26TACD2019

NAME REDACTED

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. The is an appeal against a stamp duty assessment raised by the Respondent under the Stamp Duties Consolidated Act 1999 (SDCA), section 20.

2. The issue in this appeal concerns the application of SDCA, section 41. The Respondent maintains that additional duty should have been paid on the Conveyance by reference to the mortgage of €470,000 specified in the Contract of Sale at Special Condition 5.

3. The Appellant disputes the additional charge and also asserts that the Respondent's entitlement to raise the stamp duty assessment outside of the 4 year time limit is contrary to SDCA, section 159C(3).

Background

4. The Appellant purchased a property at **ADDRESS REDACTED** (the "Property") by Deed of Conveyance dated 28 February 2005 with **NAME REDACTED** as tenants in common.

5. On the purchase of the property in 2005, the Appellant and **NAME REDACTED** paid stamp duty in the amount of €77,130, being 9% of the consideration passing on the purchase in the amount of €850,000.

6. The Appellant and **NAME REDACTED** borrowed funds from AIB bank and granted to it a mortgage on a joint and several basis.

7. By agreement dated 20 May 2008, **NAME REDACTED** agreed to dispose of his interest in the Property to the Appellant for a consideration of €250,000. In addition, Special Condition 5 in the contract of sale stated:

"*The Purchaser shall assume the full burden of all debt in relation to the property and shall procure the release of the Vendor from and against any and all bank or other liabilities associated with the property.*"

8. A deed of conveyance dated 2nd of July 2008 provided that:

   "in consideration of the sum of Two Hundred and Fifty Thousand Euro (€250,000) …. the vendor as beneficial owner hereby GRANTS and CONVEYS unto the Purchaser all his right, title, and interest in the property described in the Schedule hereto"

9. The bank was not a party to the transaction and did not consent to the disposal of the interest in the Property by **NAME REDACTED** to the Appellant.

10. The Appellant stamped the Deed of Transfer with stamp duty in the amount of €8,750, representing stamp duty payable only on the consideration of €250,000.

11. The Respondent commenced an audit of the Appellant's affairs in 2011. During the course of the audit, the agent acting for the Appellant presented a capital gains tax computation in relation to the Property which included the following costs of acquisition:

"*Purchase Price Paid – Debt Assumed*	*€470,000*
Purchase Price Paid – Cash Consideration	*€250,000"*

12. Before the issuing of the assessment, correspondence ensued between the parties, where by letter dated 20th April 2011 the Respondent wrote to the Appellant seeking a reply to issues contained in that letter including the Appellant's exposure to the additional stamp duty. However, there does not appear to have been any response by the Agent.

13. In the absence of a reply, by assessment dated 5 November 2012, the Appellant was assessed to stamp duty based on the additional consideration consisting of the undertaking to discharge the mortgage of €470,000.

14. Notwithstanding the Appellant's failure to appeal the assessment within the prescribed 30 day limit, the Respondent extended the period of appeal to accommodate the Appellant.

Legislation

15. SDCA, section 41 provides:

> *"Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to such person, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance on the property or not, the debt, money or stock shall be deemed the whole or part, as the case may be, of the consideration in respect of which the conveyance is charged with ad valorem duty."*

16. In considering the charge to tax, there is an obligation, pursuant to SDCA, section 8 to disclose all the facts and circumstances affecting the liability of an instrument to stamp duty. The relevant provisions provide:

> *(1) Except as provided for in this section, all the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument.*
>
> *(2) Where it is not practicable to set out all the facts and circumstances, to which subsection (1) refers, in an instrument, additional facts and circumstances which—*
>
> *(a) affect the liability of such instrument to duty,*
>
> *(b) affect the amount of the duty with which such instrument is chargeable, or*
>
> *(c) may be required from time to time by the Commissioners,*
>
> *are to be fully and truly set forth in a statement which shall be delivered to the Commissioners together with such instrument and the form of any such statement may from time to time be prescribed by the Commissioners; but where the instrument is stamped by means of the e-stamping system and subject to the Commissioners making regulations under section 17A in relation to when a statement is required to be delivered to them, then such statement is not required to be delivered but only if the evidence in relation to all the facts and circumstances, affecting the chargeability of the instrument to duty, are retained by the accountable person for a period of 6 years from the date the instrument is stamped and are made available to the Commissioners on request.*

