- 35 29. Mrs Watson and their daughter moved to Finvoy Road. Mrs Watson stayed there until 2013. Mr Watson farmed the land but eventually the farmland was rented out. Mr Watson also continued the old coal merchant business from premises near Clough. He continues that business today, albeit on a smaller scale of 2 days per  
40 week. He lived at a property in Seaforde for that purpose, about a mile outside Clough.

30. We did not see any documentation, but on the strength of Mr Watson's oral evidence we find that the farmhouse, yard and paddock at Finvoy Road were put into Mrs Watson's sole name. Mr Watson considered that if anything happened to him, or if Mrs Watson "*wanted to go her own way*" then she should have the property. Originally he was going to put it into the joint names of his wife and daughter, but Mrs Watson was anxious that a future partner of their daughter should not get any interest in the property. The farmland went into Mr Watson's sole name.

31. Apart from the purchase of Finvoy Road, Mrs Watson did not rely on her husband financially. She had a good pension and was able to manage her own finances. She received no income from the business carried on by Mr Watson on the Land in his sole name since 1998, whether by way of rent or otherwise. In September 2007 the PMS account was used to pay £20,500 in tax and interest falling due in relation to her 2005-06 tax return.

32. Finally we should mention that on 28 January 2011, on advice, Mr and Mrs Watson executed an "Agreement". This was professionally drafted and signed by Mrs Watson, described as "the trustee" and Mr Watson, described as "the beneficiary". It recites various details in relation to the partnership business and in the main body of the document includes a declaration by Mrs Watson that when she retired from the partnership business on 31 August 1998 she retained no interest in the business or in the partnership assets.

#### *Reasons and Decision*

33. Mr Orr submitted that the extent of the beneficial interests of Mr and Mrs Watson in the Land is to be determined on the basis of the evidence described above. He accepted that trusts of land must be evidenced in writing, but that did not apply to implied, resulting or constructive trusts. He submitted that the issue before us is essentially a question of fact. In particular, was there was an agreement or at least an understanding in 1998 that Mrs Watson would retire from the partnership and give up her interest in the partnership assets to Mr Watson. If so then from that date Mr Watson was the sole beneficial owner of the Land.

34. Matrimonial property and finance often give rise to difficulties in identifying what property is owned by which party and in what shares. Usually those difficulties arise in the case of matrimonial breakdown or where one spouse is made bankrupt. Usually they are contested between spouses. That is not the position in the present case, however similar difficulties arise in identifying Mr and Mrs Watson's interests in the Land after 1998.

35. The starting point is the legal title. In the present case the Land is partly registered and partly unregistered.

36. In relation to registered land, trusts are generally kept off the registered title. We were referred to Moir on Land Registration. At [9.1] it states:

*"The Registry is required by Section 54 [Land Registration Act (Northern Ireland) 1970] to keep trusts off the title. As a result, trustees of land may be*

*registered as full owners, and nothing on the Folio gives any indication that the land is held subject to a trust.”*

37. In relation to unregistered land, Northern Ireland has a system of registration of deeds. The land is not itself registered, but deeds relating to the land may be registered. The primary function of registration is to govern priorities between documents dealing with the same piece of land, for example in relation to mortgages. See *Witchell on Residential Property Law in Northern Ireland* at [6.04].

38. We accept Mr Orr’s submission that the legal title is not conclusive in relation to the beneficial interests. However where land is held in joint names there is a presumption that the beneficial interests in the land are equal (see *Jones v Kernott [2011] UKSC 53*). What Mr Orr seeks to establish is a “common intention” constructive trust. That may arise by way of express agreement or may be inferred objectively from the parties’ conduct. If a common intention exists then it must be shown that the “claimant”, in this case Mr Watson, has acted to his detriment or significantly altered his position in reliance on that common intention.

39. It was not suggested to us that this analysis is affected by the existence of a partnership. Nor by the fact that the common intention is said to arise on the retirement of Mrs Watson from the partnership thereby effecting a dissolution of the partnership.

40. Mr Corbett agreed that the issue we have to decide is whether or not there was an agreement or understanding in 1998 that Mrs Watson would give up her interest in the Land. He did not take issue with Mr Orr’s submissions on the law.

