[2019] UKFTT 686 (TC)

TC07459

Appeal number: TC/2019/00389

PROCEDURE – whether to give permission for late appeal to be made to HMRC – Martland – Inheritance Tax

FIRST-TIER TRIBUNAL
TAX CHAMBER

LIONEL DAVID MOSS, EXECUTOR OF DAVID OWEN (DECEASED) **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondent**

TRIBUNAL: JUDGE PARMINDER SAINI
MRS SHEILA CHEESMAN

Sitting in public at Taylor House on 10 October 2019

For the Appellant: Mr Lionel David Moss, Appellant in Person
For the Respondent: Mr S Bracegirdle, Presenting Officer

DECISION

Introduction

1. Mr Lionel Moss (the Appellant), appeals against HMRC's (the Respondent) Conclusion of a Review dated 13 July 2015 of its initial Determination of

Inheritance Tax due from the Appellant as executor of the estate of the late David Owen, pursuant to section 221 of the Inheritance Act 1984.

The Issue(s)

2. At the outset of the hearing, the parties agreed that the sole issue before the Tribunal is whether the Tribunal should extend time to allow the Appellant's late appeal to proceed to hearing. The parties agreed that the approach that the Tribunal would follow was that set down in Martland v HMRC [2018] UKUT 178 (TCC).

Late Applications for Appeal

3. The Upper Tribunal in Martland v HMRC [2018] UKUT 178 (TCC) gave guidance as to how this Tribunal should approach an application to allow the notification of a late appeal. Accordingly, we shall apply the principles explained in that decision when deciding whether it is appropriate for us to give permission in the present appeal. The Upper Tribunal stated as follows at [44] to [46] of Martland:

> 44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in Denton:
>
> > (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being "neither serious nor significant"), then the FTT "is unlikely to need to spend much time on the second and third stages" – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.
> >
> > (2) The reason (or reasons) why the default occurred should be established.
> >
> > (3) The FTT can then move onto its evaluation of "all the circumstances of the case". This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.
>
> 45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. …
>
> 46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal.

> 47. Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay: see the comments of Moore-Bick LJ in Hysaj referred to at [15(2)] above. Nor should the fact that the applicant is self-represented – Moore-Bick LJ went on to say (at [44]) that "being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules"; HMRC's appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person.

4. Since that decision, the Upper Tribunal in HMRC v Katib [2019] UKUT 189 (TCC) has re-emphasised the importance of taxpayers adhering to statutory time limits and stated *inter alia* as follows at [17]:

> …the need for statutory time limits to be respected was a matter of particular importance to the exercise of its discretion…instead of acknowledging the position, the tribunal went on to distinguish the BPP Holdings case on its facts. Differences in fact do not negate the principle, and it is not possible to detect that the tribunal thereafter gave proper weight to it in parts of the decision which followed

5. As may be seen at [44] of Martland, we must apply a three-stage approach which requires us to consider the (1) length of the delay, (2) the reasons for the delay and to then evaluate (3) "all the circumstances of the case" whilst bearing in mind the particular importance of adhering to statutory time limits when considering whether or not to exercise our discretion.

Factual Summary

6. The following facts are agreed for the purposes of this appeal.

7. The initial Notice of Determination from HMRC's Debt Management Inheritance Tax Unit was issued on 3 January 2013.

8. The Appellant appealed against that Determination on 1 February 2013 within the 30 day time limit for doing so pursuant to Section 222(1) Inheritance Act 1984 ("IHTA").

9. The Appellant was offered an internal Review on 12 February 2015.

10. The Appellant accepted the offer of that Review on 14 March 2015.

11. HMRC concluded its Review and notified the Appellant of this outcome by way of its letter dated 13 July 2015.

12. The deadline for appealing against that Review conclusion is 30 days after the date of the Review pursuant to Sections 223G(2) and 223(6)(a) of IHTA. Thus, the deadline for appealing was 12 August 2015.

13. In the event, the Appellant did not successfully lodge an appeal until 11 January 2019. As such, the delay in lodging the appeal amounts to 3 years, 4 months, 29 days after the deadline of 12 August 2015.

14. However, prior to that successful lodging of his appeal, it is the Appellant's case that there were no less than four (4) previous unsuccessful attempts to lodge the appeal.

15. Given that we must consider and evaluate all of the circumstances pertaining to the default and extent of the delay, it is necessary to summarise those attempted appeals also.

16. The Appellant's *first* attempted appeal was submitted on 12 August 2015, the final day for bringing an appeal against the Review conclusion. Had this appeal been properly filed, the Appellant, acting as a litigant in person, would have successfully appealed in time to the Tribunal. However, the Tribunal replied on 20 August 2015 saying that Section 6 of the T240 Notice of Appeal Form had not been completed, and the Tribunal had not been told (a) what result the appellant was seeking and (b) what were his grounds of appeal.

17. The *second* attempted appeal was submitted on 22 May 2017 by the Appellant's solicitors, Bloomsbury Law. The Appellant highlights that he borrowed money and engaged a solicitor to act on his behalf as he could not complete the omitted parts of section 6 and was suffering from mental fatigue. However, that appeal form was also defective.