17. The time limits for making enquiries and raising assessments is governed by SDCA, section 159C. The relevant provisions provide:

(1) In this section–

"neglect", in connection with or in relation to a relevant instrument, means–

(a) subject to paragraph (b), in the case of an instrument or a specified statement, a failure to disclose in the instrument, or as the case may be, in the specified statement, all the facts and circumstances affecting the liability to duty of such instrument or specified statement,

(b) in the case of an instrument to which section 8(2) applies, as between both the instrument and the statement referred to in that section, a failure to disclose all the facts and circumstances affecting the liability to duty of such instrument, or

(c) in the case of an instruction of the type referred to in section 76, a failure to enter a correct instruction in a relevant system within the meaning of section 68;

"relevant instrument" means–

(a) an instrument stamped by the Commissioners or a specified statement delivered to the Commissioners or

(b) an instruction of the type referred to in section 76;

"relevant period", in relation to a relevant instrument, means the period of 4 years commencing on

(a) (i) subject to paragraph (b), the date the instrument was stamped by the Commissioners,
(ii) the date the statement was delivered to the Commissioners,
(iii) or the date the instruction was made,

or

(b) the latest date on which all of the conditions were required to be satisfied for a relief or exemption

"specified statement" means–

(a) an account delivered to the Commissioners under section 5,

(b) a statement that is required to be delivered to the registrar under section 117(1)(b), or

(c) a statement that is required to be delivered to the Commissioners under Part 9.

(2) The making of enquiries or the taking of other action by the Commissioners for the purpose of satisfying themselves as to the correctness or otherwise of the charge arising, either directly or indirectly, to stamp duty in respect of a relevant instrument may not be initiated after the expiry of the relevant period.

(3) Notwithstanding any other provision in any other section of this Act, an assessment made in connection with or in relation to any relevant instrument may not be made after the expiry of the relevant period.

(4) The time limit referred to in subsections (2) and (3) shall not apply where the Commissioners have reasonable grounds for believing that any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to any relevant instrument which is the subject of any enquiries, action or assessment.

Submissions – The Appellant

Time Limits

18. The Appellant submitted that on the 5th of November 2012 he was assessed to stamp duty contrary to SDCA, section 159C(3). The Appellant argued that the 4 year time limit prescribed by SDCA, section 159C(3) expired on the 8th of August 2012, 4 years after the instrument had been stamped by the Respondent and almost two years after the Respondent had first notified the Appellant that the stamp duty appeared to have been underpaid. As such the Respondent had ample time and opportunity to raise assessments within the 4 year time limit provided in statute.

19. The Appellant asserted that the time limits relevant to stamp duty pursuant to SDCA, section 159C was introduced having regard to the '*balanced scheme*' by Finance Act 2013. SDCA, section 159A was introduced at the same time the effect of which is to limit the ability of taxpayers to seek a repayment of stamp duty beyond 4 years from the date the instrument was stamped by the Respondent. As such, it was argued that

section 159C must be read strictly in favour of the taxpayer given that counter position is that the taxpayer's right to seek repayment is also limited to 4 years.

20. The Appellant also highlighted that the '*balanced scheme*' was the subject of decisions in relation to the Taxes Consolidated Act 1997 in the case of *The Revenue Commissioners v Droog* [2016] IESC.

21. As such, it was submitted that the tax legislation places an onus on the taxpayer and tax collector alike to bring the claims within 4 years. Therefore, it would be contrary to natural justice to allow the Respondent to argue that the neglect in raising the assessment within the statutory time limit should be excused by pleading neglect on the part of the taxpayer.

22. As is usual for an assessment outside the time limits, the onus of proof in relation to showing the time limits do not apply rests with the Respondent. While the Respondent indicated that insufficient information was provided for the purposes of SDCA, section 8, that was not sufficient to discharge the onus of proof on the Respondent and it was necessary for the Respondent to outline what exactly should have been disclosed by the Appellant, particularly in the situation where the Appellant was not in agreement with the technical position now adopted by the Respondent. The assertion that there was a failure to comply with SDCA, section 8 was only raised by the Respondent when the question of a breach time limit was pointed out.

