



[2019] UKFTT 0704 (TC)

TC07476

CAPITAL GAINS TAX - principal private residence relief – whether appellant occupied property for the purposes of section 222 Taxation of Chargeable Gains Act 1992 – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/05924

BETWEEN

CORNELIA SIMPSON

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE GREG SINFIELD
TRIBUNAL MEMBER CHARLES BAKER**

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on
6 November 2019**

Nimal Fonseka of Senstone Limited for the Appellant

**Larissa Mulder, litigator of HM Revenue and Customs' Solicitor's Office, for the
Respondents**

DECISION

INTRODUCTION

1. The Appellant, Ms Cornelia Simpson, appeals against an assessment for tax of £52,656.76 and a penalty of £14,217.32 issued by the Respondents ('HMRC'). The tax relates to a gain made by Ms Simpson in the tax year ended 5 April 2014 on the disposal of a one bedroom flat at 22 Earl's Court Square, London SW5 ('Earl's Court Square') which Ms Simpson owned from 5 June 2013 to 29 November 2013. HMRC contend that the gain is chargeable to capital gains tax under the Taxation of Chargeable Gains Act 1992 ('TCGA 1992'). The penalty, which is imposed under Schedule 41 Finance Act 2008 ('FA 2008'), relates to Ms Simpson's failure to notify HMRC of her chargeability to capital gains tax in the year ended 5 April 2014 as required by section 7(1) of the Taxes Management Act 1970 ('TMA 1970').

2. Ms Simpson appealed against the assessment for tax and penalty on the single ground that the gain on the disposal was not chargeable to capital gains tax because Earl's Court Square was her only or main residence throughout her period of ownership and thus qualified for relief (known as principal private residence relief or PPR relief) under sections 222 and 223 TCGA 1992.

3. HMRC's primary case was that Ms Simpson was not entitled to claim PPR relief because she had never occupied Earl's Court Square as a residence at all. In the alternative, HMRC contended that, if she occupied it as a residence, Earl's Court Square was not Ms Simpson's main residence. In the further alternative, HMRC submitted that, if Earl's Court Square was Ms Simpson's only or main residence, PPR relief was not applicable because she had acquired it wholly or partly for the purpose of realising a gain from the disposal of it.

LEGISLATION

4. Sections 222 and 223 TCGA 1992 (as they were in force during the relevant period) make provision for relief from capital gains tax where the gain on a disposal is attributable to the disposal of a private residence which has at any time in the "period of ownership" been the taxpayer's only or main residence. The following provisions are relevant for present purposes:

"222 Relief on disposal of private residence

222(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or an interest in -

- (a) A dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or
- (b) ...

...

223 Amount of relief

223(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling-house ... has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 36 months of that period.

(2) Where subsection (1) above does not apply, a fraction of the gain shall not be chargeable gain, and that fraction shall be-

- (a) the length of the part or parts of the period of ownership during which the dwelling-house or parts of the dwelling-house was the individual's only or main residence, but inclusive of the last 36 months of the period of ownership in any event, divided by

(b) the length of the period of ownership.”

5. Section 224(3) TCGA 1992 provides:

“(3) Section 223 shall not apply in relation to a gain if the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house was made wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.”

6. Under section 222(5) TCGA 1992, where an individual has two or more residences within section 222, the individual has the right to nominate which is to be treated as the main residence for any period and so will attract relief for the period by giving notice to HMRC. This gives the individual the right to choose which of his or her two or more residences is to be treated as their main residence for PPR relief purposes. This is not mandatory and, in this case, Ms Simpson did not give any such notice.

7. We also note for completeness, as the validity of the assessment was not challenged at any point, that section 29 TMA 1970 provides that if an officer discovers that tax, which ought to have been assessed, has not been assessed (a loss of tax) the officer may assess the amount, or the further amount, which ought in his opinion to be charged in order to make good the loss of tax. Where the taxpayer has delivered a tax return, the power to assess is subject to conditions, which appear in subsections 29(4) and 29(5), but those conditions do not apply in this case as Ms Simpson did not submit any tax return for the 2013-14 tax year. Section 34 TMA provides that an assessment to income tax or capital gains tax may be made at any time not more than four years after the end of the year of assessment to which it relates.

8. In relation to the penalty under schedule 41 FA 2008, Ms Simpson did not contest the calculation of the penalty or suggest that, if there was a liability to capital gains tax, she had a reasonable excuse for not notifying HMRC of her chargeability to capital gains tax. In the correspondence, HMRC properly considered whether Ms Simpson might have a reasonable excuse for the failure or there were any special circumstances that might merit a reduction in the penalty and concluded, rightly in our opinion, that there were not any such excuse or circumstances.

CASE LAW ON RESIDENCE

9. In *Fox v Stirk, Ricketts v Registration Officer for the City of Cambridge* [1970] 2 QB 463, the Court of Appeal considered whether students should be resident in the constituency of the University that they attended. In his judgment, Lord Denning MR cited a passage from the speech of Viscount Cave LC in *Levene v Inland Revenue Commissioners* [1928] AC 217:

“... the word ‘reside’ is a familiar English word and is defined in the Oxford English Dictionary as meaning ‘to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live in or at a particular place’.”

10. Lord Denning went on to say:

“I derive three principles. The first is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man resident there. A guest who comes for the weekend is not resident. A short stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account.”

