



30 July 2021

PRESS SUMMARY

Tinkler (Respondent) v Commissioners for Her Majesty's Revenue and Customs (Appellant)
[2021] UKSC 39
On appeal from [2019] EWCA Civ 1392

JUSTICES: Lord Hodge (Deputy President), Lord Briggs, Lady Arden, Lord Burrows, Lady Rose

BACKGROUND TO THE APPEAL

Is a taxpayer prevented from challenging the validity of an enquiry into their tax return by HMRC where both parties have proceeded, for nearly a decade, on the mistaken assumption that the enquiry was validly initiated by a letter sent to the taxpayer?

Under sections 9A and 15 of the Taxes Management Act 1970 (the “**TMA 1970**”), HMRC must give notice of an enquiry into a taxpayer’s tax return by sending it addressed to the taxpayer’s usual or last known place of residence, or their place of business or employment. Mr Tinkler’s tax return for the year 2003/04 (the “**Return**”) gave his address as Station Road. On 24 February 2005 HMRC duly changed the address recorded in its computer system to Station Road. On 1 July 2005 it was incorrectly changed back to his previous address, Heybridge Lane. That same day, HMRC sent two letters. The first was a notice of enquiry into the Return, sent to Heybridge Lane. The second was to Mr Tinkler’s accountants and tax advisers, BDO Stoy Hayward (“**BDO**”), informing them of the enquiry and raising a number of questions about his tax affairs. It included a copy of the notice that had been sent to Heybridge Lane.

BDO replied to HMRC by letter on 6 July 2005, seeking to claim certain losses that had mistakenly not been included in the Return. They confirmed that they could not amend the Return “*as the Return is now the subject of a section 9A TMA 1970 enquiry*”. BDO subsequently liaised with Mr Tinkler’s personal assistant and responded to HMRC’s questions throughout October and November 2005. On 1 November 2005, HMRC corrected the address recorded in their system to Station Road.

HMRC decided that Mr Tinkler was not entitled to the losses and issued a closure notice on 30 August 2012 stating that he owed £701,990.96 in tax. Mr Tinkler argued that the closure notice was invalid because the initial notice of enquiry had been sent to Heybridge Lane, which was neither his usual or last known place of residence, nor his place of business or employment. HMRC argued that, by operation of the doctrine of estoppel by convention, Mr Tinkler was estopped from denying the enquiry’s validity. The Court of Appeal found for Mr Tinkler. HMRC appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Burrows gives the lead judgment, with which Lord Hodge, Lady Arden and Lady Rose agree. Lord Briggs gives a short concurring judgment explaining why he agrees with the reasoning of Lord Burrows. The Court holds that Mr Tinkler is estopped from denying that a valid enquiry had been opened into the Return.

REASONS FOR THE JUDGMENT

The Court first outlines the relevant legal principles [28]. An estoppel by convention will arise when the parties have acted upon a common assumption that a given state of facts or law is true. Each will then be estopped against the other from denying the truth of their common assumption [30]. The five principles governing estoppel by convention were outlined in the decision of Briggs J in *Revenue and Customs Commissioners v Benchdollar* [2009] EWHC 1310 (Ch). These principles are [45-50]:

- (i) It is not enough that the common assumption is merely understood by the parties in the same way. It must be expressly or impliedly shared between them. Something must ‘cross the line’ between the parties sufficient to manifest an assent to the assumption.
- (ii) The expression of the common assumption by the party alleged to be estopped (“D”) must be such that they may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the party raising the estoppel (“C”) an understanding that they expected C to rely upon it.
- (iii) C must in fact have relied upon the common assumption rather than merely upon C’s own independent view of the matter.
- (iv) That reliance must have occurred in connection with some subsequent mutual dealing between the parties.
- (v) Some detriment must thereby have been suffered by C, or benefit accrued to D, sufficient to make it unconscionable for D to assert the true legal or factual position.

In considering principles (i) to (iii), C must rely on the affirmation of the common assumption by D, and the latter must intend or expect that reliance [52].

The Court then applies these principles to the facts of this case [54]. The fact that HMRC mistakenly represented to BDO that Heybridge Lane was the correct address does not prevent HMRC from raising an estoppel by convention [55-56]. In its letter of 6 July 2005, BDO indicated to HMRC that it too believed that a valid enquiry had been opened. Thereafter, HMRC relied on BDO’s endorsement of the common assumption that the enquiry was valid, as BDO must have expected and intended. Principles (i) to (iii) are therefore satisfied [57-61].

Principle (iv) is satisfied because HMRC’s reliance was related to the dealings between the parties: the enquiry into the Return [62]. Principle (v) is satisfied because HMRC’s reliance on the common assumption was to its detriment, as it did not send another notice of enquiry to Mr Tinkler before the time limit to do so had expired [63]. Further, it is not unconscionable for HMRC to raise an estoppel [64]. HMRC satisfy all the requirements for establishing an estoppel by convention [66].

The Court also deals with two additional issues. First, while there was no transaction between HMRC and Mr Tinkler, this is not a requirement of estoppel by convention [71]. The mutual dealings between them are sufficient [72]. Second, estoppel by convention in this case would not undermine the statutory protection given to taxpayers by section 9A of the TMA 1970 [82]. The appeal is allowed [84].

Lord Briggs agrees that the appeal should be allowed, for the reasons given by Lord Burrows. He adds a brief concurring judgment given that much of the argument focused on his statement of principles in *Benchdollar* [86]. Requirement (ii) that D assume some responsibility for the common assumption generally means that it must have been reasonable for D to assume that C would rely, not merely upon the content of the common assumption, but also on the fact that D shared it [88-89].

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:

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