



TC07661

SDLT – service of enquiry notices – whether properly addressed and sent to Appellants registered office – s 84 Finance Act 2003

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal number: TC/2018/04758 &
04759**

BETWEEN

**TROY HOMES LIMITED
TROY HOMES (INLAND) LIMITED**

Appellants

-and-

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

Respondents

TRIBUNAL: JUDGE RACHEL SHORT

Sitting in public at Taylor House 88 Rosebery Avenue, London on 12 March 2020

Mr Patrick Cannon of Old Square Tax Chambers for the Appellants

**Mrs Gemma Adams and Dr Jeremy Schryber litigators of HM Revenue and Customs’
Solicitor’s Office, for the Respondents**

DECISION

INTRODUCTION

1. This appeal considers, as a preliminary issue, whether enquiry notices which HMRC say were properly issued to both Appellants on 13 January 2017 were served on the two companies within the statutory enquiry period in accordance with Schedule 10, paragraph 12 Finance Act 2003.

2. This substantive appeal concerns the meaning of “dwelling” for the purposes of “Multiple Dwelling Relief” from stamp duty land tax (“SDLT”) and in particular whether bare land on which construction has not commenced at the effective date of transfer is eligible for that relief.

3. The law concerning “Multiple Dwelling Relief” (“MDR”) is set out at section 58D of the Finance Act 2003 and at Schedule 6B of that Act. The meaning of “dwelling” is set out at paragraph 7 of Schedule 6B.

BACKGROUND FACTS

4. Troy Homes (Inland) Limited (“Troy Inland”) acquired land at The Pheasant, Plantation Road Amersham on 26 May 2016 for consideration of £1,560,000.

5. Troy Inland submitted a Land Transaction return for this land purchase on 22 June 2016 including a claim for MDR.

6. Troy Homes Limited (“Troy”) acquired land at Old Corn Barn, Dunmow Road, Abbess Roding on 19 April 2016 for consideration of £1,462,000.

7. Troy submitted a Land Transaction return to HMRC for this land purchase on 18 May 2016 including a claim for MDR.

8. HMRC opened enquiries into Troy and Troy Inland’s Land Transaction returns and issued enquiry notices (“the Enquiry Notices”) on 13 January 2017 on the basis that MDR was not available.

9. HMRC issued closure notices on Troy and Troy Inland on 8 January 2018 refusing their claims for MDR on the bare land which had been purchased.

10. Troy and Troy Inland appealed to HMRC on 31 January 2018 on the basis that HMRC’s enquiry letters of 13 January 2017 had not been received.

11. HMRC undertook a statutory review on 29 May 2018, confirming their original decision.

12. Troy and Troy Inland appealed to this Tribunal on 25 June 2018.

13. The amounts of SDLT in dispute are:

(1) Troy Inland: £31,500

(2) Troy: £47,980.

14. Agreed matters

(1) These two appeals were joined by a Direction of 7 August 2018.

(2) Penalties under Schedule 24 Finance Act 2007 which were originally issued to the Appellants on 16 January 2018 are no longer in dispute. The penalty notices served were withdrawn by HMRC on 27 April 2018 in respect of both Appellants.

(3) The statutory deadlines for the service of the Enquiry Notices are:

(a) Troy: 19 February 2017

(b) Troy Inland: 25 March 2017

(4) The initial burden of proof lies with HMRC to demonstrate that the Enquiry Notices were properly served under paragraph 12, Schedule 10 Finance Act 2003.

PRELIMINARY ISSUES

Late service of evidence

15. The Appellants made an application on 4 March 2020 to submit a witness statement of Adrian Cook. The Appellants accepted that this witness evidence had been served late but suggested that it included vital evidence about whether the Notices of Enquiry were given to the Appellants.

16. At the Tribunal HMRC did not object to this application. Adrian Cook's witness statement was therefore admitted and Mr Cook gave oral evidence at the Tribunal.

Witness not available to give oral evidence

17. HMRC notified the Tribunal on 6 March 2020 that its witness, Dale Ritchie, was not available to give oral evidence to the Tribunal due to ill health. They asked that either the hearing be postponed to allow Mr Ritchie to appear on another occasion or for HMRC to provide an alternative witness, or that Mr Ritchie's witness evidence be taken as read under Rule 15(e)(ii) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber)Rules 2009.

18. The Appellants did not object to Mr Ritchie's witness evidence being taken as read in order to avoid any further delay in the appeal being dealt with.