18. The *third* attempted appeal was submitted on 23 February 2018 by Bloomsbury Law again. However, that appeal form was also defective.

19. The *fourth* attempted appeal was submitted on 30 July 2018 again by Bloomsbury Law, however no copy is available of this appeal form from either party or the Tribunal's records and it is unproven as being made (although not in dispute for the purposes of this application).

20. Finally, as stated above, the fifth appeal was successfully lodged by the Appellant acting once more as a litigant in person and was lodged on 14 January 2019. It is appropriate to note at this juncture that the appeal form also included Grounds of Appeal running to 10 paragraphs and box 16 of the form would have required completion which details reasons why the appeal was being filed late. Box 16 giving the Appellant's reasons for the late appeal and in support of his application may be summarised as follows:

    a) There is a long history of dispute between the parties

    b) The Appellant unsuccessfully filed an appeal to the Tribunal owing to missing information

    c) The Appellant is elderly and has "health issues"

d) The Appellant had no savings and little pension income and could not afford legal representation but with the help of a loan from a family member the Appellant engaged solicitors who resubmitted the appeal prior to the County Court hearing

e) Clear Evidence of HMRC's waiving of time limits is appended.

21. The waiving of time limit referred to by the Appellant was in relation to correspondence from HMRC to the Appellant's solicitors dated 29 May 2018 in which the concluding remark made in the letter was "Please confirm to me when you have re-submitted your client's Appeal to the First-tier Tribunal".

Findings and Conclusions

22. The parties' did not seek to detract or demur from the cumulative facts as we have set them down above and we adopt the above summary as part of our findings of fact.

23. Section 223G of Inheritance Tax Act 1984 (ITA 1984) sets out the requirement to file an appeal with the Tribunal within 30 days if the recipient disagrees with the Review conclusion (see "Notifying appeal to Tribunal after Review Concluded" and section 223G(3) of the ITA 1984, in particular).

24. The Tribunal applying the test set out in Martland v The Commissioners for HM Revenue and Customs (Tax) [2018] UKUT 178 (TCC) at [44] to [47] concerning applying for permission to appeal out of time, finds that the Appellant has failed to satisfy the Tribunal that time should be extended for the following reasons.

25. As stated above, the Appellant acting in person failed to successfully file a valid appeal against the Review conclusion of 13 July 2015 before the deadline of 12 August 2015.

26. The appeal was ultimately filed on 14 January 2019 and the delay in filing the appeal amounts to 3 years, 4 months, 29 days after the deadline of 12 August 2015.

27. The Appellant's pleaded reasons for the delay in his appeal form are set out at §20(a) to (e) above.

28. Taking those reasons in turn, (a) the fact of there being a long history of dispute between the parties does not explain why the Appellant was late in filing his appeal.

29. Concerning (b), the Tribunal is mindful of the fact that the Appellant unsuccessfully filed an appeal to the Tribunal owing to missing information and this subject shall be turned to shortly.

30. Turning to (c), and the Appellant being elderly and having "health issues" we asked the Appellant what those issues were to which he elaborated that he

suffered from arthritis, suffered from 'spells', asthma, and took medication for heart-related issues and was broadly elderly and frail, suffered from a fall at some time in the past and was taking physiotherapy. Whilst we are sympathetic to the Appellant's health issues, unfortunately they appear to be chronic and/or age-related issues which whilst understandably exhausting and tiring would not necessarily debilitate the Appellant to such an extent that he might somehow be unable to file the appeal either with the assistance of a solicitor or himself (indeed, we note that the appeal was filed by the Appellant without the assistance of legal representation on 14 January 2019).

31. Regarding (d), and the Appellant's lack of savings and little pension income leading to the late engagement of legal representation, this does not assist the Appellant given the following passage from Moore-Bick, LJ's judgment in R, (on the application of Hysaj) v Secretary of State for the Home Department [2014] EWCA Civ 1633 wherein the following is stated *inter alia* at [43] in relation to the difficulties faced by those facing shortage of funds:

> … In my view shortage of funds does not provide a good reason for delay. I can well understand that litigants would prefer to be legally represented and that some may be deterred by the prospect of having to act on their own behalf. Nonetheless, in the modern world the inability to pay for legal representation cannot be regarded as providing a good reason for delay. Unfortunately, many litigants are now forced to act on their own behalf and the rules apply to them as well.

32. As such, the Appellant's impecuniosity cannot assist him where he could represent himself in an appeal. Furthermore, it is noteworthy that the reason given for the delay is factually inaccurate in stating that the Appellant 'engaged solicitors who resubmitted the appeal prior to the County Court hearing' as this was merely the second attempted appeal on 22 May 2017 which was unsuccessfully lodged and which consequently did not end the period of delay and cannot be taken as the final point at which to gauge the lateness of this application when considering whether we should exercise discretion or not.