23. The Appellant argued that there is no requirement to outline in the instrument or any statement that debt has been assumed, to the effect that SDCA, section 41 applies where the Appellant does not believe that such a requirement existed. It was therefore not clear as to what information could or should have been provided to the Respondent having regard to the technical position adopted by the Appellant in this case.

24. Furthermore, there was no requirement nor should there be any requirement on the Appellant to outline alternative technical arguments reasonably held by the Appellant based on the analysis of the legislation at the time of submission. If the technical position is not ultimately upheld, this is not a reason to set aside the time limits as the time limits are to prevent the re-opening of the taxpayer's affairs after the defined period and this includes the ability of the taxpayer to seek repayment of tax and should be strictly adhered to.

25. The setting aside of the time limit on the basis of an alleged failure to complete a statement that was not prescribed by the Respondent within the time limits represented an abusive use of the provision governing neglect in section 159C. Indeed, if this logic were followed, the result would be that the Respondent could at all times ensure that the time limits for assessments were of no effect by pointing to an omission of the facts

from an instrument or fact that there was a failure to deliver a statement containing such facts.

26. It was argued that to determine the matter in favour of the Respondent would represent an imposition of a fresh liability to tax that arises based on reference to a statement in the form of which is not prescribed in legislation and would fall outside the terms of the '*balanced scheme'* espoused in *Droog*. In this regard the Appellant highlighted the principles of the *Revenue Commissioners V Doorley* where it was stated:

> *"no person or property is to be subjected to tax and law unless brought within the letter of the taxing statute."*

Substantive Issue

27. On the purchase of the property, the Appellant and **NAME REDACTED**, as tenants in common, borrowed funds from AIB bank and granted to it a mortgage on a joint and several basis. The nature of AIB's interest was a legal charge over the entire legal and beneficial ownership of the property.

28. In this context the Appellant proceeded to open *'Co Ownership of Land Partition Actions and Remedies*' Bloomsbury, 2011 by a Dr. Heather Conway, specifically the following paragraphs:

> *8.03:*
>
> *"The distinguishing feature of a mortgage in the traditional sense is that it involves a transfer of interest from borrower to lender. A mortgage may be created by all of the co-owners or by one co-owner over his interest in the property".*
>
> *8.04*:
>
> *"Where all of the co-owners have joined in creating a mortgage, the mortgagee security extends to the entire property. The mortgagee takes a legal or equitable estate in the property depending on whether he has been given a legal or equitable mortgage while the co-owners retain the equity of redemption in the property. As co mortgagors the co-owners are jointly and severely liable to discharge the sums payable to the mortgagee*".
>
> *8.15:*
>
> "*It is well established that a mortgage created by all the co-owners does not prevent one or more of them from compelling partition or a sale of the mortgage property*

under the Partition Acts or under Section 31 of the Land and Conveyancing Law Reform Act 2009 in similar circumstances".

8.16:

"It is a fundamental aspect of the law on partition, that an order for partition or sale does not prejudice third parties with rights over the property and this is the case irrespective of whether such an order was sought under the Partition Acts or Section 31 of the 2009 Act. Cases such as Sinclair v James accordingly held that where a mortgage had been created by all the co-owners, the mortgagee was not a necessary party to a subsequent partition action and did not have to be served with notice of the judgment. This practice still applies today. Since a mortgagee of the entirety is not a necessary party and his consent is not required, he cannot prevent the co owners from dividing or selling the mortgage property. However, the order for partition or sale is subject to the rights of the mortgagee. These rights can only be altered with the mortgagee's consent".

8.18:

"If the mortgagee does not consent then the property is sold subject to the mortgage. However, in practical terms it may prove difficult to sell the property if the mortgagee does not consent."

8.19.

"Where the court makes an order for partition, this is in respect of the equity of redemption in the property. The mutual conveyances between the former co owners which are necessary to complete the partition only affect their equitable interests in the property. Following partition the mortgagors remain jointly and severely liable to discharge the mortgage payments as the mortgage still attaches to the entire property even though it is held in divided shares".

29. The Appellant submitted that where there are co-owners who grant a mortgage to a bank, the bank takes the full legal and beneficial ownership in the property. So, it is an entirely different interest that the bank obtains over the property to that held by the co-owners. The co-owners retain what is called the equity of redemption in the property and the Appellant should be assessed on that interest under SDCA, section 41. The Appellant submitted that co-owners can deal with the equity of redemption and the position of the bank is not affected. The bank's charge remains over the legal and beneficial ownership of the property.

