



TC05343

Appeal number:TC/2015/07008

*STAMP DUTY LAND TAX – rate of tax –value of transaction – appeal
dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DR JOHN KISSI

Appellant

- and -

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

**TRIBUNAL: JUDGE SARAH ALLATT
 MRS SHEILA CHEESMAN**

Sitting in public at Fox Court on 6 July 2016

The Appellant in person

**Mrs Sanu, instructed Presenting Officer of HM Revenue and Customs, for the
Respondents**

DECISION

5 1. The decision was announced orally at the hearing, and a short decision was issued to both parties on 16 July 2016. The Appellant has applied for a full decision and so accordingly this is set out below.

2. This is an appeal against a rejection of the Appellant's request to amend an SDLT1 form out of time, and an appeal against a demand for Stamp Duty Land Tax and interest.

10 3. The appeal was made out of time. In the interests of justice and fairness it was decided to allow the appeal to be heard out of time.

Background

4. The case concerns a property purchased by the Appellant and his wife on 20 September 2007.

15 5. A Stamp Duty Land Tax Return (SDLT1) was filed showing consideration paid for the property was £274,950.

6. The Land Registry also shows the purchase price to be £274,950.

7. The SDLT1 form stated the tax owed to be at 1% (£2,749.50)

8. A payment of £2,749.50 was made to HMRC.

20 9. A purchase price of £274,950 would put the property in the 3% stamp duty bracket.

10. HMRC maintain that an addition 2% plus interest is due.

11. The Appellant explained that he believes that the house was purchased for less than £250,000, and that no tax is therefore owing.

Evidence

12. The Tribunal heard from Dr Kissi, and saw several documents that he produced.

13. The Tribunal found Dr Kissi to be a credible witness.

14. Dr Kissi explained that he had purchased the property new in September 2007. To the best of his recollection although the 'headline advertised price' had been 30 £274,950, he would describe that as no more than a 'quoted price', and he did not believe that was the price that had been paid.

15. Dr Kissi produced an undated summary, without any letterhead or signature, which was all he had been provided with from the solicitor.

16. This showed the purchase price of the property to be £274,950. A mortgage had been obtained for £247,425. The summary then showed various fees, a stamp duty charge of £8,248.50 (although not explained on the summary, this is in fact 3% of the (disputed) purchase price). The summary showed that at completion an amount of £235,539.25 is due to the vendor, and Dr Kissi was owed £2,526.50.

17. Mr Kissi contends that no deposit was paid on the property, and the amount of £235,539.25 was in fact the full purchase price.

18. HMRC contend that it is more likely that a deposit was paid, and that stamp duty is due on £274,950.

19. The solicitor did not pay the £8,248.50 to HMRC. £2,749.50 was paid, on submission of the SDLT1 form, on 8 October 2007, by the solicitor.

20. HMRC noticed the error in the SDLT1 form submitted by the solicitors, where the valuation was shown as higher than £250,000 but SDLT was only paid at 1%. On 16 November 2007 they issued a payment notice to the solicitors for the tax still owing.

21. HMRC continued to issue notices to, and speak to, the solicitor until April 2008. At this point the case was referred to the Debt Management team, who sent a letter to Dr Kissi at the address of the property. He did not live there and the letter was returned. In February 2009 Dr Kissi received a letter at his correct address. He advised that he had paid the full stamp duty owing to the solicitor, who he believed was no longer trading.

22. Dr Kissi opened a complaint against the solicitor with the Legal Complaints Service. The solicitor had absconded and Dr Kissi maintains he did not receive even the amount shown as owing to him on the completion statement, and certainly not the amount that would have been due to him had the solicitor shown on the completion statement SDLT due at the lower figure that the solicitor actually paid.

23. Dr Kissi also states that he never received a copy of the contract for the purchase.

24. The complaint was considered by the Legal Complaints Service. The Tribunal were shown a copy of letter concerning the complaint dated 17 December 2009. It contains the following paragraphs

‘The complaint...was that at the completion of the purchase of [the property], the solicitors failed to pay in full the Stamp Duty Land Tax that was owing.