33. Finally, the Appellant stated that there was "clear evidence", which he did not have earlier, of HMRC waiving its time limits. As stated above, the appended letter of 29 May 2018 merely recorded in its concluding remarks that the Appellant's solicitors should confirm they had "re-submitted" the appeal to the First-tier Tribunal. This did not represent language, clear or otherwise, that could be reasonably construed as any kind of guarantee or official stance position taken by HMRC to waive the delay since 12 August 2015 up to that point.

34. In relation to the Appellant's complaints before us that his legal representatives letting him down, unfortunately, that negligence or incompetence he alleges occurred by his solicitors, Bloomsbury Law, is not a matter which can also assist in extending time on his behalf pursuant to Hysaj at [42] which simply makes exception for public law proceedings involving asylum and humanitarian protection claims, for example. There is no similar level of fundamental breach

of rights, such as the right to life or protection from mistreatment, that requires exceptional protection and safeguarding in this appeal.

35. Finally, the Appellant argued in particular before us that he was ill-equipped to file the appeal himself and needed legal representation. We observe that the Appellant filed the first attempted appeal on 12 August 2015 as a litigant in person and simply failed to fill in the sections detailing what result he wanted from the Tribunal and what his grounds for appealing were. It has been said by the Appellant that these omissions could not be made good without legal representation, however, we further note that ultimately, the appeal which was successfully lodged on 14 January 2019 and which resulted in these proceedings was lodged by the Appellant acting as a litigant in person who had not only managed to complete the omitted sections but had also filed comprehensive grounds of appeal and had also given reasons, such as they were, for why the appeal was being filed late. These actions do not convey any real difficulty on the part of the Appellant to act in his own interest in filing the appeal, albeit several years later than he should have, and notwithstanding the passage of time and the apparent deterioration that would have occurred to his health.

36. In any event, the lack of legal representation cannot assist the Appellant given the following passage at [44] of Moore-Bick, LJ's judgment in Hysaj in relation to whether leeway should be given for unrepresented parties / litigants in person:

> …The fact that a party is unrepresented is of no significance at the first stage of the enquiry when the court is assessing the seriousness and significance of the failure to comply with the rules. The more important question is whether it amounts to a good reason for the failure that has occurred. Whether there is a good reason for the failure will depend on the particular circumstances of the case, but I do not think that the court can or should accept that the mere fact of being unrepresented provides a good reason for not adhering to the rules. That was the view expressed by the majority in Denton at paragraph 40 and, with respect, I entirely agree with it. Litigation is inevitably a complex process and it is understandable that those who have no previous experience of it should have difficulty in finding and understanding the rules by which it is governed. The problems facing ordinary litigants are substantial and have been exacerbated by reductions in legal aid. Nonetheless, if proceedings are not to become a free-for-all, the court must insist on litigants of all kinds following the rules. In my view, therefore, being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules.

37. As such, the Appellant's status as a litigant in person cannot afford him any particular assistance given that the Court of Appeal have confirmed that such status is not a good reason for extending time for late action.

38. Turning to the circumstances as a whole, we find that there is little prejudice to the Appellant and that the merits of the appeal succeeding at first blush are dim. We note that the documents before us include an email from the Appellant's former solicitors, Bloomsbury Law, sent as recently as 16 January 2019 to the Appellant (two days after the appeal was filed) informing him that the appeal is more likely than not to fail in their view. Whilst this is not of course an admission made by the Appellant's representative, it is a striking piece of correspondence that the Appellant has provided as part of the documentation before us which shows that even his former legal representatives did not advise his appeal would be successful.

39. In relation to the suggestion that there should be joint liability for the inheritance liability shared between the Appellant and the former joint executor, Anthony White, a solicitor, we note that the solicitors' bill in the documentation before us did not provide for any work being invoiced by Mr White in his capacity as an executor (such as for preparation of the Inheritance Tax forms), neither have we been shown any evidence that he acted as an executor as opposed to simply being named as one by the late David Owen. Indeed, we note that the Inheritance Tax form is only signed by the Appellant as executor, and does not bear any signature from Mr White, which we would expect it to do had he been a joint executor in any more substantial way than being named as such. We also note that probate was given to the Appellant and not to the joint executors. Similarly, we note that Maddersons have taken over the law firm of Anthony White, but there is no indication or evidence to show that they have taken over the role of Joint Executor from Mr White, if he ever held it.

Conclusion

40. Against the authorities summarised in Martland and applying the three stage test, the above reasons are plainly not reasonable excuses for the Appellant's lateness in challenging the matter. Whilst we sympathise with the Appellant's frailty and can understand that he would not have been helped by the questionable assistance rendered by his former solicitors in attempting to file an appeal on several occasions, these were not reasonable excuses or good reasons why the Appellant could not have filed the appeal soon after 12 August 2015, as he eventually did himself on 14 January 2019.

41. Thus, having evaluated all of the circumstances of the case, we find that the Appellant has not shown a reasonable excuse warranting an extension of time to cover the 3 years, 4 months, 29 days of delay after the deadline of 12 August 2015.

Decision

42. The application is REFUSED.

43. 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.

PARMINDER SAINI

TRIBUNAL JUDGE

RELEASE DATE: 11 NOVEMBER 2019