



TC07917

CAPITAL GAINS TAX – relief on disposal of private residence – appellants lived in property for only 6-8 weeks – unsolicited offer to buy the property received from a neighbour – did the occupation of the property have the nature and quality of residence? – held, yes, as appellants intended to live there indefinitely until offer accepted – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal numbers: TC/2018/05685 and
TC/2018/05687**

BETWEEN

**STEPHEN CORE
LISA CORE**

Appellants

-and-

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

Respondents

TRIBUNAL: JUDGE ZACHARY CITRON

The Tribunal determined the appeal without a hearing with the consent of both parties under the provisions of rule 29 Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, as the Tribunal considered that the documentary evidence was sufficient for it to be able to decide the matter without a hearing. The documents to which the Tribunal was referred are described in the decision under 'Evidence'.

DECISION

1. This appeal was about whether the principal private residence (“PPR”) exemption from capital gains tax applied to the appellants’ sale of a jointly-held residential property (“Green Lane”) in June 2014.

BACKGROUND TO THE APPEALS

2. The appellants did not include the gain on the sale of Green Lane in their 2014-15 tax returns.

3. HMRC issued a closure notice in respect of the first appellant’s tax return for the 2014-15 tax year on 20 February 2018, bringing into charge a gain on the sale of Green Lane. It showed £11,990.03 as capital gains tax owing.

4. On 23 February 2018, HMRC charged a careless inaccuracy penalty on the first appellant in the amount of £2,158.20 in respect of the same gain.

5. The first appellant notified his appeal against these decisions to HMRC on 16 March 2018.

6. On 19 April 2018 HMRC raised a notice of assessment in respect of the 2014-15 tax year of the second appellant under s29 Taxes Management Act 1970, in the amount of £11,976.95, in respect of the same gain.

7. On 20 April 2018 HMRC charged a careless inaccuracy penalty on the second appellant in the amount of £2,066.02.

8. The second appellant notified her appeal against these decisions to HMRC on 20 April 2018.

9. On statutory review of these decisions in respect of both appellants, they were upheld, with a small reduction of the first appellant’s penalties (to £2,068.28), on 14 June 2018.

10. The appellants wrote to HMRC on 9 July 2018 requesting ADR.

11. HMRC replied in a letter dated 23 July 2018 reminding the appellants’ agent of their right to appeal to the Tribunal, giving an email address for ADR, and stating that “as statutory review has already been carried out, your clients should also apply to the tribunal to keep their legal rights”.

12. Notices of appeal dated 30 July 2018 were received by the Tribunal on 23 August 2018.

13. The Tribunal directed that the appellants’ appeals proceed together and be heard together by the same tribunal.

PERMISSION FOR LATE NOTIFICATION OF APPEALS TO TRIBUNAL

14. It appears that the appeals were notified to the Tribunal just over one month late (23 August 2018 as opposed to 14 July 2018). The Tribunal wrote to HMRC on 17 October 2018 requiring them to give any objection to the late appeal (with reasons) by the time of their filing a statement of case and stating that they would be considered to have consented to the late appeal if no objection was received. HMRC did not object. In their notices of appeal, the appellants said that documents were not delivered to them in time and were sent with insufficient time due to holidays and being away; also, when telephoning HMRC, call waiting was long in itself and, when they got through, immediate help was not given.

15. The norm is for Tribunal deadlines to be adhered to. However, as the delay is relatively short, appears to be linked to confusion over whether ADR would be pursued, and HMRC have not objected on grounds of lateness, I give permission for the late appeal.

EVIDENCE

16. I had a “court bundle” prepared by HMRC, which included correspondence between the parties and a witness statement of the HMRC officer involved in the case. I also had documentary evidence provided by the appellants on 25 May 2019 (and admitted by the Tribunal by direction dated 16 July 2019), which included a witness statement of the appellants and a letter from the buyer of Green Lane dated 4 July 2018.

RELEVANT LAW

PPR exemption: statute

17. The PPR exemption, as relevant to this appeal, is set out in the following sub-sections of ss222-223 Taxation of Chargeable Gains Act 1992:

222 Relief on disposal of private residence

(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

(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 18 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 18 months of the period of ownership in any event, divided by

(b) the length of the period of ownership.

PPR exemption: case law

18. In *Goodwin v Curtis* [1998] STC 475, a Court of Appeal case concerning the PPR exemption, the taxpayer put a property up for sale soon shortly before formally acquiring it from a related company; subsequently, he separated from his wife and family and, as a stop-gap measure pending the completion of his purchase of somewhere else to live, moved into the property for about a month before it was sold. Millett LJ held (at 480):

“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.”

19. In the same case, Schiemann LJ said (at 481):

“I accept, as did the commissioners, the Crown's contention that 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. Before the commissioners the taxpayer contended that at the date when he had acquired an interest in the respective properties he had intended them to be a permanent residence in each case. That contention explains the phraseology of the General Commissioners when they say in their third finding:

'We accepted the respondent's contention that on the dates when the appellant moved into respectively the [properties] he did not intend to occupy them as his permanent residence.'

