TRANSFER TAX APPEAL

JAMAICA

IN THE REVENUE COURT

NO. 15 OF 1976

BETWEEN	ARPAD RONAI	APPELLANT
A N D	STAMP COMMISSIONER	RESPONDENT

For the Appellant : Mr. Enos Grant.

For the Respondent : Mr. Herbert A. Hamilton and Mr. Lawrence Brown

CORAM: MARSH J.

27th March, 1980.

NOTE OF ORAL JUDGMENT

This case raises a very short, but interesting point of law. The facts are not in dispute and so I propose to deliver my judgment immediately.

A transfer of property was made on the 31st July, 1970 and the sole question in this case is whether that transfer is liable to tax under the Transfer Tax Act.

The Appellant contends that it is not, and he relies partly on Sections 11 and 46(4) of the Act. It is, however, more convenient in dealing with the matter to state firstly what is the contention of the Respondent, as indicated in his submissions to support the charge to tax.

The Respondent's contention is, if I may say so, both subtle and ingenious and, as with many such arguments, it has in its favour the virtue of simplicity. The argument is as follows:

Section 3 of the Act is the charging section, and that section charges to tax all transfers of property made after the 1st April, 1970. Section 11, so the argument ran, is not a charging section, but a machinery section; and that section merely

indicates /.....

indicates that the grant of any option subsequent to the 1st April, 1970 is to be treated as a transfer of property and exigible to tax as such on the consideration for the option. That section (that is section 11) also provides (at subsection 2) that if an option is exercised the grant of the option and the transaction entered into in fulfilment of the grantors obligations under the option, shall be treated for the purpose of tax as a single transaction.

However, the Respondent contends that these provisions have no relevance whatever to the instant case, because the "option" in question was granted prior to the effective date of the operation of the Act - that is to say prior to 1st April, 1970. This being so, there can be no question of the grant merging with the transfer and being treated as a single transaction. There is, it was submitted, only one question for the Court to decide and that is whether the transfer, which occurred on the 31st July, 1970, is chargeable to tax; and since it is common ground that that date was subsequent to 1st April, 1970, the transaction was clearly caught by Section 3 and must be taxed accordingly.

As I indicated, that argument does have the virtue of /not simplicity because this Court would/then be concerned with the galvanising functions of Section 11,whereby the actual transfer and the grant of the option is to be treated as one transaction.

For the Appellant it was submitted that Section 11 was relevant to the issue. In particular Section 11(2) was applicable and, that when applied, it had the effect of merging the transfer with the grant of the option. In that connection it was further submitted that the effect of the merger was to make the effective date of the transaction the date of the Option rather than the date of the Transfer, and since that date was prior to 1st April, 1970, then clearly the transaction was not taxable.

I do not /.....

I do not accept the Appellant's view of the effect or relevance of Section 11. It is clear from its wording that that section relates and relates only to options, the granting of which were subsequent to 1st April, 1970; and, since it is admitted that the instant option is not in that category, there is, in my judgment, no question of Section 11 applying. I therefore, accept the Respondent's submission on that point.

However, that does not dispose of the matter. Reference was made to the transitional provisions of Section 46(4)(a) and (b) of the Act. That subsection states that no tax shall be charged in respect of -

(a) a conveyance or transfer shown to the satisfaction of the Commissioner to have been effected in pursuance of any contract made before the 2nd April, 1970;

(b) a transfer before the 18th November, 1970, of any settled property as provided by subsection (4) of section 6, or of any lease or <u>option</u>.

Counsel for the Appellant submitted primarily that because of (b), even if he was wrong in stating that the effective date of the transaction was the date of the option and that the correct view was the date of the transfer (3/7/70), then on the wording of section 46(4)(b) the transaction would be exempt from tax.

Here again I do not accept the view contended for by the Appellant. I am satisfied that the reference to the word "option" in section 46(4)(b) is a reference back to the word option in section 11 and it is common ground that the expression as used in that section means, an option granted subsequent to 1st April, 1970. For these reasons I reject the contention that section

46(4)(b) provides any relief to the Appellant.

All of which brings me to a consideration of Section 46(4)(a). Here, the question of law is: was the grant of an option by the Appellant on the 17th June, 1969 a - "contract made before the 2nd April, 1970"? If it was, then, in my judgment, the transaction would be within the provisions of Section 46(4)(a) and would, therefore, be outside the charge to tax.

Counsel for the Respondent on this point contended that an option agreement was not such a contract and relied partly on the William Cory case reported at (1964) 3 ALL ER p. 61.

Counsel for the Appellant on the other hand, not surprisingly, submitted the contrary; and so at the end of the day, therefore, the determination of this issue turns upon what view I take of this particular point.

I have considered the William Cory case and the submissions made by Counsel for the Respondent but have come to the conclusion that the Cory case is distinguishable in that that case merely decided, on the particular facts, that an option was not a contract for sale. The current issue is wider and I have to decide whether an option agreement is a contract simpliciter. I have been supplied in my bundle with a copy of the option agreement and the transfer. I have examined the agreement and I am satisfied that it embraces sufficient elements of the law of contract as is necessary to constitute a contract. Indeed, as I indicated, and while admitting that the same is not conclusive, the document states (clause 6) "all dates herein provided shall be the essence of the contract".

For these reasons I have come to the conclusion that the

transaction /.....

section in this case was effected pursuant to a contract made before the 2nd April, 1970 and therefore falls outside the charge to tax having been caught by the provisions of section 46(4)(a).

In the circumstances the order of this Court is that the Appeal is allowed with costs to the Appellant in the sum of $100.

Approved,

Dermot Marsh
Puisne Judge & Judge
of the Revenue Court.