11. Further to this Lord Widgery commented:

“This conception of residence is of a place where a man is based or where he continues to live, the place where he sleeps and shelters and has his home. It is imperative to remember in this context that ‘residence’ implies a degree of permanence. In the words of the Oxford English Dictionary, it is concerned with something which will go on for a considerable time. Consequently a person is not entitled to claim to be a resident at a given town merely because he pays a short, temporary visit. Some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence.”

12. These comments are regarded as equally applicable to PPR relief and were relied on by the Court of Appeal in *Goodwin v Curtis* (1998) 70 TC 478. In that case, the taxpayer moved into the property in question as a stop-gap measure pending finding somewhere else to live. Millett LJ held in his judgment at 510:

“Temporary occupation at an address does not make a man resident there. The question whether the occupation is sufficient to make him resident is one of fact and degree for the Commissioners to decide.

The substance of the Commissioners’ finding taken as a whole, in my judgment, is that the nature, quality, length and circumstances of the taxpayer’s occupation of the [property] did not make his occupation qualify as residence.”

13. In the same case, Lord Justice Schiemann said at 510:

“... in order to qualify for the Relief a taxpayer must provide some evidence that his residence in the property showed some degree of permanence, some degree of continuity or some expectation of continuity.”

ISSUES TO BE DETERMINED AND BURDEN OF PROOF

14. Ms Simpson’s only ground of appeal against the assessment for tax and the penalty is that no liability to capital gains tax arose when she sold Earl’s Court Square on 29 November 2013 because it was her only or main residence during the period of 5 June 2013 to 29 November 2013 and, accordingly, any gain on its disposal was not chargeable to capital gains tax.

15. If the gain was chargeable to capital gains tax (which she denies), Ms Simpson does not challenge the validity of the assessment or penalty. Indeed, Mr Fonseca, who represented Ms Simpson, told us that HMRC had done everything properly. Therefore, it is not necessary for us to determine whether the discovery assessment under section 29 TMA 1970 issued by HMRC on 15 March 2018 is valid. We observe, however, that the facts, which are described below, clearly show that the relevant HMRC officer, Mrs Wendy Reddaway, made a discovery, in the sense described by the Upper Tribunal in *Anderson v HMRC* [2018] UKUT 159 (TCC) at [28], when she considered the information regarding the acquisition and sale of Earl’s Court Square disclosed to her on 6 May 2016 and the further documentation which she obtained throughout 2017. In our view, that discovery was set out by Mrs Reddaway in her letter of 15 February 2018, in which she sought comments from Ms Simpson. We also conclude that Mrs Reddaway made the discovery assessment within a reasonable time thereafter on 15 March 2018. Accordingly, if it had been in issue, we would have found that the discovery assessment was validly made.

16. It has been settled law for more than 90 years that, in an appeal against an assessment for tax, the burden is on the appellant to show that the sums charged to tax by the assessment are excessive (see the comments of Lord Hanworth MR in *T Haythornthwaite & Sons Limited v Kelly (Inspector of Taxes)* (1927) 11 TC 657, at 667). The position was confirmed by Mustill

LJ in *Brady (Inspector of Taxes) v Group Lotus Car Companies plc* [1987] STC 635, at 642, as follows:

“The starting point is an ordinary appeal before the [Tribunal]. Here, however unacceptable the idea may be to the ordinary member of the public, it has been clear law binding on this court for sixty years that an inspector of taxes has only to raise an assessment to impose on the taxpayer the burden of proving that it is wrong: *Haythornthwaite & Sons Ltd v Kelly (Inspector of Taxes)* (1927) 11 TC 657.”

The standard of proof is the ordinary civil standard, which is the balance of probabilities.

17. It follows that the only issue to be determined in this appeal is whether the gain made by Ms Simpson on the disposal of Earl’s Court Square qualifies for PPR relief under sections 222 and 223 TCGA 1992. In order to establish that PPR relief applied, Ms Simpson must prove, on the balance of probabilities, that:

- (a) she occupied Earl’s Court Square as a residence;
- (b) it was her only or main residence; and
- (c) she had not acquired it wholly or partly for the purpose of realising a gain from its disposal.

EVIDENCE

18. There were two witness statements: one from Ms Simpson and one from Mrs Reddaway. HMRC provided a hearing bundle which included the witness statements and various documents and correspondence exhibited by Mrs Reddaway.

19. At the hearing, both Ms Simpson and Mrs Reddaway gave oral evidence on oath. Ms Simpson was asked some questions in chief by Mr Fonseca to correct errors in her witness statement and was cross-examined by Ms Mulder, who appeared for HMRC. Mrs Reddaway clarified some points in response to questions from Ms Mulder. Mr Fonseca did not have any questions for Mrs Reddaway. We found Mrs Reddaway to be a credible witness and fully accept her evidence.

20. As will be seen below, we have concluded that Ms Simpson’s evidence was not entirely credible and we were unable to accept it in relation to certain key points which we describe in our findings of fact and in our conclusions on the evidence. Ms Simpson was, of course, giving evidence about events that occurred almost seven years ago but our doubts about her credibility go beyond an understandable difficulty in recalling distant events in detail. Ms Simpson’s oral evidence at the hearing flatly contradicted her written witness statement prepared as recently as May 2019 in important respects.