That seems to have been the dispute before them. They resolved it in a manner which was open to them and the conclusion which they came to is equally open to them.”

Burden and standard of proof

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

FINDINGS OF FACT

21. The appellants were a married couple with school-age children, living in a town in Merseyside. Mr Core, the first appellant, was a builder by trade; he operated that business through his own company.

22. The appellants bought Green Lane on 22 March 2013. At the time, the appellants were living in rented accommodation (“Victoria Road”) in the same town. They did not move into Green Lane upon purchasing it, as they wished to do building work on it - extending and some refurbishment. Mr Core carried out this building work himself.

23. Victoria Road was conveniently located for Mr Core because his company was involved in a building project in the next door house.

24. The appellants signed an extension to their lease of Victoria Road, to 30 June 2014, with the landlord on 18 December 2013. On 23 June 2014 they signed a further such extension, to 31 December 2014.

25. During the course of the refurbishment work on Green Lane, the appellants fell out with the next door neighbours. Initially the dispute was over boundary/party wall works. Then, police and council were called in reference to vehicles illegally parked. Following a further complaint, an argument became physical.

26. On 16 June 2014 the appellants sold Green Lane to an individual who was living locally (the “Green Lane Buyer”).

27. As most of parties’ arguments in this case concern matters of fact, I shall deal with those arguments in this section of this decision. The key factual issues in contention in this case are:

- (1) When did the Green Lane Buyer offer to buy Green Lane and when did the appellants accept?
- (2) Did the appellants move out of Victoria Road and in to Green Lane in 2014 and, if so,
 - (a) when and for how long? and
 - (b) why?

28. I find as follows on these issues:

Factual issue (1)

29. The Green Lane Buyer first approached Mr Core in person as he was working outside in the front garden at Green Lane around February 2014. He asked if the property was for sale. Mr Core replied that it was not. Around a month later, in March/April 2014, the Green Lane Buyer once more approached Mr Core, in person at Green Lane, and made an oral offer to buy Green Lane, subject to a quick sale (as the Green Lane Buyer was selling his home). In this meeting, Mr Core told the Green Lane Buyer about his dispute with the neighbour. Mr Core did not accept the offer. A few days later, the Green Lane Buyer phoned Mr Core asking him to reconsider. Again, Mr Core did not accept the offer. About a month later, in May 2014, the Green Lane Buyer again called on Mr Core and made him a higher offer, if exchange could take place immediately. Mr Core accepted this higher offer.

30. The findings in the preceding paragraph are based on the evidence of the appellants and of the Green Lane Buyer, which was largely consistent and, in my view, more likely than not to have been accurate. There was, as HMRC argued, a lack of corroborating documentary evidence for the evidence given by the appellants and the Green Lane Buyer: however, in my view, this does not tip the balance of probability against their evidence, in part because the key events concerned were informal and undocumented.

31. HMRC's argument against the appellants' version of events focused on the statement in Mr Core's evidence that he accepted the Green Lane Buyer's offer after "asking the landlord at Victoria Road for an extension to our intended stay". HMRC argued that this meant the Green Lane Buyer's offer was accepted around December 2013, when the appellants' lease of Victoria Road was extended to 30 June 2014 – and so, by the time the appellants moved in to Green Lane in spring 2014, they had already agreed to sell Green Lane to the Green Lane Buyer. HMRC argued that this statement by Mr Core (about asking the Victoria Road landlord for an extension of the lease) could not be referring to the (later) Victoria Road lease extension to 31 December 2020, because that lease extension was signed with the landlord on 23 June 2014 - after the date of sale of Green Lane. On the balance of probabilities, I find that Mr Core was indeed referring to that later Victoria Road lease extension (to 31 December 2014), and not the earlier extension to 30 June 2014, because

- (1) this is consistent with the chronology of the making of the Green Lane Buyer's offer given by both Mr Core and the Green Lane Buyer – in both their accounts, the offer was made after the Victoria Road lease extension to 30 June 2014 had already been signed; and

- (2) the fact that the Victoria Road lease extension to 30 June 2014 was signed on 23 June 2014 does not mean that Mr Core did not ask the landlord, prior to that date, whether the landlord would be agreeable to such an extension – on the contrary, it is eminently likely that the extension was discussed (and informally agreed) between the appellants and the Victoria Road landlord well before the lease extension document was signed. I find that it is probable that Mr Core discussed the possibility of an

extension of the Victoria Road lease with the landlord following the Green Lane Buyer's amended offer in May 2014, in accordance with Mr Core's account of what happened.

Factual issue (2)

32. The appellants and their family moved out of Victoria Road and into Green Lane in March/April 2014 (about a year after their purchase of Green Lane). The year's delay in moving in was because it was not until this time that the building work at Green Lane was sufficiently completed to allow the family to move in. When moving from Victoria Road to Green Lane at this time, the appellants did not terminate, or seek to terminate, their lease of Victoria Road, because Mr Core used Victoria Road as an office, storage and amenity site for the building work his company was doing next door. The family later moved out of Green Lane, back to Victoria Road, shortly after the Green Lane Buyer's offer was accepted – this was towards the end of May 2014.

