



[2022] FTSTC 6

Ref: FTS/TC/AP/22/0001

Land and Buildings Transaction Tax – Additional Dwelling Supplement (ADS) – disposal of dwelling that was the subject matter of the chargeable transaction and which was not the buyer’s only or main residence at any time during the period of 18 months ending with the effective date of the transaction – whether ADS repayable – no – appeal dismissed

DECISION NOTICE

IN THE CASE OF

Mr Iain Robertson

Appellant

- and -

Revenue Scotland

Respondent

**TRIBUNAL: ANNE SCOTT
CHARLOTTE BARBOUR**

**The hearing took place at George House, Edinburgh, in person, on Thursday
7 July 2022**

Iain Robertson, the Appellant, in person

Mairi Gibson, Solicitor, Revenue Scotland

DECISION

Introduction

1. This is a very sad case.
2. It concerns an appeal against the decision dated 19 May 2021, confirmed on review on 25 January 2022, by Revenue Scotland refusing Mr Robertson's application for repayment of Additional Dwelling Supplement ("ADS"). That application was in terms of paragraph 8 of Schedule 2A to the Land and Buildings Transaction Tax (Scotland) Act 2013 ("LBTTA").
3. Neither the facts nor the law are in dispute.

The facts

4. On 14 February 2020, Mr Robertson purchased a house ("the House") and the electronic Land and Buildings Transaction Tax ("LBTT") return was received by Revenue Scotland on the same day.
5. Mr Robertson owned a flat ("the Flat") which he intended to sell in order to fund the renovation of the House which would then become his and his wife's home.
6. Therefore the LBTT return included an additional amount of LBTT chargeable of £4,000 being the ADS.
7. Lockdown happened the following month. As a result, Mr Robertson had been unable to leave the Flat, house moves were not permitted so he could not put the Flat on the market and no contractors were allowed to enter the House to undertake required renovations.
8. Once lockdown eased the family who had intended to help him renovate the House were no longer able to do so and he could not find appropriate tradesmen for all of the work. He did find someone to install a new boiler and radiators and lay carpets in some of the rooms.
9. His savings had all been used so he did some of the work himself, such as laying flooring in the hallway and kitchen. However, that had a very adverse effect on his serious underlying health conditions. He then spent three weeks in bed unable to do very much at all let alone repairs. His mobility deteriorated significantly. He was unable to climb the stairs in the House. He was in debt. He is a pensioner and lives on his pension.
10. Very reluctantly, he decided that because of this combination of unique and completely unpredictable circumstances that he had no choice but to sell the House.
11. It was sold on 16 April 2021, and his lawyer submitted a claim to Revenue Scotland for repayment of the ADS of £4,000.

12. Revenue Scotland wrote to the lawyer on 19 May 2021 confirming that the conditions for repayment of the ADS had not been met, not least because the House had formed the subject matter of the chargeable transaction.

13. Correspondence ensued and Mr Robertson decided to write to Kate Forbes, MSP explaining the situation and pointing out that he had “been caught by a set of rules that were not meant” for his situation. Tom Arthur, MSP replied stating that Ministers could not intervene with Revenue Scotland and their decisions. Revenue Scotland had to apply the legislation as passed by the Scottish Parliament.

14. The correspondence then passed to the Directorate of Taxation and Fiscal Sustainability which confirmed that the Scottish Government could not intervene, telling Mr Robertson to request that Revenue Scotland review their decision.

15. Correspondence with Revenue Scotland then ensued and on 24 November 2021, a formal review of the decision of 19 May 2021 was requested. Mr Robertson again explained the circumstances as outlined above. He argued in addition that he had been forced to make the property suitable for sale and put it on the market without ever spending one night in it. It was wholly unfair that he should not be able to reclaim the ADS.

16. On 15 December 2021, Revenue Scotland issued its View of the Matter letter to Mr Robertson confirming that the original decision was upheld on the basis that Mr Robertson’s claim did not satisfy the conditions in section 8 of Schedule 2A of LBTTA.