In brief, my conclusions were that based on my understanding of the purchase price of £274,950, the amount of Stamp Duty owing was 3% of the purchase price, a total sum of £8,248. However, it was apparent that HMRC had only received the sum of £2,749, representing 1% of the purchase price. You complained that the completion statement that the

5 solicitors provided, set aside £8,248 for this but the full amount had not been paid. Based on the information provided to me – the solicitors original file of papers not being available – it appeared that the solicitor had failed to pay the Stamp Duty owing in full and therefore in my eyes this was inadequate professional service.

10 In your email to me of December 2009, you advised me that the property was purchased through a discount offer, that offer amounting to 14% discount from the original purchase price and that this accounted for the difference between the purchase price and the amount that was sent to the vendor. If you refer back to the completion statement...you will note that the amount sent to the vendor was £235,639.25....you appear to accept that this was the final price.

15 Having considered the most up to date information available from HMRC website, which appears to be the same as the information that was relevant at the time of completion, you would need to apply the discounted purchase price for your property to the calculation of Stamp Duty and therefore the sum owing would have fallen within the 1% Stamp Duty band. On this basis, it would appear that the solicitors did pay the correct sum owing in relation to Stamp Duty.

20 I am therefore at a loss to understand as to why the solicitors would have provided information to HMRC that would have recorded you owing Stamp Duty that fell within the 3% band. However, I am now unable to see that there is a failure in relation to the service that has been provided by the solicitors.....’

25 25. The Tribunal were not provided with the December 2009 email referenced in the letter.

26. Dr Kissi then reverted to HMRC with a copy of this letter. There was a lull in communication until July 2013, where HMRC wrote to Dr Kissi requesting further information or evidence of his suggested purchase price of £235,639.25.

30 27. Dr Kissi did not have a copy of the purchase contract, nor did he recall ever getting one from his solicitor. He wrote to the bank that had provided the mortgage, and the vendor of the property, to see whether they had copies. The bank did not have a copy, nor was it able to provide details of the total amount that had been paid for the property, but they did confirm the mortgage as £247,425.

35 28. The vendor did not have a copy of the contract either, but stated

40 ‘In order to assist, however, I have obtained a copy of the title to the property and this is attached. On page 2, entry 2 of the Proprietorship Register states that the price paid on 20th September 2007 was £274,950. This would however have been the price stated in the Transfer Deed and would not reflect any incentives (other than discounts) which Mr Kissi may have received at the time, for example, deposit paid allowance, stamp duty allowance, legal fees allowance.

5 If any such incentives were given, and I have no way of knowing whether this was the case so I am speculating, this would have reduced the amount of money actually paid to Taylor Wimpey on completion as these would have been deducted and may account for why the completion statement supplied by the solicitor shows the amount to vendor as being £235,539.25. Furthermore, this 'amount to vendor' probably takes into account the likely 10% deposit which would have been paid on exchange of contracts and therefore not included in the monies paid to Taylor Wimpey on completion. Again though I have no way of knowing how much deposit was paid on exchange so this is also speculation.'

10 29. HMRC did not consider the evidence provided sufficient to displace the value on the SDLT1 form.

15 30. There were a number of other exchanges between Dr Kissi and HMRC, including HMRC asking Dr Kissi in December 2014 for further evidence as to the value. As Dr Kissi was out of time to amend his SDLT1 form by that time, HMRC subsequently apologised for not telling him this and offered him £25 compensation (which he refused).

31. The matter therefore came before the Tribunal.

The Law

20 32. There is no dispute as to the law in this area. If the purchase price was above £250,000, SDLT is due at 3% of the purchase price, if the purchase price is lower than £250,000, SDLT is due at 1%.

33. Dr Kissi is now out of time to amend his SDLT return but the Tribunal has the power to allow a claim for excessive assessment out of time.

Findings of Fact

25 34. The Tribunal therefore needs to make a finding of fact about the property transaction.

30 35. Dr Kissi claims that the purchase price was under £250,000. His evidence for this is his own recollection of the transaction, as he does not believe a deposit was paid. He contends that the letter written by the Legal Complaints Service, quoted extensively at paragraph 24 above, supports this claim. He also contends that little weight should be given to documents filed by his solicitor, as the solicitor absconded owing him money, and in his view was clearly less than professional. He contends that the total amount paid to the vendor was the amount shown as 'owing to vendor' on the summary provided by the solicitor.