30. The Appellant proceeded to open *Sinclair v James* [1984] 3 CH D 554. The headnote of that judgment is set out at page 554:

"*An action for partition was brought by the owner of the equity of redemption of an undivided share of lands subject to mortgagors affecting the whole. The Plaintiff's mortgagee and the overriding mortgagees being made parties, the action was dismissed against the several mortgagees as showing no reasonable cause of action".*

31. The Appellant proceeded to the decision of North J. where at page 556 he said:

"First, to take the case of the overriding mortgagees I cannot see any reason why they should be parties to the action, and no partition of the interest of persons entitled to the equity of redemption can affect them. A partition of the equity of redemption cannot diminish or affect their rights. That point is covered by the authority cited".

32. The Appellant argued that under the law of property, the only interest that the parties could transfer was the equity of redemption and the only consideration for the transfer of that interest was €250,000.

33. It was submitted that the charge that the bank had was over the entire legal and beneficial ownership of the real property. There was an equity of redemption being assigned, that was the property interest and as such there was no bank charge over that particular interest.

34. The Appellant proceeded to open *Swayne v The Commissioners of Inland Revenue* [1899] 1 QB 335. The headnote at page 335 reads:

"The lessee, for a term of ninety-nine years at a yearly rent, of a piece of land with three houses thereon, assigned and conveyed two of the houses, in consideration of 503l., for the residue of the term subject to an apportioned rent representing two-thirds of the rent reserved by the lease. By the deed of assignment the assignee covenanted to pay such apportioned rent, and to keep the assignor indemnified in respect of it, and the assignor covenanted to pay the remaining one-third of the rent reserved by the lease, and to keep the assignee indemnified in respect of it. The three houses were of the same annual value"

35. The position of the Crown was set out at page 338:

"Payment of rent by the assignee is really part of the consideration for the assignment because the assignor, pro tanto, escapes liability to the lessor. There is no privity between the assignor as between the assignee and the lessor, the assignor makes what bargain he pleases with the assignee".

36. The Appellant thereafter placed emphasis on the following passage where Bruce J. at page 340 said:

> *"If the commissioners have the right to require the sum of 2l. 11s. to be treated as part of the consideration as regards the assignment of the lease of houses 7 and 8, they have the same right with regard to the 2l. 11s. payable in respect of houses 9 and 10. But, in my opinion, they have no such right in either case. The question turns upon the meaning of the words "subject to the payment of any money." Of course, where leasehold property is assigned it is commonly assigned subject to the payment of rent, because the payment of rent is an obligation ordinarily incident to leasehold property. But when we come to look at the preceding words in the section - "conveyed to any person in consideration wholly or in part of any debt due to him" - which govern the words "or subject to the payment of any money," it seems to me that it is reasonable to construe the section as pointing to a liability to pay money arising in some way other than as incident to and inseparably connected with the property conveyed. Where a lease for years subject to the payment of an annual rent is conveyed or assigned, the very property conveyed is in its nature a qualified property, and the liability to pay rent arises out of the nature of the estate conveyed. The liability to pay is not in the nature of a charge or incumbrance on the property; it does not even arise out of any independent stipulation that the money shall be paid; it is inherent in the nature of the property, and can never be extinguished so long as the character of the property remains."*

37. Furthermore, the Appellant cited the following passage where Bruce J. determined at page 341:

> *" therefore it is right that the sums of money, upon the payment of which the purchaser is able to obtain an unincumbered estate, should be taken into consideration as forming part of the purchase-money and be added to the amount paid by the purchaser as the price of the incumbered estate, or as the price of the estate sold burthened with the condition of the payment of money in futuro. It was to meet cases of this kind that from time to time various provisions have been made by the Legislature, the last of which is contained in the section now under consideration. No doubt the words in the section are very wide, but I think they cannot properly be applied to mean more - to use the language of Martin B. in the case of Mortimore v. Commissioners of Inland Revenue (1) - than this, that ad valorem duty shall be paid "on the entire consideration which, either directly or indirectly, represents the value of the free and unincumbered corpus of the subject-matter of sale." Where, as in this case, the liability to pay is an incident of the corpus of the sale and inseparable from it, and from which the corpus never can be freed, it seems to me that it would be giving too comprehensive a meaning to the words of the Legislature to hold that the rent to which the corpus is subject should be treated as if it were an incumbrance"*

38. In this context, the Appellant argued that the agreement between the Appellant and **NAME REDACTED**, was the transfer of the equity of redemption where under the contract governing the transaction, the Appellant was responsible for the debt.