19. Mr Ritchie's witness statement was therefore accepted as uncontested witness evidence at the Tribunal.

THE LAW

20. SDLT returns and Enquiry Notices

(1) *Section 78 Part 4 Finance Act 2003 Returns, enquiries and related matters*

“Schedule 10 has effect with respect to land transaction returns, assessments and related matters”

(2) *Schedule 10 Finance Act 2003 – paragraph 12 Notices of Enquiry*

“(1) The Inland Revenue may enquire into a land transaction return if they give notice of their intention to do so (“notice of enquiry”) –

(a) to the purchaser.

(b) before the end of the enquiry period”

(3) *S 84 Finance Act 2003 “Delivery and service of documents”*

“(1) A notice or other document to be served under this Part on a person may be delivered to him or left at his usual or last known place of abode.

(2) A notice or other document to be given served or delivered under this Part may be served by post.

(3) For the purposes of section 7 of the Interpretation Act 1978 (c.30) (general provisions as to service by post) any such notice or other document to be given or

delivered to, or served on, any person by the Inland Revenue is properly addressed if it is addressed to that person-

(a).....

(b) in the case of a company –

(i) at its principal place of business

(ii) if a liquidator has been appointed, at his address for the purposes of the liquidation, or

(iii) at any place prescribed by regulations made by the Inland Revenue”

(4) *S 7 Interpretation Act 1978 “References to service by post”*

“Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”

(5) *Companies Act 2006 s 1139(1) “Service of documents on a company”*

“(1) A document may be served on a company registered under this Act by leaving it at, or sending it by post to, the company’s registered office”

Meaning of dwelling for MDR purposes

(6) *S 116 Finance Act 2003 Meaning of residential property*

“(1) In this Part “residential property” means:

(a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use, and

(b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on that land) or,

(c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b)”

(7) *Paragraph 7 Schedule 6B Finance Act 2003 What counts as a dwelling*

“(1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.

(2) A building or part of a building counts as a dwelling if –

(a) it is used or suitable for use as a single dwelling, or

(b) it is in the process of being constructed or adapted for such use.

(3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.

(4) Land that subsists or is to subsist for the benefit of a dwelling is taken to be part of that dwelling”

21. Case authorities referred to:

(1) *Spring Capital Limited v HMRC* [2016] UKFTT 0246(TC)

(2) *Qureshi v Revenue & Customs* [2018] 115 (TC)

(3) *Kothari v HMRC* [2019] UKFTT 0423 (TC)

EVIDENCE SEEN AND HEARD

22. Evidence of Mr Cook

(1) Mr Cook's witness statement dated 27 February 2020 was brief, stating his role as finance director of Troy and Troy Inland and that

“as Finance Director I deal with payments of SDLT. I work closely with Richard Werth CEO and I can confirm that we did not receive HMRC's letters dated 13 January 2017”.

Mr Cook gave oral evidence and was cross-examined by HMRC and further explained that most of the Appellants' post was received at their business address, which in 2017 was Winter House, Enfield.

The address which had been included on the SDLT form was not the Appellants' business address but their registered office. Neither he nor Mr Werth worked at the registered office, which was the address of the Appellants' accountants, Grunberg.

Grunberg had been appointed as the Appellants' accountants in 2015 and their address had been the registered address of the Appellants since then.

Mr Cook told the Tribunal about the system for dealing with post at his business address and at the registered office; if Grunberg received letters at the registered address they would send an email to Mr Cook informing him that post had been received and then send that post on, either in hard copy or as an email attachment.

Mr Cook said that correspondence from HMRC was sent to the registered address not the business address of the Appellants.

Mr Cook stated that as far as he was aware there had been no other issues with non-receipt of post at the Appellants' registered office.

Mr Cook referred to the letters sent to HMRC by Cornerstone, the Appellants' agent in July 2016 notifying HMRC that they should communicate with them in respect of the MDR claims and said that HMRC had not provided any explanation for why these letters had not been acted on.

Mr Cook confirmed that he had not undertaken any searches of the companies' files to ascertain whether the original letters of 13 January 2017 could be found, but that he was satisfied that the Enquiry Notices had not been received.

Evidence of Mr Ritchie

(2) I saw Mr Ritchie's witness statement dated 15 March 2019 which was taken as read. In that statement Mr Ritchie, an officer of HMRC in their mail service team sets out HMRC's standard processes for printing and posting mail through its “Central Print Service”, including (i) creating and up loading letters in standard template forms, (ii) the conversion of these in large batches to print files in the Central Print Service, (iii) their digital transfer to the print provider, (iv) the print provider printing the letters through an automated process (v) an automated process for separating folding and enclosing the letters in windowed envelopes with a unique identifier on each page and finally (vi) passing the letters to the relevant postal carrier.