41. We are satisfied that there was an agreement between Mr and Mrs Watson in 1998 that Mrs Watson would retire from the partnership. She told Mr Watson that she wanted to wash her hands of the partnership business. By that she meant that she was retiring from the partnership business and wished to assign her share in the partnership to Mr Watson. She did not intend that there would be any winding up of the partnership business. She intended that Mr Watson would henceforth own and continue to operate the partnership business and its assets as a sole trader.

42. We are satisfied that Mr Watson significantly altered his position in reliance on that common intention. In particular he took no steps to wind up the partnership business and carried on the business on his own account for seven years.

43. We recognise that these events took place in the context of Mr and Mrs Watson’s matrimonial and family relationship. Mrs Watson no doubt understood that Mr Watson would continue fulfil his family obligations, in the sense that he would be working and earning an income for the benefit of the family. However with effect from the date of dissolution Mrs Watson had no legal claim against the partnership assets arising from her position as a retiring partner. That is not to say that she would not then, and subsequently, have had a claim in respect of matrimonial property in the event of matrimonial difficulties. It is not suggested that any such claim has ever been in prospect.

44. The treatment of the partnership business in the accounts since 1998 is entirely consistent with and probative of such an agreement. In the year ended 31 August 1999 the accountants drew up accounts on the basis that Mr Watson was a sole trader. The Land and other partnership assets and liabilities were treated as belonging to Mr  
5 Watson. Those accounts properly reflected the agreement between Mr and Mrs Watson. At no stage since 1998 has Mrs Watson ever maintained any claim to a share in the partnership assets as at the date of dissolution. She has not made any claim or received any share in the partnership profits since dissolution. Nor has she been paid any sum by way of rent in relation to the Land or the partnership assets generally.

10 45. Mr Corbett relied on the fact that the proceeds of sale of the Land were paid into a joint account at PMS and then used to purchase the farmhouse at Finvoy Road. He submitted this supported the respondents' case that Mrs Watson continued to have a beneficial interest in the Land. We accept that this is relevant evidence, however we consider that it is explicable on a different basis.

15 46. Firstly, Mr Watson regarded the PMS account as his own. Secondly the operation of the PMS account and the purchase of Finvoy Road in the sole name of Mrs Watson were both entirely consistent with Mr and Mrs Watson's matrimonial status. We do not consider that these matters lead to any inference that the purchase of Finvoy Road was intended to satisfy Mrs Watson's half share in the Land. Mr  
20 Watson's intention was, as he described, that Mrs Watson would have Finvoy Road if anything happened to him or if she "*wanted to go her own way*".

47. Mr Corbett suggested that Mrs Watson was simply content to let Mr Watson use the joint assets, including the Land, rent free. That is certainly a possible explanation, but for the reasons given above we do not think it is supported by the evidence as a  
25 whole.

48. We do not consider that the Agreement entered into by Mr and Mrs Watson on 28 January 2011 adds anything to the case put forward in evidence by Mr Watson. It does however confirm that in 2011 Mrs Watson was acknowledging that since 1998 she had had no interest in the business or the Land.

30 49. Mr Corbett also relied on the fact that Mrs Watson had initially returned a gain on her 2005-06 tax return on the basis that she was entitled to 25% of the Land.

50. We are not satisfied that the way in which Mr and Mrs Watson treated the disposal in their tax returns sheds any light on their respective interests in the Land. The documentary evidence in the bundle before us was not particularly clear. See for  
35 example the explanation given by the accountants in their letter dated 19 September 2008 referred to above. More importantly, Mr Corbett for the respondents did not put any case to Mr Watson that his evidence was in fact inconsistent with his tax return and the way in which the disposal had been treated in the 2005-06 tax returns.

51. Finally we should note that we are not concerned in this appeal with the tax  
40 treatment of Mr Watson's disposal of the Land. Plainly however it is now clear that he

ought to have included in his 2005-06 tax return the whole of the disposal proceeds of the Land.

*Conclusion*

5 52. For the reasons given above we are satisfied that Mrs Watson did not have any beneficial interest in the Land in 2005. She made no disposal for CGT purposes. We therefore allow the appeal.

10 53. 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.

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**JONATHAN CANNAN  
TRIBUNAL JUDGE**

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**RELEASE DATE: 17 June 2014**