21. First, the witness statement records that Ms Simpson wanted to carry on a property management business and tried to do so before realising, in late 2013 or early 2014, that others had already cornered the market. Ms Simpson said on oath that she had never carried on or even intended to carry on a property management business but that was something that her partner, a wine merchant, had wanted to do himself. We do not accept Ms Simpson’s evidence on this point. The witness statement did not simply refer to Ms Simpson carrying on a property management business once but mentioned it in three places relating to different times.

22. In her witness statement, Ms Simpson stated that it was in early 2013 that she was told by her daughter that she was getting married. In evidence, Ms Simpson told us that she was told about the wedding in 2012. The witness statement also states that her daughter’s husband, who was French, had obtained a job in France which was why the couple decided to stay in France following their marriage rather than return to the UK as planned. Ms Simpson told us

that was not correct and it was her daughter who, while she was on honeymoon, was offered a very good job with Louis Vuitton in Paris which was why they decided to stay in France.

23. Mr Fonseca tried to explain the inconsistencies as being mistakes made by him when drafting the witness statement. He said that these errors were caused by the fact that he and Ms Simpson were in different countries (Ms Simpson now lives in France) and communication by email was difficult. Ms Simpson acknowledged that she had not taken as much care checking the witness statement as perhaps she should have done. We do not accept that the fact that witness statement was drafted by exchange of emails is a satisfactory explanation for the inconsistencies in Ms Simpson's evidence. Ms Simpson signed the witness statement underneath the usual statement of truth by which she confirmed that the facts stated in the witness statement were true. It was an important document because it was the only evidence put forward by her to challenge a potential liability to pay almost £67,000 in tax and penalty. We do not accept that Ms Simpson, who is clearly an intelligent woman, could have been so careless about the contents of her witness statement that she would allow such obvious errors to go uncorrected. We consider that the differences between her written witness statement and her oral testimony cast doubt on Ms Simpson's evidence that her daughter and her husband originally intended to move from France to the UK. As there was no other evidence that the couple planned to relocate and we cannot accept Ms Simpson's evidence on the point, we find that Ms Simpson has failed to establish, on the balance of probabilities, that her daughter and new husband ever intended to move to London.

24. At an early stage in the correspondence, Ms Simpson's accountant, Senstone Limited ('Senstone'), told HMRC that Ms Simpson wanted to buy Earl's Court Square because her three bedroom flat in Coleherne Court, Redcliffe Gardens, London SW5 ('Coleherne Court') was too large for her needs. We note that Ms Simpson claimed the single occupant Council Tax discount on Coleherne Court for the whole of 2013 and 2014 although her sister was living with her for at least part of that time. Ms Simpson gave inconsistent evidence about when her sister moved out of Coleherne Court. In her evidence in chief, Ms Simpson confirmed Mr Fonseca's statement that she bought Earl's Court Square already knowing that her sister would be moving out in mid-2013. During cross-examination, Ms Simpson said that she was not sure of the exact date but it was sometime in 2013. She also said that her sister told her about the move after Ms Simpson returned from France at the end of August 2013. Later, after the lunchtime adjournment, Ms Simpson was definite that her sister moved out of Coleherne Court in the early spring of 2014. She remembered this because her sister married in December 2014 having lived with her future husband for less than a year. We find these inconsistencies in Ms Simpson's evidence mean that we cannot make any firm finding about when her sister ceased to live in Coleherne Court.

25. In our view, the inconsistencies between the written and oral testimony make Ms Simpson's evidence unreliable not just on those points but more generally. Our view is reinforced by the fact that, both in the witness statement and in her oral testimony, Ms Simpson was vague about certain important matters, such as when her partner moved to London to live with her or when her sister, who had been living with her, moved out and how much was paid and when for works carried out to Earl's Court Square, while being clear about less significant events. Accordingly, we are cautious about accepting the oral evidence of Ms Simpson except where it is corroborated by other evidence.

26. On the basis of the documents provided and the evidence given at the hearing, we find the material facts to be as set out below.

FACTS

27. On 18 December 2001 and following her divorce, Ms Simpson purchased Coleherne Court for £825,000. Ms Simpson moved into the flat with her daughter, Victoria, then aged 14. A few years later, Ms Simpson's widowed sister, Mrs Beatrice O'Donnell, moved in with her.

28. In 2010, having completed her university studies, Victoria moved to Paris to live with her French boyfriend, Gregory Boitard.

29. In 2011, Ms Simpson met Patrick Dumoncel D'Argence, a wine merchant living and working in France, and during the course of the following year, they fell in love. Mr Dumoncel D'Argence's business was not doing well. At some point in 2012 or early 2013 (Ms Simpson was not clear about when), Ms Simpson suggested to Mr Dumoncel D'Argence that he close his affairs in France and move to London where he could start a wine business in London. At the same time, Ms Simpson decided that she would go into Property Management, although she had no prior experience in this field.

30. At some point in late 2012, Mr Boitard and Victoria decided to get married. Victoria had had several jobs during her time in Paris but was not particularly happy in any of them or with living in Paris. She suggested to Mr Boitard that they move to London after they were married, and he agreed. Victoria told her mother that she and Mr Boitard were going to be married in June 2013 and wanted to live in London.