Mr Ritchie states that he downloaded a data report on 14 March 2017 confirming that two letters were created with specific job references Troy Homes (Inland) Limited and Troy Homes Limited. Those letters were received into the Central Print Service on 12 January 2017 and “completed” ie printed and despatched on 13 January 2017.

Mr Ritchie also refers to a reconciliation file which is provided by the print provider to HMRC confirming that all items have been printed and despatched. Mr Ritchie referred to a spreadsheet which he received on 28 March 2017 showing that a reconciliation report was made to HMRC confirming production and dispatch of all files between 14 January and 16 January 2017.

Documentary evidence

(3) Email of 20 March 2017 from Jordan Armstrong of Grunberg to Richard Werth:

“Please find attached two enquiry letters that I have received from HM Revenue and Customs today. HM Revenue and Customs are enquiring into the stamp duty land tax position for Troy Homes Limited and Troy Homes (Inland) Limited. We have not received the letters dated 13 January 2017 as referred to in HM Revenue and Customs’ letter. As far as I am aware, our office was the registered office for both of the Troy Homes companies at that time, so we should have received a copy of the initial letters at the very least. Please let me know if you have received any correspondence from HM Revenue and Customs regarding an enquiry into the SDLT position for either Troy Homes Limited or Troy Homes (Inland) Limited”

(4) Email of 20 March 2017 from Richard Werth to Stevie Gill and David Hannah (at the Appellants’ solicitors office) forwarding the email of 20 March 2017 from Grunberg saying:

“Please see attached letters. I haven’t had the letter of 13 January. Annoying”

(5) Land Transaction returns of both Appellants sent to HMRC electronically by their solicitor and including at box [56] “purchaser address” –

(a) for Troy Inland “10-11 Accommodation Road London” sent on 22 June 2016, and

(b) for Troy “10-14 Accommodation Road London” sent on 18 May 2016.

(6) Letters from the Appellants’ agent, Cornerstone to HMRC dated 19 July 2016 enclosing a letter of authority and asking that HMRC communicate with them in respect of claims for MDR for Troy in respect of purchases at Plantation Road and Dunmow Road.

(7) Various correspondence between the parties from 27 April 2017 to 29 May 2018.

WERE THE ENQUIRY NOTICES SERVED ON THE APPELLANTS WITHIN THE STATUTORY PERIOD ?

23. The Appellants argue that the Enquiry Notices issued to both Appellants and dated 13 January 2017 were not received by either Appellant and that HMRC has therefore failed to comply with its obligation at paragraph 12 Schedule 10 Finance Act 2003 to serve Enquiry Notices within the statutory period.

24. HMRC contend that the Enquiry Notices were properly served in accordance with s 84(3) Finance Act 2003 by post to the Appellants on 13 January 2017, within the statutory time period.

HMRC's arguments

Onus of proof

25. HMRC accept that the initial burden of proof lies with them to show that the Enquiry Notices were properly served under paragraph 12 of Schedule 10 Finance Act 2003.

Evidence provided by HMRC

Mr Ritchie's evidence

26. HMRC say that Mr Ritchie's evidence of HMRC's Central Print Service system demonstrates that the Enquiry Notices were properly issued through that system to the address given on the SDLT returns for both Appellant companies on 13 January 2017. The print provider provided evidence that all items sent to print for that date were successfully printed and despatched. In the absence of any evidence to the contrary, the print process operated successfully and both Notices of Enquiry were properly issued.

27. The slight discrepancy in the address used for Troy Inland (10-11 Accommodation Road) compared with the address used for Troy (10-14 Accommodation Road) accords with the address provided on Troy Inland's SDLT return. HMRC have sent the Enquiry Notices to the address provided by the Appellants. In any event, the Enquiry Notice would have been properly served because Accommodation Road has consecutively numbered properties with no separate number 11.

28. Other HMRC correspondence issued to 10-11 Accommodation Road has been confirmed as received by Troy Inland.

29. HMRC did not receive any notice of undeliverable post at either address and the Enquiry Notices were not returned to HMRC.

Properly addressed and sent

30. HMRC state that s 84(2) provides that the Enquiry Notices may be served by post and that if served by post, in accordance with s 7 of the Interpretation Act 1978, the Enquiry Notices will be treated as properly addressed if addressed to the Appellants at their principal place of business.

