

Short period of residence

(Lecture P1231 – 13.59 minutes)

In *Core v HMRC* (2020), the First Tier Tribunal accepted that, on the facts of this particular case, a period of occupation of some six to eight weeks was sufficient to demonstrate 'residence' for CGT main residence relief purposes.

Mr Core and his wife, a married couple with school-age children, lived in Merseyside. Mr Core was a builder by trade, operating the business through his own company.

Mr and Mrs Core purchased Green Lane on 22 March 2013. At that time, the family were living nearby in rented accommodation (Victoria Road) which was conveniently located for Mr Core's building business. They did not immediately occupy Green Lane after they bought it, given that they wished to do some extension and refurbishment work on the property. Mr Core carried this work out himself.

The Cores signed a six-month extension to their lease of Victoria Road with the landlord in December 2013. In June 2014, they signed a further six-month extension through to 31 December 2014.

During the course of the refurbishment work on Green Lane, Mr Core fell out with one of the neighbours which perhaps explains why the couple then sold Green Lane to a local buyer on 16 June 2014. They had therefore owned Green Lane for just under 15 months.

Mr and Mrs Core did not include the gain on the sale of Green Lane in their self-assessment tax returns for 2014/15 and subsequently appealed HMRC's closure notices which had brought the gain into charge on the ground that no relief was available under S222 TCGA 1992.

The factual issues in this dispute were:

- (i) the date when the buyer of Green Lane offered to buy the property and the date when the Cores accepted this offer; and
- (ii) when, for how long and why the Core family moved into Green Lane.

Despite a lack of documentary evidence in relation to the issue (i) above, the First Tier Tribunal found that the offer which was accepted by Mr and Mrs Core had been made in May 2014 (although the buyer had previously put forward lower offers which were rejected).

In relation to the issue in (ii) above, the First Tier Tribunal accepted the Cores' evidence that the family had moved out of Victoria Road and into Green Lane in March/April 2014, at which time the building work at the property was sufficiently advanced to allow the family to relocate. When moving out of Victoria Road, Mr Core did not seek to terminate their lease there in view of the fact that he used it as an office and storage site for building work which his company was doing in the neighbouring property. The family moved out of Green Lane and back to Victoria Road shortly after their acceptance of the buyer's latest offer. This was towards the end of May 2014.

HMRC cited the Court of Appeal's decision in *Goodwin v Curtis* (1998) as the main reason for refusing Mr and Mrs Core's claim that they 'resided' in Green Lane. In that case, which concerned a taxpayer who put up a property for sale very shortly after acquiring it and who only occupied it for about five weeks, Millett LJ said:

'Temporary accommodation at an address does not make a man resident there. The question whether the occupation is sufficient to make him resident is one of fact and degree for the Commissioners to decide.

The substance of the Commissioners' finding taken as a whole, in my judgment, is that the nature, quality, length and circumstances of the taxpayer's occupation of the (property) did not make his occupation qualify as residence.'

Schiemann LJ followed up with:

'I accept, as did the Commissioners, the Crown's contention that in order to qualify for relief a taxpayer must provide some evidence that his residence in the property showed some degree of permanence, some degree of continuity or some expectation of continuity.'

Because the taxpayer in *Goodwin v Curtis* (1998) was unable to establish this position to the satisfaction of the Court, he lost the case.

In this instance, the First Tier Tribunal concluded that, although lower offers had already been made by the buyer of Green Lane by the time when the Core family moved into Green Lane, the fact that they had made the move was strongly indicative of their expectation to live there indefinitely and that this, combined with the Cores' evidence of the unexpected nature of the latest offer from the Green Lane buyer, demonstrated a sufficient expectation that they would remain there indefinitely such that it became their sole residence for that period.

Consequently, the whole of Mr and Mrs Core's gain was within the main residence exemption because the rest of their period of ownership was covered by the so-called 'final period' which stood at 18 months in 2014/15 (see S223(1) TCGA 1992).

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