39. The Appellant therefore submitted that the mortgage over the Property which was over the entire legal and beneficial ownership, held by the mortgagee, is not the property interest transferred. What was transferred was the equity of redemption and the liability assumed by the Appellant inherent in the nature of the property acquired. As such SDCA, section 41, did not extend to the value of mortgage assumed.

40. The Appellant thereafter argued that the property conveyed was the equity of redemption held by **NAME REDACTED** and that interest was not subject to the bank debt but was inherent in that interest. But the only property interest transferred was the equity of redemption.

41. As such, the bank debt was not a charge or incumbrance on the property interest held by **NAME REDACTED** because he held an equity of redemption in the property and it was not subject to the bank debt. The *corpus*, the subject matter of the conveyance, was the equity of redemption.

42. The Appellant asserted that the plain words contained in the Deed of Conveyance provided for a transfer of the equity of redemption for a consideration of €250,000. As the mortgage had been granted as a matter of law, the only interest in the property was the equity of redemption and reflected in the operative part of that document which states:

> *"the Vendor as beneficial owner Grants and Conveys on to the purchaser all his right, title and interest in the property contained in the schedule hereto".*

43. Separately, it was argued that if one focuses on the interest passing which was the equity of redemption, inherent in that was the bank mortgage. But that does not make it chargeable under SDCA, section 41 and the authority for that was the *Swayne* decision.

44. The Appellant distinguished *IRC v City of Glasgow Bank Liquidator*s (1881) 8 R (Ct of Sess) 389, as that case did not address the issue of co ownership. Therefore, the Appellant submitted that the *Swayne* decision which occurred after the *City of Glasgow* case was on all fours with this appeal.

45. The Appellant argued that he was jointly and severely liable for the mortgage before and after the conveyance. Following the *Swayne* decision, there was ample authority to find that the deed or the instrument here was correct and as such there was no neglect on the part of the Appellant in formulating the instrument in the manner in which it was

done. There was no requirement in an instrument to make the Respondent's case. All that was required to be inserted into the conveyance was the interest moving from NAME REDACTED which was the equity of redemption of €250,000.

Submissions - Respondent

Time limit

46. The Respondent submitted that the express wording of SDCA, section 159C(4) disapplies the time limit where the Respondent had reasonable grounds for believing that there was neglect. The Respondent argued that the Deed of Conveyance did not disclose the mortgage which would have enabled the Respondent to activate the provisions of SDCA, section 41. It was also relevant that in the Appellant's capital gains tax return, a deduction was claimed for the consideration of €470,000 in the form of a debt assumed and that was sufficient to constitute reasonable grounds for Respondent to consider that there had been inadequate disclosure in relation to the stamp duty.

47. Furthermore, it is explicit in SDCA, section 8(1) that "*all the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument."* As such, the disclosure of the mortgage was a fact or circumstance affecting the liability of the conveyance to duty pursuant to SDCA, section 41.

48. Furthermore even if the Appellant or his solicitors did not think it was appropriate or necessary to mention the assumed debt in the instrument, there was nothing to prevent the insertion of a short statement noting the provision in the contract therefore putting the Respondent on notice that the transactions also included the assumption of the debt pursuant to SDCA, section 8(2). As such the failure to have made such a disclosure, excludes the Appellant's entitlement to rely on the 4 year time limit.

49. In the alternative, if it is found against the Respondent on the disclosure issue, but that SDCA, section 41 was applicable on the basis that the debt assumed of €470,000 should have been treated as consideration, then it would not be possible to find that the Respondent did not have reasonable grounds for believing that there had been neglect.

50. It was argued that the *'balanced scheme*' as advanced by the Appellant is a feature of the Superior Courts specifically in the decision of *Droog* where Clarke J. referred to a taxpayer having made a fully compliant return. Therefore the '*balanced scheme'* only applies to a fully compliant taxpayer who has done everything that is required under the act.