31. In respect of the use of the companies' registered address, HMRC go on to say that s 1139(1) Companies Act 2006 provides that a document may be served on a registered company by leaving it at, or sending it by post to, the company's registered office, as was done in this case.

32. In accordance with s 7 of the Interpretation Act 1978 the Enquiry Notices were "properly addressed, pre-paid and posted" to the Appellants and therefore they are deemed to be served on the Appellants unless the Appellants can prove otherwise.

33. HMRC told the Tribunal that in this case the Enquiry Notices were sent to the Appellants' registered office because that was the address provided on the SDLT form. HMRC could not provide any information about any system which they had for checking that address, for example against other addresses held for that taxpayer, but did say that it was a decision for the particular officer involved which address was used for Enquiry Notices.

Appellants' evidence of non-receipt

34. HMRC accept that that neither Mr Cook nor Mr Werth saw the 13 January 2017 Enquiry Notices, however they point out that the only evidence of non-receipt provided by the Appellants is Mr Cook's brief witness statement and Mr Werth's email. The Appellants have

not provided any evidence of the postal system which operated at their registered office or any evidence to rebut a suggestion that the Enquiry Notices were simply mislaid in the post system at the registered office.

35. In the face of a lack of evidence from the Appellants to demonstrate that the Enquiry Notices were not received, on the balance of probabilities the Enquiry Letters were received at the Appellants' registered office.

36. HMRC could not explain why the letters sent from Cornerstone in July 2016 authorising them to act as agents for the Appellants had not been received or acted on.

Appellants' arguments

37. The Appellants' starting point is that HMRC need to show that the Enquiry Notices were given to the Appellants before the end of the enquiry window. While there is no dispute what the end dates for the Enquiry Notices to be sent for each of the Appellants is, the onus is on HMRC to prove that the letters have been properly addressed, pre-paid and posted in accordance with s 7 Interpretation Act 1978.

Evidence provided by HMRC

38. It is the Appellants' view that the evidence provided by HMRC in the form of the witness statement provided by Mr Ritchie, is not sufficient to establish that the Enquiry Notices were properly addressed, prepaid and posted. To be sufficient the evidence must meet the requirements set out in *Qureshi*

“Courts and Tribunals admit evidence of system which, if sufficiently detailed and cogent, may well be sufficient to discharge the burden of proving that such a notice was sent in the ordinary course of the way in which a particular business or organisation operates its systems for the dispatch of such material” [14]

Properly addressed and sent

39. It is only a supposition on HMRC's part that the letters processed by HMRC were sent to the correct address. Despite having been asked to provide the relevant metadata, HMRC have not provided this, although this was considered relevant evidence in other decisions such as *Kothari*, to demonstrate that HMRC's systems had failed.

40. Also as suggested in *Kothari*, the fact that HMRC did not receive the Enquiry Notices back as undelivered is not evidence that they were sent to the correct address; if they were not sent, then they could not have been returned.

41. HMRC's evidence falls short in a number of ways; the data reports referred to by Mr Ritchie have not been supplied; the reconciliation report referred to by Mr Ritchie has not been supplied, nor has the spreadsheet to which he refers. There is also a discrepancy in the dates for which Mr Ritchie says he has information of despatch (14 – 16 January); the relevant date for the Appellants' purposes is 13 January. HMRC have not produced anything to demonstrate that the Enquiry Notices were sent to the correct address.

Evidence of non-receipt

42. Even if it can be assumed that the Enquiry Notices have been properly pre-paid addressed and posted, the Appellants have provided evidence, in the witness statement of Mr Cook and emails from Grunberg, that the letters were not received.

43. Any suggestion by HMRC that these statements are not good evidence of non-receipt amounts to a suggestion of dishonesty on the part of Grunberg and Mr Werth.

44. In the Appellant's view it is unlikely that letters from HMRC would have been lost in the post room of the registered office.

45. On the balance of probabilities the evidence suggests that even if HMRC did properly address the Enquiry Notices, they were not received by the Appellants.

Findings of fact

46. On the basis of the evidence heard and seen I make the following findings of fact:

(1) The address stated by the Appellants on both SDLT forms was their registered address. This registered address is not the main business address of either of the Appellants.

(2) Neither Mr Cook nor Mr Werth worked at the registered office, which was in fact the office of the Appellants' accountants.

(3) There was a process in place for transferring post from the Appellants' registered office to Appellants' business office.

