Wine cellar acts as sign of PPR in recent tax case

Synopsis: Principal private residence relief (PPR). A case where a couple won their appeal against more than £3.3m in tax because of factors showing their property was their principal private residence, including moving 2,000 bottles of wine into it.

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In this case, TC09498, Raymond and Diana Eyre purchased a house in Burnsall Street in Chelsea for £9,750,000 in September 2010. They demolished the property and built a new house on the same site, which they occupied in July 2013 and sold 18 months later for £27,150,000. In addition to various other properties, both in the UK and overseas, the couple owned a house in Holland Park, which they lived in both before and after the sale of Burnsall Street.

In July 2013 – when they moved into the Burnsall Street property – the couple's accountant submitted an updated PPR relief election to HMRC, to name it as their new principal place of residence. The couple submitted their tax returns on this basis when reporting the sale of the Burnsall Street property.

However, HMRC's view was that the purchase of the Burnsall Street property, its redevelopment and sale, constituted an adventure in the nature of a trade, or in the alternative, that the sale was subject to capital gains tax (CGT) as the property was not the couple's principal private residence. HMRC issued the couple with income tax assessments totalling more than £3.3m. The couple appealed.

When the Burnsall Street property was purchased, it covered a total of 6,468 square feet. In line with other properties they had owned previously, the couple looked to renovate it, and engaged Finchatton, a specialist property development business at the top end of the market. However, Finchatton suggested that the property should be demolished and replaced with a very modern house, including a basement.

Under a development funding and management agreement (DFMA), Finchatton was required to contribute £1m to the development, which would be repayable alongside a "priority return" of 15%, payable on the earlier of the sale of the property or the couple confirming in writing that they did not wish to sell the property. Such confirmation was never given.

Raymond Eyre argued that the DFMA served both parties' interests –Finchatton knew it would be engaged to complete the project after having done the hard work of obtaining planning permission, while the couple, by offering Finchatton a substantial return, hoped to secure their continued enthusiasm and commitment through to the end of the work.

The couple were extensively involved in the design and fitting out of the property. It was argued that Diana Eyre had selected materials she "loved" regardless of cost, choosing marble for the swimming pool and gym area which was "unbelievably expensive" and which would not have been used had they been "planning to sell and move on". The wine cellar was similarly bespoke to Raymond Eyre, with 2,000 bottles moved to the property.

The finished property covered 10,526 square feet. It had six bedrooms, six bathrooms, a swimming pool and sauna, a gym, a wine cellar, a media room, two kitchens and a utility room.

Following the issue of the completion certificate in January 2014, Finchatton pressed the couple to obtain a formal valuation of the property, so that they could be paid under the DFMA. A brochure was prepared. Besides showcasing the work carried out by Finchatton, the First-tier Tribunal (FTT) found that the brochure also had a purpose of marketing the property to potential buyers.

In November 2014, the couple exchanged contracts for the sale of the property, following an extremely high offer of £27,150,000 plus a further £600,000 for the furniture. The sale completed in February 2015. After costs the couple's share was around £8.5m split between them, while Finchatton's share was around £2.9m.

Following the sale, the couple moved back to the Holland Park house.

The FTT first considered whether the sale of the Burnsall Street property should be subject to income tax. While HMRC accepted that the couple had not entered into any other property trading transactions (and did not advance an argument of "supervening trading"), it held that the purchase and sale of the property constituted a venture in the nature of trade because the couple's intention in purchasing and developing it was to realise a profit.

The FTT disagreed. It referred to the case of Taylor vs Good, in which the judge had disagreed with the theory of law that "a man who owns or buys without present intention to sell land is engaged in trade if he subsequently, not being himself a developer, merely takes steps to enhance the value of the property in the eyes of a developer who might wish to buy for development."

The FTT found that the couple had intended to refurbish the property and then move into that property as they had done with their earlier homes, and that they intended to sell the Holland Park house (which the FTT found had been on the market from the end of 2010). The extent to which the couple had personalised the Burnsall Street property was also noted to be entirely inconsistent with an intention to buy, develop and sell at a profit.

HMRC's attempts to rely on the terms of the DFMA were also ineffective. The FTT said that the difficulty with this part of HMRC's case was that, whatever its terms, the DFMA was effective from 15 September 2010, the date of completion. It was not in contemplation at the time the couple exchanged contracts, and HMRC rightly accepted that the property was acquired on exchange, not on completion.

The FTT also considered the clauses on which HMRC placed reliance. HMRC had argued that the couple not afford to exercise an option to retain the property rather than sell it because they did not have the funds to pay Finchatton the amounts owed under the DFMA, and so would always have had to sell the property soon after it was completed. However, the FTT thought that it was very likely that the couple could have raised the £2.9m payable to Finchatton without having to sell either the Holland Park House or the Burnsall Street property.

The FTT said that the brochure – which it accepted had a purpose to market the property – did not mean that the couple had a trading intention from inception.

The FTT then turned its attention to HMRC's alternative position, that the Burnsall Street property did not benefit from a CGT exemption under the PPR provisions as the property was not the couple's main residence.

Although their period of occupation was only for 18 months, the FTT decided that the couple demonstrated the degree of permanence and continuity sufficient to turn "mere occupation into residence". This took into account various factors, such as the moving of their personal possessions; registration for council tax; inclusion on the electoral roll; contracting for the supply of utilities; postal redirection from the Holland Park House; the transfer of Raymond Eyre's wine to the property; and social events hosted at the property.

As a result, the FTT found that when the couple moved into the Burnsall Street property, and until they moved out, the property was their "residence" within the meaning of section 223(1) TCGA 1992. While the couple had more than one residence during this period, as they had nominated the Burnsall Street property as their principal private residence from 13 July 2013, it was considered their main residence from that date until they moved out.

HMRC also relied on the fact that the company did not in fact sell the Holland Park House. However, the FTT found as facts that this property had been on the market since 2010, other than during the period when the basement and related works were being carried out, and that viewings did take place during that time.

The FTT therefore allowed the couple's appeals.

The FTT also considered various "badges of trade" as part of its decision, noting that such badges are not a checklist, but provide "common sense guidance". Having considered the full picture of this case, the Tribunal was satisfied that the sale of the Burnsall Street property was not a trading transaction.

Relying on the ninth badge which refers to doing a deal "purely for the purposes of making a profit on the turn", HMRC had argued that there was nothing about the property's acquisition and disposal which indicated it was not a trading transaction; it had been bought and sold on the open market, had been funded in part by borrowings, and work had been carried out to enhance its value. However, the description of the ninth "badge" begins by asking whether the item provided enjoyment for the purchaser or pride of possession, and if the answer to that question is yes, this may indicate an intention to buy for personal satisfaction rather than to do a deal purely for the purpose of making a profit on the turn. The FTT found as facts that the property provided enjoyment for the couple when they were living there: both Mr and Mrs Eyre said they "loved" it; Mrs Eyre was "sad to sell it"; they both took personal satisfaction in the quality of the refurbishment. The FTT decided that the ninth "badge" therefore did not support HMRC's case.

Although the house was purchased on the open market and funded in part by borrowing, the same is true of almost all property acquisitions, so these factors are neutral. The FTT found as a fact that some of the work carried out on the property was personalised to suit the couple and so was not "for the purposes of resale". Other "badges" point in the same direction, it said: the lack of repetition; the purchase being unrelated to Mr Eyre's aircraft leasing business, and the fact that the house was sold as a single lot and not divided up.

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