31. It is unclear when Victoria informed Ms Simpson about the wedding and the desire to move to London. In her witness statement, Ms Simpson says that it was in early 2013 but in the witness box she was adamant that it was in late 2012. Whenever it was, Ms Simpson's evidence was that, once she learned that Victoria and her husband wished to live in London, she immediately decided that they should live in Coleherne Court.

32. Ms Simpson's sister, Mrs O'Donnell, was still living with Ms Simpson in Coleherne Court in 2013. Ms Simpson said that she realised that it would be awkward for all of them to live together in Coleherne Court. Ms Simpson says in her witness statement that she immediately looked for a smaller flat in the same area. Emails show that Ms Simpson had already instructed Goodman Derrick in relation to a possible purchase of a flat (not Earl's Court Square) by 28 February 2013. That purchase did not proceed.

33. Ms Simpson told us that she intended to transfer Coleherne Court to the married couple as part gift and part sale. There is no reference to this arrangement in Ms Simpson's witness statement. When asked if she had taken advice about how to effect the transfer and what the tax consequences of the gift would be, Ms Simpson said that she had but she could not recall what the advice was. She said that she had documents relating to the proposed transfer but had not provided them to HMRC because she did not know they would be relevant. She said that she was not aware that such documents had been requested by HMRC but not provided. We found this evidence hard to accept in view of the fact that the area of dispute with HMRC was clear and the significance of any evidence that showed that Ms Simpson intended to dispose of Coleherne Court was obvious. As already mentioned, HMRC had been able to obtain emails, which were exhibited and in the hearing bundle, that showed correspondence between Ms Simpson's solicitors and her and other solicitors in relation to the purchase of Earl's Court Square and other properties. It is surprising, in the context of HMRC's request for documents, that not correspondence relating to the proposed sale of Coleherne Court to Victoria and her husband was provided to HMRC.

Purchase of Earl's Court square

34. Earl's Court Square was marketed by the estate agents Foxtons. It was 500 metres or just a few minutes' walk away from Coleherne Court. Ms Simpson decided to buy it. On 16 April 2013, Foxtons wrote to Ms Simpson to confirm that her offer of £630,000 for Earl's Court Square had been accepted. An earlier offer of £599,999 had had to be renegotiated. Contracts were exchanged on 16 May 2013.

35. On 5 June 2013, Ms Simpson purchased Earl's Court Square for £630,000. On the day of completion, Foxtons wrote to Ms Simpson to tell her that it was vitally important that she contact the suppliers of gas, electricity and telephone services as well as the local authority to ensure that the accounts for the relevant services and council tax were transferred into her name.

36. Ms Simpson's daughter, Victoria, married Mr Boitard in France on 15 June 2013. The couple then went on honeymoon to Italy for two or three weeks. Ms Simpson told us that, while they were on honeymoon, Victoria was headhunted by Louis Vuitton in Paris. Ms Simpson said that, at the same time, Mr Boitard's family told him they wanted him to stay in Paris. Ms Simpson said that the couple decided that they would stay in Paris and, therefore, they would not proceed with the transfer of Coleherne Court. Apart from the fact of the marriage of Victoria and Mr Boitard and their decision to remain in France, none of these details appear in Ms Simpson's witness statement. As we have stated above, we are not satisfied that Ms Simpson's daughter and new husband ever intended to move to London.

37. Ms Simpson's evidence was that she and Mr Dumoncel D'Argence moved into Earl's Court Square immediately after they returned from her daughter's wedding in France. Ms Simpson said that, when she bought Earl's Court Square, there was nothing major to be done but she made arrangements for some repainting before they moved into the flat.

38. Ms Simpson says in her witness statement that she moved some excess furniture in Coleherne Court to Earl's Court Square. In her oral testimony, Ms Simpson told us that she also had some furniture from a rented house in Wiltshire that she had given up. She said that she did not understand what was meant by "excess" and that she had chosen the furniture from Coleherne Court because she wanted to keep those things and to make Earl's Court Square a home. We do not accept that Ms Simpson did not know the meaning of "excess" or her description to us of the furniture. We prefer the version set out in her witness statement, namely that she took some furniture that was not needed from Coleherne Court and put it in Earl's Court Square. Accordingly, Coleherne Court remained fully furnished which is unsurprising as Mrs O'Donnell was still living there at that time.

39. Ms Simpson told us that she knew in late June or early July that Victoria had decided to stay in Paris. She said that she did not put Coleherne Court on the market at that time because her sister, Mrs O'Donnell, was still living there and she did not want to ask her to leave. Ms Simpson said that Victoria had also asked her not to sell Coleherne Court because she regarded it as the family home. Ms Simpson also told us that she did not put Earls Court Square on the market immediately because she and Mr Dumoncel D'Argence spent August in France. For all of August, Earl's Court Square was empty.

40. Ms Simpson's evidence was that, when they came back in September 2013, Mr Dumoncel D'Argence found Earl's Court Square too small to conduct his business activities. He could not afford to rent an office until his wine dealing business took off. Mr Dumoncel D'Argence and Ms Simpson thought it would be better to live in Coleherne Court because it was bigger and there was ample space for an office.