35 36. HMRC contend that the purchase price was £274,950. They point to the SDLT return filed for that amount and the Land Registry which shows that the purchase price was £274,950. They contend that it is likely that a deposit was paid and therefore the amount paid to the vendor was higher than £235,539.25. They point out that the mortgage obtained was for £247,425 which is higher than the £235,539.25

claimed as the purchase price by Dr Kissi. They say that the letter from the Legal Complaints Service does not provide any evidence that the purchase price was other than £274,950. They point out that the summary provided by the solicitor showed SDLT owing at 3% of the £274,950 price.

5 37. Whilst the Tribunal considers Dr Kissi to be an honest witness, his recollection
of the transaction is the only piece of evidence for the transaction price being under
£250,000. The letter written by the Legal Complaints Service does not give any
further evidence to the price, it merely reiterates that Dr Kissi believed the price to be
under £250,000. The Tribunal is not impressed with the letter from the Legal
10 Complaints Service, as the paragraph 'I am therefore at a loss to understand as to
why the solicitors would have provided information to HMRC that would have
recorded you owing Stamp Duty that fell within the 3% band. However, I am now
unable to see that there is a failure in relation to the service that has been provided by
the solicitors....' seems simultaneously to state there has been a mistake made by the
15 solicitors and yet that there has not been a failure in relation to their service.

38. The evidence that points to the price being over £250,000 is more numerous.
Firstly, there are the documents compiled by the solicitor, namely the completion
statement, the SDLT form, and the Land Registry form. Whilst we agree with Dr
Kissi that the normal weight should not necessarily be given to these, given the
20 circumstances, nevertheless, there is no specific reason to disbelieve them. The
completion statement shows stamp duty owing at 3% of £274,950. We have no
evidence that Dr Kissi thought that was incorrect at the time. The first contact Dr
Kissi made with HMRC was to say that he had paid the stamp duty to the solicitor,
and we presume that he meant the £8,248.50 shown on the completion statement.
25 When HMRC first picked up the error, they issued notices to the solicitor and four
calls were made by the agent to HMRC. There is no record of the transaction price
being queried by the solicitor.

39. Secondly, there is the fact that the mortgage on the property was for £247,425.
If the purchase price was £235,539.25 then this mortgage would be significantly more
30 than 100% of the purchase price. Whilst not impossible, this appears unlikely.

40. Thirdly, there is the email from Taylor Wimpey which implies it is usual for a
deposit to be paid: 'Furthermore, this 'amount to vendor' probably takes into account
the likely 10% deposit which would have been paid on exchange of contracts and
therefore not included in the monies paid to Taylor Wimpey on completion. Again
35 though I have no way of knowing how much deposit was paid on exchange so this is
also speculation.' This is inconclusive one way or the other but suggests taking the
'amount to vendor' price on the completion statement as the full price should only be
done with firm evidence, as such a transaction would be unusual.

41. This Tribunal has a great deal of sympathy for Dr Kissi. He had poor service at
40 the very least from his agent. It was then 18 months after the purchase date that he
first became aware of the problem due to HMRC dealing with his agent before then.
The reply to his complaint to the Legal Complaints Service appeared to shrug off the
problems the solicitor had caused Dr Kissi with HMRC, and be unconcerned that the

5 SDLT1 form and the Land Registry form had been filled in with a price different to Dr Kissi's recollection. Dr Kissi was left with a hope that HMRC should change the transaction price when in fact no evidence as to that transaction price had been proved. HMRC appeared to treat the Legal Complaints Service as Dr Kissi's new agent (which was incorrect, but did not appear to be corrected by the LCS). There was then a *four year* period when HMRC appear to have made no contact with Dr Kissi at all. This is extremely poor service from HMRC.

42. However, for the reasons above, we find that no evidence has been produced to show that the transaction price was anything other than £274,950.

10 43. We therefore dismiss this appeal.

15 44. 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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**SARAH ALLATT
TRIBUNAL JUDGE**

RELEASE DATE: 6 SEPTEMBER 2016

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