



TC04062

Appeal number: TC/2014/01124

Capital Gains Tax –Principal Private Residence Relief – Has Appellant demonstrated that criteria for relief are met? – No – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALISON CLARKE

Appellant

- and -

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

**TRIBUNAL: JUDGE ALISON MCKENNA
 MR TONY HENNESSEY FCA**

Sitting in public at Bedford House, Belfast on 25 September 2014

The Appellant represented herself

Mr O'Reilly of HM Revenue and Customs, appeared for the Respondents

DECISION

1. This matter concerns the Appellant's appeal against a Closure Notice and amendment to returns issued under s.28A (1) and (2) of the Taxes Management Act 1970 (as amended), by which HMRC claimed Capital Gains Tax in relation to property sales in the years 2004-2005 and 2006-2007 respectively. The Appellant had, for the relevant years, filed returns claiming Principal Private Residence Relief under sections 222 and 223 of the Taxation of Chargeable Gains Act 1992. However, following an enquiry, HMRC was not satisfied that this relief had been properly due because it was not satisfied that the Appellant had occupied the properties as her only or main residence at the relevant time.

2. The issue for the Tribunal was whether the Appellant had been entitled to claim the relief and consequently whether the Closure Notice should be upheld. There was no dispute as to the amount of tax due if the claim to relief failed.

Factual Background

3. The facts relating to the sale and purchase of the properties were not in dispute between the parties.

4. In June 2003 the Appellant purchased a flat at St John's Wharf Belfast, which she occupied as her residence. She has retained ownership of that flat throughout subsequent events and lives there now. It is the address given on her application to the Tribunal.

5. The Appellant purchased a house at Wandsworth Road Belfast on 5 March 2004 for £138,000 plus fees and stamp duty. During her period of ownership she spent over £80,000 on improvements to the property, which she sold on 2 February 2005 for £290,000 (a period of ownership of 11 months).

6. The Appellant then purchased a house at Ravensdene Crescent Belfast on 13 May 2005 for £165,000 plus fees and stamp duty. She spent £62,000 on improvements to the property, which she sold on 24 November 2006 for £385,000 (a period of ownership of 17 months).

7. HMRC issued tax returns to the Appellant for the years 2004-2005 and 2006-2007. The completed returns were filed on 17 May 2010, and included claims to Principal Private Residence Relief in respect of the capital gains made on the sales of the houses at Wandsworth Road and Ravensdene Crescent. HMRC issues Enquiry Notices in respect of both returns on 12 July 2010.

8. HMRC issued Closure Notices dated 29 November 2013 by which it brought into charge the amount of Capital Gains Tax which it believed to be due. This was £16,432 in respect of the Wandsworth Road property and £49,448 in respect of Ravensdene Crescent. The tax claimed has not been paid pending determination of this appeal by the Tribunal.

The Law

9. The term “residence” is not defined in the legislation referred to above, but the courts have interpreted the term. Mr O’Reilly referred the Tribunal to the leading case of *Goodwin v Curtis* [1996] STC 1146 in which the Court of Appeal decided that
5 the question of whether the occupation of a property was sufficient to make a person “resident” there for tax purposes was a question of fact and degree in each case but that for a person to be “resident” there must be some evidence of permanence, some degree of continuity or expectation of continuity.

10. The Appellant’s former advisers had relied in correspondence with HMRC on a
10 First-tier Tribunal decision, which the Appellant also referred us to. We explained that, as no citation for the case had been given, it was difficult to identify it but that in any event First-tier Tribunal decisions turn on their own facts and do not establish precedent.

HMRC’s Case

15 11. HMRC has engaged in extensive correspondence with the Appellant and her former advisers concerning this matter. It obtained documentary evidence from the Appellant following service of several Taxpayer’s Information Notices under schedule 36 to the Finance Act 2008.

20 12. HMRC obtained other evidence from third parties through its own enquiries, as follows. The Land and Property Service at Belfast City Council informed HMC that the Wandsworth Road property was unoccupied from May 2003 to March 2005 and that the Ravensdene Crescent property was vacant from April 2002 to December 2006. The Appellant accepted that the Council was unaware of her occupation of both properties as she had not registered to pay domestic rates at either address.

25 13. The property at Wandsworth Road was purchased with the assistance of a bridging loan of £171,000 and the terms of the loan required it to be repaid by 31 January 2005. HMRC also ascertained that the property at Ravensdene Crescent was purchased with the assistance of a bank loan of £168,000, which was to be repaid by 31 May 2006.

30 14. Gas bills produced by the Appellant’s former advisers (for part only of the periods in question) indicated low consumption and no other utility bills were forthcoming. HMRC was informed that there were no insurance policies for either house. The Appellant’s car had remained registered at the flat throughout this period. HMRC had been concerned to ascertain how the Appellant had funded her living
35 expenses, as she did not work. The Appellant’s advisers had stated that she lived on capital raised from the repayment of a loan, the receipt of compensation for being mis-sold an insurance policy, and the funds from cashing in an endowment policy. Her personal bank statements were not provided when requested.

40 15. Mr O’Reilly asked the Tribunal to take into account the fact that the Appellant had retained ownership of her flat throughout all the relevant years and had never made an election under s.222 (5) of the Taxation of Chargeable Gains Act 1992 in

order to designate another property as her main residence. He submitted that the documentary evidence before the Tribunal tended to support HMRC's case that the Appellant had not lived at the properties but had maintained her main residence at her flat while the properties were refurbished. Her reliance on short term finance arrangements, her failure to register for domestic rates at the properties, the absence of utility and other bills for most of the relevant periods and the likely inhabitable state of the properties during their extensive renovation all supported, in his submission, HMRC's case.