41. At some point, Ms Simpson decided to have some significant changes made to Earl's Court Square but she was extremely vague about the nature of the works, which we discuss below, and when they were carried out. Ms Simpson was also unable to provide details of the dates of her occupancy and how she managed to occupy Earl's Court Square despite these works being undertaken. HMRC contended that occupation by Ms Simpson and Mr Dumoncel D'Argence during this period was particularly unlikely when Coleherne Court was close by, bigger. As Ms Simpson's witness statement had said that Mrs O'Donnell had moved out by this point, HMRC made the point that there was nothing to stop Ms Simpson and Mr Dumoncel D'Argence living in Coleherne Court while the works to Earl's Court Square were being carried out as, following the departure of Mrs O'Donnell, it was not occupied by anyone else during this period. As noted earlier, it is possible that Mrs O'Donnell was actually still in residence in Coleherne Court at that time although we can make no definite finding on the point.

42. In her witness statement Ms Simpson said that she undertook certain improvements to Earl's Court Square on the advice of Foxtons. During cross examination, she twice confirmed that Foxtons advised her to undertake certain improvements. As will be seen, the improvements were "almost finished" when she met with Foxtons on 27 September 2013. The works were extensive enough to take some time and Ms Simpson was in France for the whole of August. That means she must have given instructions to the contractors sometime before August. In turn, that implies that the advice from Foxtons must have been given around the time of purchase of Earl's Court Square.

Sale of Earl's Court Square

43. On 27 September 2013, Ms Simpson attended a meeting at Foxtons to discuss the sale of Earl's Court Square. The notes also show Ms Simpson's contact address as Coleherne Court. The notes state that the reason for sale was "Bought through us and ready to flip" and "Ready to go at the end of the month, works almost finished." In relation to the client's expectation, the notes state:

"Bought through us for £630,000. Thinking of putting back on around £850,000."

44. Ms Simpson said that he did not remember the meeting on 27 September. Ms Simpson told us that she was not aware of estate agents' jargon and did not know what "flipping" meant although she learnt later that it meant selling a property at a profit. She said that she did not have any intention of flipping Earl's Court Square when she bought it. In the light of the evidence and, in particular, what happened subsequently, we do not accept Ms Simpson's evidence on this point.

45. Ms Simpson instructed Foxtons to put Earl's Court Square on the market with an asking price of £850,000. Foxtons' Sales Terms and Conditions showed Ms Simpson's contact address as Coleherne Court. HMRC contended that this showed that Foxtons considered that Ms Simpson was contactable at Coleherne Court in September 2013. HMRC submitted that this supported their case that Ms Simpson did not occupy Earl's Court Square. The date on the instructions to sell Earl's Court Square is clearly 23 September but we suspect that is a mistake. The instructions to sell would naturally follow rather than precede the initial meeting on 27 September.

46. Ms Simpson's evidence was that Foxtons advised her to make certain cosmetic improvements which would enhance the value of the property, which she did. We are unable to accept this evidence as the works described below are more than "cosmetic" and it is clear that they had not been finished when Ms Simpson had her meeting with Foxtons on 27 September.

47. Foxtons produced a sales brochure in relation to Earl's Court Square on 30 September 2013. The brochure stated that Earl's Court Square benefited from "recent refurbishment throughout" and had had a "superb refurbishment throughout". The brochure describes the kitchen as "eat-in" and "with space to dine" but the photograph of the kitchen reveals that there were no table or chairs in it, and none is shown in the photograph of the reception room.

48. It is clear from comparing the Foxtons brochures for the purchase in June and the sale in November that significant works were undertaken during Ms Simpson's period of ownership, including refitting the kitchen with new units as well as a new sink and oven in a different place with a new extractor fan unit above the hob. It also appears that the flooring in the kitchen and reception room had been changed.

49. In response to questions from Ms Mulder, Ms Simpson said that the works were undertaken while she and Mr Dumoncel D'Argence were living in Earl's Court Square. We do not accept this as it defies logic and common sense that anyone would live in a small flat while extensive works were being carried out the kitchen when they had a fully functioning kitchen in a flat just a few minutes' walk away. Ms Simpson told us that she paid for the work on Earls Court Square in cash. The work cost £10,000 to £12,000 but she did not ask for any invoices.

50. On 16 October 2013, Foxtons wrote to Ms Simpson to communicate an offer to purchase Earl's Court Square for the asking price of £850,000. It appears that the offer was rejected and, on 17 October, Foxtons wrote again with another offer from the same potential purchaser to buy the flat for £900,000. Both letters from Foxtons were addressed to Ms Simpson at Coleherne Court. HMRC contended that this showed that Foxtons considered that Ms Simpson could be contacted at Coleherne Court in October 2013. As above, HMRC submitted that this supported their case that Ms Simpson did not occupy Earl's Court Square.

51. Earl's Court Square was sold on 29 November 2013 for £900,000.

52. For the period of Ms Simpson's ownership of Earl's Court Square, ie June to November 2013, British Gas bills sent to Earl's Court Square were all addressed to "The Occupier". This contrasts with correspondence and annual gas statements from British Gas in relation to Coleherne Court around the same time which were all addressed to Ms Simpson at Coleherne Court. Ms Simpson told us that she did not remember if she had told British Gas (or the other utility providers) that she had purchased Earl's Court Square and moved in but it seemed clear to us that she had not done so. Ms Simpson said that she had never been very good with paperwork. She also, when questioned, stated that she was not very interested in these bills and things which is why she had Mr Fonseka.