33. The findings in the preceding paragraph are based on the evidence of the appellants, which I found more likely than not to have been accurate. As before, there was, as HMRC argued, a lack of corroborating documentary evidence for the appellants' version of the evidence: however, in my view, this does not tip the balance of probability against their evidence, in part because the events concerned were unlikely to have been set out in documents.

34. The appellants and their family thus lived at Green Lane for 6-8 weeks, from late March/early April to late May 2014.

35. The appellants purchased a property ("Southport Road") in the same town as Green Lane on 14 May 2014. It was a derelict Grade 2 listed cottage; the appellants had been looking to buy it for some time; it needed a lot of work.

36. The appellants purchased a further property ("Piercefield Road") in the same town in November 2014; they moved into this property at the beginning of 2015, when the Victoria Road lease expired. They lived there for a year and on 31 December 2015, moved into Southport Road.

PARTIES' ARGUMENTS

37. I have dealt with the parties' positions on questions of fact in the 'findings of fact' section above.

38. HMRC do not accept that the occupation of Green Lane was of the quality and necessary degree of permanence or continuity to qualify as the appellants' private residence in line with s222.

39. HMRC submit that the crux of the case in many ways is whether the offer for sale of Green Lane was accepted prior to the appellants moving into the property. If so, then HMRC contend that any question of residence is redundant as there would not have been an intention to make Green Lane the appellants' residence.

40. The appellants argue that the PPR exemption is due on their sale of the property as their intention was to live in Green Lane as a family home and they actually did so. They never intended to sell Green Lane until they accepted the unsolicited offer made on it by the Green Lane Buyer.

APPLYING THE LAW TO THE FACTS AS FOUND

41. The issue in this case, given the facts as I have found them, is whether for some or all of the appellants' 6-8 week occupation of Green Lane, that property was their sole residence, or their main residence.

42. I have found that the appellants, with their children, moved out of the rented accommodation at Victoria Road, and into Green Lane, in late March/early April 2014. It follows that from this point in time, Victoria Road was no longer the appellants' residence.

43. The appellants' occupation of Green Lane was temporary – it lasted only 6-8 weeks. As the Court of Appeal said in *Goodwin v Curtis*, whether *occupation* amounts to *residence* is a question of fact and degree to be resolved by the Tribunal deciding whether the nature, quality, length and circumstances of the occupation made it so. To succeed, the appellants must provide some evidence that their residence in the property showed some degree of permanence, some degree of continuity or some expectation of continuity.

44. I have found that the appellants' move into Green Lane late March/early April 2014 was occasioned by the fact that the building work on Green Lane, carried out by Mr Core himself, was sufficiently completed for them to move in; and that the fact that the Victoria Road lease carried on, even after the appellants moved into Green Lane, was explained by Mr Core's using the space for his building project next door. These facts support the inference that the appellants had moved to Green Lane expecting to live there for an indefinite period.

45. On the other hand, by late March/early April, when the appellants moved into Green Lane, the Green Lane Buyer had already twice approached Mr Core, offering to buy Green Lane. Mr Core had not, at that stage, accepted that offer. He would do so, in late May, when the Green Lane Buyer increased the offer price.

46. The question is whether the existence of that offer at the point at which the appellants moved in to Green Lane, means that the quality of their occupation of Green Lane was other than residence – essentially, because they knew all along that their stay at Green Lane might well be very short-lived.

47. In my view, the very fact that the appellants moved in to Green Lane with their children – when they had a continuing lease at Victoria Road and so could have stayed on there until the end of June – is strongly indicative that they expected to live at Green Lane indefinitely. If, in late March/early April, they had thought there was a serious possibility of their accepting the Green Lane Buyer's offer and selling Green Lane in the short term, they would stayed put at Victoria Road until such a sale was made (or clearly would not be made).

48. I am thus satisfied that the appellants' evidence – essentially, their account of what happened in the spring of 2014 and in particular the details of the unexpected, and eventually increased, offer from the Green Lane Buyer - shows sufficient expectation that their occupation of Green Lane from late March/early April 2014 would continue indefinitely, such that Green Lane became their sole residence from that time until they moved back to Victoria Road in late May 2014.

49. This means that, applying sections 222 and 223 TCGA, the whole of the appellants' gain on sale of Green Lane was within the PPR exemption (given that the last 18 months of their period of ownership of Green Lane covers the whole period of their ownership of Green Lane).

CONCLUSION

50. The appeal is allowed: the assessments in respect of the gain on sale of Green Lane are reduced to nil and the related penalties are cancelled.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

51. 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.

**ZACHARY CITRON
TRIBUNAL JUDGE**

RELEASE DATE: 31 OCTOBER 2020