(4) The Enquiry Notices had been processed in accordance with HMRC's standard procedure and no errors had been reported.

Conclusion on preliminary point - service of Enquiry Notices

Have HMRC demonstrated that letters properly addresses and posted?

47. The specific provisions of s 84 Finance Act 2003 apply to the Enquiry Notices purportedly served by HMRC on the Appellants, since they are documents served under s 78 of Part 4 of the Finance Act 2003. That statutory provision is detailed and clear; documents served by post under Part 4 of the Finance Act 2003 are properly addressed if they are addressed to the company's "principal place of business".

48. Despite this clear wording, HMRC could not direct me to any process which they applied to determine the correct address which should be used when sending an enquiry notice under Part 4 of the Finance Act 2003, saying that the address which was used would be up to the relevant officer. The Tribunal was not told who that relevant officer was or anything about the process for deciding on the address used.

49. What is clear is that in this case, the address which was used was the Appellants' address as given on the SDLT form. In fact, because of the discrepancy between the address given for Troy and Troy Inland, there can be little doubt that what was done by the officer in this case was to transpose the address from the SDLT form onto the Enquiry Notice.

50. Interestingly the SDLT form does not require a taxpayer to provide any particular type of address, merely providing a space headed "purchaser's address". This is at odds with the prescriptive terms of s 84 of the Finance Act 2003 for service by post which refers specifically to a company's principal place of business.

51. In this case, the purchaser's address given by both Appellants on the SDLT form was not their principal place of business, but their registered address.

52. HMRC seemed to be suggest that despite this discrepancy, their Enquiry Notices had been properly addressed for two reasons:

- (1) The provisions of the Companies Act, which stipulates that documents may properly be served at a company's registered address; and
- (2) The general principle that HMRC are entitled to address correspondence to the address most recently provided to them by a taxpayer.

53. In my view neither of these assertions support HMRC's argument that the Enquiry Notices were properly addressed:

(1) While s 84 does refer to other regulations which may provide for different rules about serving documents on companies, HMRC did not suggest that there were any such regulations which gave the Companies Act precedence over the rules given in s 84, nor did they suggest any other reason why the Companies Act may be relevant in circumstances where legislation refers to documents being posted to a company's principal place of business and not its registered office.

(2) While HMRC may be able to assert as a general proposition that it can only act on address information provided by a taxpayer, that general proposition cannot be extended to situations in which relevant legislation provides for service of documents by post to a particular kind of address unless HMRC have got some basis for believing that the address which they are using fits within the correct category of address.

54. It is worth stressing that the onus is on HMRC to address Enquiry Notices in accordance with the statutory code. It must therefore follow that the onus is on HMRC to ensure that the address which they are using is the correct address in accordance with the relevant statutory code.

55. The relevant statutory code here requires HMRC, if it is sending an enquiry notice by post, to send it not to the address provided by the taxpayer on the SDLT form, but to the taxpayer's principal place of business. As far as I could ascertain, there was nothing on the SDLT form completed by the Appellants to indicate that the address required was their principal place of business.

56. HMRC provided no evidence that they did anything other than accept that the address given on the form was the "correct" address for s 84 purposes. HMRC seem to have assumed that address given in SDLT form was the correct address for s 84(3) purposes, despite the fact that the form does not stipulate that the address given should be the principal place of business. When questioned by the Tribunal HMRC merely reiterated that the enquiry notices had been sent to the "correct and appropriate address"; being the address provided on the SDLT form. HMRC did not provide any evidence of the address history held for the Appellants for SDLT or other purposes.

57. Neither could HMRC explain why the letters written to them by Cornerstone requesting that correspondence be addressed to them as the Appellants' agents in July 2016 had not been acted on.

58. In my view, in failing to demonstrate that they had any basis to believe that the address given by the Appellants in the SDLT forms was in fact the Appellants' principal place of business and in making the decision to send their Enquiry Forms to that address without any further enquiry, HMRC have failed to "properly address" the Enquiry Notices and have not fulfilled the conditions at s 84(3) Finance Act 2003.

59. For that reason the Appellants' appeal against the Enquiry Notices must succeed; the Enquiry Notices served on both Troy and Troy Inland were not properly served within the relevant time limit.

60. Having come to this decision on the preliminary question, it is not necessary for me to consider the substantive issue in dispute between the parties.

61. 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.

RACHEL SHORT

TRIBUNAL JUDGE

RELEASE DATE: 1 APRIL 2020