53. Information provided to HMRC by Thames Water showed that Ms Simpson had no contact with Thames Water regarding the water supply and wastewater services for Earl's Court Square. Further, she did not notify Thames Water that she had sold Earl's Court Square in November 2013 or respond to letters issued by Thames Water chasing payment. Thames Water eventually wrote off the debt owed by Ms Simpson for water supply and services to Earl's Court Square.

54. In view of the consistent evidence of the suppliers that they had no contact with Ms Simpson and the inherent implausibility of her own evidence, we reject her evidence and find that she did not tell the utility providers that she was the new occupant of Earl's Court Square and should be the relevant account holder at any time.

55. The Council Tax bill for Earl's Court Square from the Royal Borough of Kensington and Chelsea ('RBKC') for the period of Ms Simpson's ownership, ie 5 June 2013 to 28 November 2013, was addressed to her at Coleherne Court. In a letter dated 8 January 2018 to HMRC, the

RBKC stated that Ms Simpson paid the full council tax charge, with no discount, and that Earl's Court Square was considered by the RBKC to be a secondary residence. By contrast, the council tax bills for Coleherne Court provided by the RBKC, were sent to Ms Simpson at Coleherne Court. At all times until it was sold on 15 January 2015, Ms Simpson claimed the 25% single person discount to reduce her council tax liability in respect of Coleherne Court. The single person discount is available where only one person is living in a property. Ms Simpson said that she did not read these letters but simply looked at the amount and paid it. She acknowledged that she should have read them. We do not accept that Ms Simpson did not understand what she was paying as council tax. We consider that it is clear from the council tax bills and information provided by the RBKC that Ms Simpson never told the RBKC that she was living at Earl's Court Square as her main residence. On the contrary, the fact that she claimed the single person discount in respect of Coleherne Court and not Earl's Court Square clearly indicates that she regarded Coleherne Court as her main residence.

Subsequent events

56. Mr Dumoncel D'Argence's business did not prosper. Ms Simpson decided to sell Coleherne Court and that they would move into a smaller flat in the area.

57. On 26 February 2014, Ms Simpson purchased a one bedroom flat on Earl's Court Road, London SW5 ('Earl's Court Road') for £625,000 and Ms Simpson and Mr Dumoncel D'Argence moved in. Ms Simpson still owned Coleherne Court which was unoccupied. She told us that between 26 February and 15 January 2015, when it was sold, she emptied Coleherne Court

58. On 7 March 2014, Mr Dumoncel D'Argence and Ms Simpson set up a limited company, PDDA Ltd. Ms Simpson owned 70 % of the shares and Mr Dumoncel D'Argence held the remaining 30%. They were both directors. The nature of the company's business was stated to be "other accommodation". The company's Annual Returns filed with Companies House, dated 7 March 2015, showed Mr Dumoncel D'Argence's occupation as director and Ms Simpson's occupation as Property Developer. Ms Simpson could not explain why she was described as a property developer. PDDA Ltd never traded. In our view, the description of Ms Simpson's occupation as property developer is consistent with the references in her witness statement. We find that between a point in late 2012 or early 2013 and, at least, February 2014, Ms Simpson intended to carry on some form of property business.

59. In respect of the tax year ending 5 April 2014, no tax return or notice to file was issued to Ms Simpson under section 8 TMA 1970 and no voluntary return has ever been submitted.

60. Mr Dumoncel D'Argence was finding it an uphill battle to break into the wine trade in London and he eventually lost interest in pursuing it. He was not very happy and wanted to return to France. At some point, he suggested that he and Ms Simpson move to France and go into the bed and breakfast business.

61. On 15 January 2015, Ms Simpson sold Coleherne Court for £2,300,000.

62. On 6 April 2015, in respect of the year ended 5 April 2015, a notice to file a Return was issued to Ms Simpson under section 8 TMA 1970.

63. On 8 May 2015, Ms Simpson sold Earl's Court Road for £775,200. Following the sale, Ms Simpson and Mr Dumoncel D'Argence moved to France where they married and still live.

64. On 31 July 2015, Ms Simpson filed her self-assessment tax return for the year ended 5 April 2015. This return contained details of the sale of Coleherne Court for £2,300,000 with the net gain of £1,376,287. No chargeable gain and no capital gains tax was shown as payable because Ms Simpson claimed PPR relief.

