



19 August 2020

PRESS SUMMARY

Commissioners for Her Majesty's Revenue and Customs (Respondent) v Parry and others (Appellants)

[2020] UKSC 35

On appeal from [2018] EWCA Civ 2266

JUSTICES: Lord Reed, Lord Hodge, Lady Black, Lord Kitchin, Lord Sales

BACKGROUND TO THE APPEAL

During her marriage, Mrs Staveley and her husband set up a company. She had a pension fund with the company's occupational scheme, and this fund was transferred to another pension scheme ("the pension scheme") for her when she and her husband divorced. In December 2006, Mrs Staveley died. Shortly before her death, she transferred funds from the pension scheme into a personal pension plan ("PPP"). The transfer was motivated by Mrs Staveley's desire to ensure that her ex-husband did not benefit from the return to the company of any surplus in the fund. She did not take any pension benefits during her life and, in those circumstances, death benefit was payable under the PPP. Mrs Staveley nominated her two sons as beneficiaries of the death benefit, subject to the discretion of the pension scheme administrator. After her death, the death benefit was paid to them. Her Majesty's Revenue and Customs ("HMRC") determined that inheritance tax was due on the death benefit, on the basis that both the transfer of funds from the pension scheme into the PPP, and Mrs Staveley's omission to draw any benefits from the plan before her death, were lifetime transfers of value within section 3 of the Inheritance Tax Act 1984 ("IHTA"). The issue in this appeal is whether HMRC were right to take that view.

The appellants are the three executors of Mrs Staveley's estate (her two sons and a solicitor, Mr Parry). They argue that inheritance tax is not payable, either on the transfer of funds into the PPP (the "**transfer**") or on Mrs Staveley's omission to draw pension benefits from the PPP (the "**omission**").

The issue has divided the courts below. The First-tier Tribunal (Tax Chamber) held that inheritance tax was due on the omission but not the transfer. The Upper Tribunal (Tax and Chancery Chamber) disagreed, finding that no inheritance tax was payable on either transaction. The Court of Appeal held that both the transfer and the omission gave rise to a charge to inheritance tax.

JUDGMENT

By a majority, the Supreme Court partially allows the appeal, holding that the omission gave rise to a charge to inheritance tax, but the transfer did not. Lady Black gives the lead judgment, with which Lord Reed and Lord Kitchin agree. Lord Hodge gives a separate judgment, dissenting in part, with which Lord Sales agrees.

REASONS FOR THE JUDGMENT

Inheritance tax is chargeable on the value transferred by a "disposition" which is a "transfer of value" under the IHTA. Section 3(3) IHTA extends the meaning of "disposition" to include deliberate omissions by which the donor's estate is diminished and the value of another person's estate is increased. Section 10(1) IHTA provides that a disposition that "*was not intended, and was not made in a transaction intended, to confer any gratuitous benefit on any person*" is not a "transfer of value" and so does not give rise to a charge to inheritance tax. Section 10(3) IHTA provides that a "*transaction*" for section 10(1) purposes "*includes a series of transactions and any associated operations*" [6-13].

In the lead judgment, Lady Black sets out the three issues that arise on the appeal: (1) whether section 10 IHTA applies to the transfer as a disposition viewed on its own, i.e. whether the transfer was “*not intended ... to confer any gratuitous benefit on any person*” (“**Transfer Issue 1**”); (2) whether section 10 IHTA applies to the transfer looked at in its wider context, i.e. whether the transfer was “*not ... made in a transaction intended to confer any gratuitous benefit on any person*” (“**Transfer Issue 2**”); and (3) whether the terms of section 3(3) are satisfied in respect of the omission, i.e. whether, by her omission to draw pension benefits from the PPP, the value of Mrs Staveley’s estate was diminished and the values of her sons’ estates were increased (“**Omission Issue**”) [17-20].

Transfer Issue 1 (transfer on its own)

Section 10 IHTA applies where the overall effect of the disposition is not intended by the disponor to confer a gratuitous benefit. In the present case, the transfer had not been motivated by any intention to improve the sons’ position. Mrs Staveley’s sole intention in transferring the funds was to eliminate any risk that any part of the funds might be returned to her ex-husband. The mere fact that the sons’ inheritance was intended to be enjoyed in a different legal form after the transfer did not mean that Mrs Staveley intended to confer a gratuitous benefit her sons. When viewed on its own, section 10 IHTA applied to the transfer [65, 66].

Transfer Issue 2 (transfer and omission as associated operations)

The parties accepted that, in omitting to draw lifetime benefits under the PPP, part of Mrs Staveley’s intention was to benefit her sons. The question for the Supreme Court was whether this intention coloured the transfer with an intention to confer gratuitous benefit which the transfer would not have on its own. The majority of the Supreme Court did not accept, as the Court of Appeal had found, that the omission and the transfer together formed part of a scheme (a “*series of transactions and any associated operations*”) intended to confer a gratuitous benefit. The present case could be distinguished from *Inland Revenue Comrs v Macpherson* [1989] AC 159, where the House of Lords had found that a series of operations formed part of a such a scheme and so gave rise to tax. In *Macpherson*, the operations under consideration had been clearly linked by a common intention. In contrast, in the present case, Mrs Staveley’s essential scheme had been her omission to draw a lifetime pension in order to benefit her sons by leaving them her death benefits. That could have been achieved without the transfer. Accordingly, the transfer and the omission were not linked by a common intention and did not form part of a single scheme intended confer a gratuitous benefit on any person. Section 10 IHTA therefore applied to the transfer, even when viewed in its wider context. It followed that the transfer did not give rise to a charge to inheritance tax [67, 88].

The Omission Issue

The limited discretion of the pension scheme administrator did not break the chain connecting the omission and the payment of the death benefit. The omission was the operative cause of the increase in the sons’ estates and therefore gave rise to a charge to inheritance tax under section 3(3) IHTA [94].

Lord Hodge would have dismissed the appeal in relation to the transfer and the omission. He agrees with Lady Black on Transfer Issue 1 and the Omission Issue but reaches a different conclusion on Transfer Issue 2. The transfer, when taken with the omission and the nomination of the sons as beneficiaries of the death benefit, formed a contributory part of a scheme to confer a gratuitous benefit. Mrs Staveley’s intention to benefit her sons pre-dated the transfer and was reflected in her nomination in the PPP. Therefore, he concludes, section 10 does not apply and tax ought to be payable [104, 109].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<https://supremecourt.uk/decided-cases/index.html>