



Neutral Citation: [2024] UKFTT 00053 (TC)

Case Number: TC09035

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

[By remote video/telephone hearing]

Appeal reference: TC/2022/02533

Principal private residence relief – whether the Appellant was living at the property – appeal dismissed.

Heard on: 20 December 2023
Judgment date: 16 January 2024

Before

**TRIBUNAL JUDGE SARAH ALLATT
MS GILL HUNTER**

Between

MR SABBIR PATWARY

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: Ms Xingzhao Duan

For the Respondents: Mr T Pearson, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. The form of the hearing was video, with all parties attending remotely. The documents to which we were referred are the main bundle of 201 pages and the supplementary bundle of 55 pages.
2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

APPEAL

3. The appeal is in relation to a closure notice issued by HMRC, disallowing the Principal Private Residence relief (PPR) claim for the year ended 5 April 2016, following the sale of 19 Emmott Close, London.
4. Both PPR and lettings relief was claimed on the disposal. Due to an administrative error, although HMRC do not believe lettings relief to be due, they are not contesting this as part of the hearing as they had put forward no pleadings on this issue in advance.
5. Therefore the amount of tax at stake in this appeal, on a gain of £202,170, is £43,199.80.
6. The sole matter for the Tribunal to decide is whether Principal Private Residence relief should apply to the disposal.
7. The appeal was submitted late. HMRC do not object to the lateness of the appeal. The Tribunal decided to admit the appeal.
8. The burden of proof is on the Appellant to show that the assessment by HMRC is incorrect or excessive.
9. The sole part of the conditions for PPR to apply that is under dispute is whether the house was the only or main residence of the individual.

BACKGROUND

10. Until 9 April 2010, the Appellant lived at home with his parents, in a property on Aldborough Rd in London.
11. On 9 April 2010 the Appellant bought a property in Emmott Close.
12. It is the Appellant's contention that he lived at this property from April 2010 to October 2013, together with his girlfriend (to whom he got married in 2012 and from whom he is now divorced) and a tenant who shared the whole property with them.
13. From October 2013 the property was occupied by a tenant, the Appellant having moved back to live with his parents, and it was sold on 26 February 2016.

THE LAW

14. The legislation relating to this appeal is contained in s222 Taxation of Chargeable Gains Act 1992.
 - (1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of 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 []

15. There is a reasonable amount of case law in this area. The only case to which we were referred was *Goodwin v Curtis* 70 TC 478.

16. It was held that ‘in order to qualify for the Relief a taxpayer must provide some evidence that his residence at a property showed some degree of permanence, some degree of continuity or some expectation of continuity.’

EVIDENCE AND DISCUSSION

17. Ms Duan presented the case briefly for the Appellant but we heard mainly from the Appellant himself presenting his case and answering questions from the Tribunal.

18. The Appellant’s witness statement was extremely brief and is presented here in full.

1. I, Sabbir Patwary of 515 Aldborough Road North, ILFORD, Essex, IG2 7SY, am the appellant in this claim. The facts in this statement come from my personal knowledge.

2. I had been living at 19 Emmott Close, London, E1 4QN with Bindu Ismail from 09/04/2010 to 31/10/2013. During this period, I have made good connection with our neighbor Francis Martines.

3. I have also invited friends and family members for some gatherings at 19 Emmott Close, London, E1 4QN. A guest list could be provided if needed.

4. I did not change my address of my bills is simply because I have a close relationship with my family and I visit them regularly, so it is convenient to me to collect my correspondence there. Meanwhile, I was going through a divorce with my ex-wife Bindu Ismail, so I did not want to expose some of my personal information with her. In this case, keeping my mail address to my parents’ place seemed logical to me.

5. I believe that the facts stated in this witness statement are true.

19. In addition to this witness statement, the Appellant produced as evidence mortgage statements on the property in question addressed to him at Emmott Close, a letter from a shower company about an expiring guarantee in April 2012 addressed to him at Emmott Close, water bills for the period addressed to him at Emmott Close, a bill relating to leasehold services on the block of flats addressed to him at Emmott Close and a letter about an electricity prepayment meter, where the address is not visible.

20. The Tribunal reminded the Appellant that the burden of proof was on him to show that he had lived at the property. Through questioning, the Tribunal elicited the following information:

21. This was a difficult period in his life.

22. Initially he lived at the flat together with his girlfriend. Their friend moved in around 2011 as his girlfriend needed some (unspecified) help.

23. The flat was a maisonette in a block. There were rooms on the ground floor and 2 bedrooms upstairs.

24. He was working in Bethnal Green at the time and could walk to work. He worked with his father and so he saw no need to change address for anything as his father could bring any

post daily. In addition he received most information (including from his banks) online and so post was not of major importance.

25. He did not register to vote at his new address as he preferred to vote in the more marginal constituency of his parents' home where his vote would carry more weight.

26. He did not need a parking permit at his property.

27. He did not own a TV and so he did not have a TV licence.

28. He did not have council tax statements for the property. He said in a letter to HMRC that his housemate was responsible for this, however there appears to have been, by his own contention, a period where there was no one else at the property apart from him and his girlfriend.

29. He did not think his payslips had his address on them.

30. He could not remember whether his marriage certificate had his address on.

31. Mr Patwary continually asserted that he lived at Emmott Close.

32. HMRC's contentions were firstly that the appellant did not live at the property as his only or main residence, and secondly, if at any relevant time he had done, this lacked any degree of permanence or continuity.

33. HMRC pointed out that before and after the potential period of residence at Emmott Close, the Appellant lived at Aldborough Close with his parents.

34. He did not change his address with his bank, HMRC nor the electoral roll. He did not provide any documentation that one might expect to be provided in relation to residence in, rather than ownership of, the property, such as council tax bills.

35. HMRC also pointed out that in a letter to them on 4 June 2020, the Appellant had said 'The length of my residence at Emmott Close was unexpected and unforeseen, as a result it made little sense for me to change bank addresses and to register to vote at this address'

36. HMRC say that this shows that any residence at Emmott Close was always intended to be temporary and therefore even if he did reside in the property, PPR relief should not apply.

37. The starting point for the Tribunal was that the Appellant has the burden of proof in this case. Whilst what he is asserting (that he left his parents house to live with his girlfriend in a property he had purchased, intending to make this his permanent home, lived there for over 3 years, during which time they got married, and then moved out as the marriage broke up) does not seem improbable, we would expect to see certain amounts of evidence to back this up.

38. We agree with the Appellant that we should not be prescriptive about what evidence shows residence. We agree that where bank statements are sent, particularly where information is more readily accessed online, is not determinative of residence.

39. However, this case has seen remarkably little evidence from the Appellant to demonstrate a period of residence in the property of over 3 years. Neither to HMRC, nor to the Tribunal in the bundle, nor even to the Tribunal when questioned, did the Appellant appear to make significant effort to show that he had lived in the property. We accept that after a period of time some documents may be difficult to obtain, however it appears unlikely that no documentation from that period would remain, or could be obtained had the Appellant tried. In addition we note that there was no supporting evidence in the form of non-official documentation (statements from his lodger, his now ex-wife, or anyone else who knew his presence at the property).

40. The evidence that was produced is all of the kind that might be properly addressed to an owner, even if someone else was living in the property at the time.

41. We have seen nothing other than assertions by the Appellant that back up his claim to have lived at the property.

42. Accordingly, we conclude that the Appellant has not discharged the burden of proof to show that the assessment is incorrect.

DECISION

43. This appeal is therefore DISMISSED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

44. 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.

**SARAH ALLATT
TRIBUNAL JUDGE**

Release date: 16th JANUARY 2024