65. On 25 January 2016, HMRC opened an enquiry under section 9A TMA 1970 for the year ended 5 April 2015. HMRC sent a letter to Ms Simpson and Mr Fonseka at Senstone. HMRC asked for documentary evidence that Coleherne Court had been occupied by Ms Simpson as her only or main residence throughout the period of ownership of the property from 18 December 2001 to 15 January 2015. HMRC also requested details of any other property transactions entered into by Ms Simpson from 6 April 2011.
66. On 8 March 2016, Senstone sent a letter to HMRC which gave details of the acquisition and disposal of Coleherne Court. In response to the request relating to all property transactions since 6 April 2011, Senstone provided details of the purchase and sale of Earl's Court Road. No reference was made to Earl's Court Square in this correspondence.
67. On 1 April 2016, HMRC wrote again to Senstone to ask for further information about Coleherne Court and Earl's Court Road. HMRC also repeated the request for details of all property transactions from 6 April 2011.
68. On 6 May 2016, Senstone wrote to HMRC with details of the purchase and sale of Earl's Court Square. Senstone also provided dates of Ms Simpson's residence in the three properties.
69. On 10 June 2016, HMRC wrote to Senstone saying that it appeared that Ms Simpson had two (or more) residences within the meaning of section 222 TCGA 1992. HMRC asked for further information to enable them to determine which property was Ms Simpson's only or main residence, whether each or any of the properties qualified for PPR relief and, if so, what was the qualifying period.
70. On 13 July 2016, Senstone wrote providing a timeline of Ms Simpson's occupancy of each of the three properties, completion statements and council tax bills. On 5 August 2016, HMRC wrote again to Senstone to request specific information and documents.
71. On 27 October 2016, Senstone wrote to HMRC and stated that Ms Simpson had disposed of her paperwork when she moved to France and enclosing what bills Ms Simpson had been able to locate. This letter also stated that Ms Simpson's partner, ie Mr Dumoncel D'Argence, had intended to start a wine business in the UK and Ms Simpson had decided to commence a property business in the UK. To that end, Ms Simpson had registered with HMRC for this purpose, although she had never commenced trading and had abandoned the idea when Mr Dumoncel D'Argence decided that he wanted to return to France to set up his wine business as he could not find any opportunities in London.
72. HMRC subsequently asked for and obtained signed mandates from Ms Simpson to enable HMRC to approach and obtain information relating to the three properties from Thames Water, British Gas, the estate agents and the RBKC. Ms Simpson also provided signed mandates for contents insurance but without providing the names of any insurance providers.
73. On 8 January 2017, Ms Simpson filed a self-assessment tax return for the year ending 5 April 2016, showing no taxable source of income or capital gains. A capital gains attachment was filed with the return reflecting the sale of Earl's Court Square on 8 May 2015 with a net gain of £97,147 in respect of which she claimed PPR relief.
74. There were further exchanges of correspondence which we need not set out except to note that, on 3 July 2017, Senstone wrote to HMRC to say that their client had been unable to locate any information on contents insurance. We are satisfied that the absence of any information about contents insurance, not even the name of an insurer or broker which could confirm the existence of a policy, shows that Ms Simpson never took out any contents insurance in relation to Earl's Court Square.

75. Finally, Senstone wrote to HMRC on 13 December 2017 to say that they considered that Ms Simpson had provided everything in her possession to HMRC.

76. On 15 February 2018, HMRC wrote to Senstone describing the information and documents relating to each property provided by both Ms Simpson and the third parties approached under the mandates. The letter set out HMRC's view of the capital gains tax liability of each property based on the information and documents.

77. On 15 March 2018, HMRC issued an assessment under section 29 TMA 1970 for £52,656.76 in relation to the chargeable gain arising on the disposal of Earl's Court Square in the tax year ended 5 April 2014. The assessment was made within the time limit prescribed by section 34 TMA 1970, i.e. within four years of the end of the year of assessment to which it related. On 13 April 2018, Ms Simpson appealed against the assessment and requested a review.

78. On 6 June 2018, HMRC issued a penalty assessment under Schedule 41 FA 2008 in the amount of £14,217.32 for failure to notify chargeability to capital gains tax in the year ended 5 April 2014. Senstone lodged an appeal with HMRC on behalf of Ms Simpson on 11 June 2018.

79. After a further exchange of correspondence, HMRC sent a review conclusion letter to Ms Simpson on 15 August 2018. The letter upheld the assessments for tax and penalty. On 12 September 2018, Ms Simpson appealed to the Tribunal in time. The grounds of appeal were as follows:

“The property concerned ... was my principle [sic] private residence during the relevant period – 5 June 2013 to 29 November 2013. As such I am not liable to any capital gains tax charge.”

SUBMISSIONS

80. Mr Fonseca contended that each of the properties was Ms Simpson's main residence for the following periods:

- (1) Coleherne Court from 18 December 2001 to 5 June 2013
- (2) Earl's Court Square from 5 June 2013 to 29 November 2013;
- (3) Coleherne Court from 29 November 2013 to 26 February 2014; and
- (4) Earl's Court Road from 26 February 2014 to 8 May 2015.

81. Ms Simpson's evidence was therefore that she owned two properties for the following periods:

- (1) From 5 June 2013 to 29 November 2013, she owned Coleherne Court and Earl's Court Square; and
- (2) From 26 February 2014 to 15 January 2015 (Coleherne Court and Earl's Court Road)

82. Mr Fonseca submitted that the fact that Coleherne Court remained Ms Simpson's correspondence address did not matter as there was no compelling reason to notify a change of address if she was happy to receive bills etc at old address and paid them. Mr Fonseca acknowledged that Ms Simpson only stayed in Earl's Court Square a few months but submitted that there is no minimum time limit that must be met in order for residence to be established.

83. HMRC's primary submission was that Earl's Court Square was not occupied by Ms Simpson at any time during the period of ownership from 5 June 2013 to 26 November 2013.

Ms Mulder stated that Ms Simpson had not provided any documentary evidence to support occupation of Earl's Court Square.