17. On 25 January 2022, Revenue Scotland issued the Review Conclusion letter to the same effect.

18. On 28 January 2022, Mr Robertson lodged an appeal with the Tribunal.

The Appellant’s Grounds of Appeal

19. At the heart of Mr Robertson’s case was his argument that the Scottish Government had enforced lockdown and extending the time for sale of the original property was not the only reasonable provision to make in relation to Covid. A measured and fair solution would be to make allowances for exceptional circumstances.

Revenue Scotland’s argument

20. Shortly put, Revenue Scotland state that they must apply the law and they have no discretion. There is no ambiguity in the clear words of the statute and Mr Robertson had not complied with the three provisions in paragraph 8(1) of Schedule 2A LBTTA.

Discussion

21. We unequivocally accept that at the time of the purchase of the House, Mr Robertson fully intended to replace the Flat which was his existing main residence.

22. The Tribunal was created by the Scottish Parliament and is therefore a creature of statute. What that means is that its powers are only those that are given to it expressly

by statute. Any decision that the Tribunal makes must be based on the relevant law. In this case that is paragraph 8(1) Schedule 2A LBTTA which reads:-

“Repayment of additional amount in certain cases

- 8 (1)** Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—
- (a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (**other than one that was or formed part of the subject-matter of the chargeable transaction**),
 - (b) that dwelling was the buyer’s only or main residence at any time during the period of 18 months **ending with the effective date of the transaction**, and
 - (c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer’s **only or main residence.**”

23. We have highlighted in bold the key words.

24. It is not in dispute that in the first instance Mr Robertson was liable for both the LBTT and the ADS. It is also not in dispute that if he had sold the Flat within 36 months (extended in his case from 18 months because of Covid) then he would have qualified for repayment of the ADS.

25. The problem for him is that he simply did not comply with either paragraphs 8(1)(a) or 8(1)(b) Schedule 2A LBTTA.

26. Since it is the House which triggered the payment of ADS, it is the House which formed the subject-matter of the chargeable transaction. Therefore, in order to obtain repayment the disposal must be of a property *other* than the House in order to meet the first condition. Thus, the disposal of the House cannot result in repayment of the ADS. Therefore, the condition in paragraph 8(1)(a) is not met.

27. From the wording of the legislation, it is clear that it was the Scottish Parliament’s intention that ADS is only repayable in the limited circumstances set out in paragraph 8(1) of Schedule 2A LBTTA. All three conditions in paragraph 8(1) of that Schedule must be met for the ADS to be repayable. As neither of the conditions in paragraph 8(1)(a) or 8(1)(b) of Schedule 2A LBTTA are met in this case, the ADS cannot be repayable.

28. It is evident that when this legislation was drafted, and amended more than once, it was the clear intention of the Scottish Parliament to permit repayment of the ADS in only very limited circumstances. Sadly for Mr Robertson, he simply does not fit within those. The legislation contains no provisions giving Revenue Scotland the power to extend those circumstances.

29. This Tribunal has no discretion and must apply the law as it has been enacted by the Scottish Parliament. Only the Scottish Parliament can alter the terms of the legislation.

30. Lastly, in their Skeleton Argument, Revenue Scotland are correct to quote *Dr Goudie and Dr Sheldon v Revenue Scotland*¹ at paragraph 67 where, having quoted from the Upper Tribunal in *HMRC v Hok*², the Tribunal stated “This Tribunal does not have jurisdiction to consider...fairness.” It does not.

31. Both in correspondence and at the Hearing, Revenue Scotland have very fairly said that they sympathise with Mr Robertson. We also most certainly sympathise with him and fully understand why he feels trapped and very unhappy. However, we can only apply the law.

Decision

32. For the reasons set out above, we find that Revenue Scotland’s interpretation of the legislation and its application to the undisputed facts is entirely correct and the decision is upheld.

33. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has the right to apply for permission to appeal on a point of law pursuant to Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. In terms of Regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, any such application must be received by this Tribunal within 30 days from the date this decision is sent to that party.

ANNE SCOTT
President

RELEASE DATE: 15 July 2022

¹ 2018 FTSTC 3

² [2012] UKUT 363 (TCC)