16. HMRC's case also relied upon the absence of evidence from the Appellant to support her contention that she occupied the properties successively as her only or main residence at the relevant time. Mr O'Reilly reminded the Tribunal that the Appellant bore the burden of proof to prove her case on the balance of probabilities and submitted that she had not discharged that burden.

The Appellant's Case

17. The Appellant's evidence (largely read from a pre-prepared script) was that the properties at Wandsworth Road and Ravensdene Crescent had each been bought for occupation as her main residence and she had intended to sell her flat, but that changed circumstances had required her to sell each house and move back to the flat.

18. She told the Tribunal that the house at Wandsworth Road had been close to her brother's family home and that, as she had no children of her own and enjoyed spending time with her brother's children, she had wanted to live nearby. Unfortunately, her brother and family had then decided to move away to the country, so she no longer wanted to live at the property and sold it.

19. She also told the Tribunal that she had then bought the property at Ravensdene Crescent in order to be close to her parents. She had also liked it because it would enable her to walk more. However, she had subsequently decided to move to Dublin with her then-partner, so decided to sell the house and retain the flat. Ultimately her relationship with her partner had ended so she moved back into the flat and stayed there.

20. The Appellant told the Tribunal that she was used to living in properties while they were being renovated and that she had undertaken some of the work herself as she was unemployed. She said she had occupied both properties during the period of their renovations, returning to the flat only to collect her post and use the bathroom if necessary. She said that she had taken her brother's children to play at Wandsworth Road during the renovations. The Appellant told the Tribunal that she had not known about the ability to make an election as to which property was to be treated as her main residence, or she would have done so. She said that it had not occurred to her to register for domestic rates at either of the properties and that the Council had not sent her a bill. She said she had continued to pay rates at her flat. She explained that she had not arranged to have the post redirected because the flat provided a secure postal address, whereas the houses had each had builders coming and going. She was not concerned about the short-term nature of the loan finance used to purchase the

properties she said, because if she had failed to pay the loan it would have turned into a mortgage. She did not produce any documentation to substantiate her evidence as to the terms of the loan.

21. The Tribunal asked the Appellant whether she had brought to the hearing any other documents to support her case, such as letters received when living at the properties, photographs of herself in occupation, or witness statements from family and friends who could say where she had lived. She said she had not thought of obtaining such evidence. She said she did not have a camera, so there were no photographs, did not have a television so there was no TV licence, the gas had been turned off due to the building works so she had not used much gas. She asked us to take into account the fact that if she had intended to avoid paying tax, she would have made a better job of it.

Conclusion

22. The Tribunal is required to decide whether the Appellant occupied the properties as her only or main residence at the relevant time so that tax relief was properly due. The Appellant bears the burden of proof of satisfying the Tribunal that her case, on the balance of probabilities, is correct.

23. We were troubled by the absence of documentary evidence to support the Appellant's case. It seems to us that if she had lived at the houses as she told us, it is likely there would be some evidence of it to support her case. We note that HMRC on several occasions resorted to the exercise of its statutory powers to obtain information from the Appellant because these details were not provided voluntarily.

24. In the absence of documentary evidence, the Appellant's case essentially turned on her oral evidence. It was difficult for us to assess the Appellant's credibility as she had decided to read out a pre-prepared written statement to the Tribunal, rather than giving her evidence in the usual way. As her statement had not been provided to HMRC in advance, cross examination was made more difficult. Overall, we found the Appellant's oral testimony and her answers to questions from Mr O'Reilly and to those from the Tribunal unsatisfactory in many respects.

25. Having weighed the evidence before us carefully, we find that the Appellant has not satisfied us on the balance of probabilities that she occupied the properties at Wandsworth Road and Ravensdene Crescent as her sole or main residence during her period of ownership. We find that the weight of evidence supports HMRC's view that she continued to occupy her flat as her main residence, and had purchased the properties as investments to be refurbished and sold on at a profit. In particular, we note that each property was owned for a short period and sold almost as soon as the refurbishments were completed. The refurbishments were extensive, which would have made it difficult to live in the properties while the works were being carried out. The bridging and other short-term loan finance arrangements on which the Appellant relied suggests to us that a short period of ownership was intended, and the Appellant was unable to support with evidence her recollection that these loans would have been converted into mortgages or state what the terms of such mortgage facilities would

have been. As we understand that the Appellant did not work at the relevant time, it was not clear how she intended to make mortgage repayments in any event.

26. We also take into account the fact that the Appellant continued to use her flat as her postal address, the address at which her car was registered, and that the invoices for the refurbishment works were sent to the flat. We note that the Appellant did not register for domestic rates at the houses and that she has not produced continuous utility bills for her stated period of occupation. We note that she did not insure the properties at which she says she lived.

27. We take the view that whilst none of these factors is determinative in its own right, each piece of the jigsaw contributes to an overall picture of the Appellant's circumstances at the relevant time. Having considered these circumstances, we are not satisfied that the Principal Private Residence Relief was properly due and we have decided to dismiss the appeal so that the Closure Notice stands and the Capital Gains Tax is due.

28. 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.

**ALISON MCKENNA
TRIBUNAL JUDGE**

RELEASE DATE: 9 October 2014