84. In the alternative, HMRC submitted that, if the Tribunal were to find that Ms Simpson occupied Earl's Court Square, she did not do so with a sufficient degree of permanence, continuity or expectation of continuity such as to amount to residence during the period of ownership from 5 June 2013 to 26 November 2013.

85. Further, even if Earl's Court Square was occupied by Ms Simpson as a residence, HMRC submitted that Coleherne Court was her main residence and, therefore, that PPR relief was not available in respect of Earl's Court Square.

86. Lastly, HMRC contended that s224(3) TCGA 1992 applied to deny PPR relief in relation to Earl's Court Square because Ms Simpson acquired it for the purpose of realising a gain from its disposal.

CONCLUSIONS ON THE EVIDENCE

87. Having described the evidence in some detail and made our findings of fact, we can set out our conclusions quite shortly. We accept the submission of HMRC that Ms Simpson has not proved, on the balance of probabilities, that she occupied Earls Court Square as her only or main residence at any time during her period of ownership from 5 June 2013 to 29 November 2013. Apart from the testimony of Ms Simpson, which we have found to be unreliable for the reasons set out above, there is a complete absence of evidence to show that Ms Simpson occupied Earls Court Square at all. If, contrary to our view, Ms Simpson occupied Earls Court Square at any time, we consider that such occupation did not have the necessary degree of permanence, continuity or expectation of continuity for it to be regarded as her residence. Our reasons for reaching these conclusions include the following:

- (1) There was no evidence to support the reason given by Ms Simpson for moving out of Coleherne Court and into Earl's Court Square such as a witness statement from her daughter.
- (2) Ms Simpson's stated intention to sell Coleherne Court to her daughter and her husband would have generated contemporaneous correspondence with her solicitors such as instructions to prepare documents for the sale but none were produced.
- (3) The sparse furnishing of Earl's Court square with excess furniture from Coleherne Court and the Wiltshire property was not consistent with an intention to live in the property permanently.
- (4) The inability to provide any information relating to contents insurance in relation to Earl's Court Square led us to conclude that Ms Simpson had never taken out any contents insurance (see [74]) which, in turn, indicated that Ms Simpson had never occupied the property either at all or as a residence.
- (5) The fact that utility accounts for Earl's Court Square were never transferred into Ms Simpson's name, notwithstanding that Foxtons had advised her that it was important to do so (see [34]), further indicates that Ms Simpson did not intend to occupy Earl's Court Square either at all or with sufficient degree of permanence, continuity or expectation of continuity to amount to a residence.
- (6) The use of Coleherne Court as the correspondence address for council tax bills for both Coleherne Court and Earl's Court Square (see [55]) and the fact that Foxtons' correspondence in relation to the sale of Earl's Court Square were addressed to Ms Simpson at Coleherne Court (see [50]) show that Ms Simpson continued to use Coleherne Court as her main residence and represented it as such to third parties.

(7) The fact that Coleherne Court was undoubtedly Ms Simpson's only or main residence for the first half and last month of 2013 and the complete absence of any evidence that Ms Simpson ever ceased residing at Coleherne Court leads us to find that it was more likely than not that it continued to be her only or main residence throughout 2013.

88. Having reviewed the evidence, our view is that Ms Simpson was not entitled to PPR relief in respect of her disposal of Earl's Court Square. Accordingly, the capital gain made on the sale of that property was chargeable and should have been shown on her 2013-14 self-assessment tax return and capital gains tax paid accordingly. As Ms Simpson failed to notify the chargeability to capital gains tax and there is no other ground on which the penalty was disputed, it follows that Ms Simpson is liable to pay the non-deliberate penalty issued under Schedule 41 FA 08.

89. In view of our finding that Earl's Court Square was never occupied by Ms Simpson as a residence, it is not necessary for us to reach a concluded view on HMRC's alternative submission, based on section 224(3) TCGA 1992, that PPR relief is not available because Ms Simpson acquired Earl's Court Square for the purpose of realising a gain from its disposal. We acknowledge that there is some evidence to support such a submission. Firstly, the indications that Foxtons gave advice about the improvements at or about the time of purchase and, secondly, the various references in the documents to Ms Simpson's intention to start a property business in the UK both strongly suggest that she was considering engaging in a property related business at some point. However, the earliest reference to such a business activity is the PDDA Ltd returns in which Ms Simpson is described as a Property Developer. Those returns were filed in March 2015 which was long after Earl's Court Square had been sold. There is insufficient evidence that Ms Simpson had formed an intention to be a property developer or manager before she bought Earl's Court Square or that it was the intended object of a property development business at the date of its acquisition. The fact that a gain was made is not necessarily evidence that achieving a gain was the reason for its acquisition. Accordingly, we have reached the conclusion that HMRC have not shown that Ms Simpson's evidence on this point, namely that she did not purchase Earl's Court Square with a view to selling it for a profit, should be rejected.

DISPOSITION

90. For the reasons set out above, Ms Simpson's appeal is dismissed.

91. Finally, we would like to record our appreciation of the electronic hearing bundle and authorities bundle which were prepared by HMRC and provided in advance. It was extremely helpful to have electronic versions of the bundles as it enabled both members of the panel to read the core documents such as the witness statements and skeleton arguments in advance.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

92. 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.

JUDGE GREG SINFIELD
CHAMBER PRESIDENT
Release date: 21 November 2019