51. Finally, the Appellant was on notice within the 4 year time limit of the Respondent's position and his position cannot be compared with *Droog* where the taxpayer, at the

end of the 4 year period, thought that his affairs were closed. The Appellant in this appeal never got that closure in relation to his stamp duty affairs because he knew that the transaction was still under audit at the end of that period.

Substantive Issue

52. The Respondent referred to the Appellant's acknowledgement that no reliance was placed on the submissions on partitions and partnerships included in his written outline of arguments.

53. The Respondent also acknowledged the Appellant's possible exposure to the bank in respect of the full mortgage liability as the mortgage was arranged on a joint and several basis. As such the bank would not have to pursue **NAME REDACTED** even as a co-owner.

54. However, while they were co-owners, the Appellant had a right of contribution from **NAME REDACTED** and authority for such an assertion was in Dr Conway's book, previously opened by the Appellant, where at footnote 12 of chapter 8, it says:

> *"Where two or more persons incur a debt they are jointly and severely liable to discharge that debt and a co-owner who pays more than his share has a right to a contribution from the others".*

55. Therefore, if the bank sought to enforce the debt against the Appellant while he and **NAME REDACTED** were co-owners, the Appellant might have been forced to discharge the loan, but he could have pursued **NAME REDACTED** for a contribution as a legal right and something he could have progressed through the courts.

56. However, that position changed as a result of this transaction once the Appellant entered into the contract and assumed the full burden of the debt. Therefore, **NAME REDACTED** was released from the liabilities associated with the property and that the Appellant lost that right of contribution. So at that point, the Appellant became solely liable for the entire amount outstanding on the loan which was a significant change in his liabilities.

57. The Respondent noted that the monthly loan repayments were met jointly by the Appellant and **NAME REDACTED**. However, after he had purchased **NAME REDACTED** 's share in the property, the repayments were met by him and his wife out of the sale of another property. It was therefore evident that the Appellant accepted that he had sole liability after he had bought **NAME REDACTED** 's share. It was clear that **NAME REDACTED** accepted before the sale of the half share that they were jointly liable and

the promise to procure the release of the debt was a form of consideration that came within SDCA, section 41

58. Furthermore, it was also apparent from the letter from Ronan Daly Jermyn of 1st October 2015 that **NAME REDACTED** was released from his liability in respect of that loan from the bank. Therefore, the financial liabilities for which the Appellant was responsible completely changed by the purchase of **NAME REDACTED** 's interest.

59. The Respondent thereafter disputed the Appellant's argument that the subject matter of the sale was the equity of redemption arguing that such an interest was not recorded in the contract for sale. The Memorandum of Agreement expressed, *inter alia*, in that contract gave dates and purchase price. Under the heading, Particulars and Tenure, details of the property sold specified:

> *"All that and those part of the lands at **ADDRESS REDATCED** as is more particularly delineated on the map or plan attached hereto and edged red and marked A held in fee simple".*

60. Therefore, on the face of the contract, it was for a sale of a property held in fee simple and there was no mention of equity of redemption.

61. The Respondent also disputed the Appellant's assertion that all a mortgagor can sell is the equity of redemption. The Respondent argued that it is common to sell properties which are subject to mortgages and the full interest in the property is conveyed to the purchaser but on the basis that the sale proceeds are used to repay the mortgage and thereafter the mortgage will be released.

62. Furthermore, under Special Condition 4 of the contract, there was no mention of the equity of redemption and no restriction of the transaction to the equity of redemption but instead stated:

> *"The vendor and the purchaser are joint owners of the property as tenants in common in equal shares and the vendor is selling his entire share in the property to the purchaser".*

63. The Deed of Conveyance stated under Recital 1 read:

> *"The vendor and the purchaser... more particularly described in a schedule hereto for an estate in fee simple in equal shares subject to a yearly rent of 2 shillings sterling but indemnified against the payment thereof. The vendor has agreed with the purchaser for a sale to the purchaser of the vendor's share of the property described in the schedule hereto for an estate in fee simple in possession for the price or sum of €250,000".*

64. Therefore, the conveyance was an interest in an estate in fee simple. It was the full ownership of the property and there was no mention of the equity of redemption. In addition, the Schedule in the Deed of Conveyance only refers to the dwelling house and premises known as **ADDRESS REDATCED** and to the map as the property included in a previous Deed of Conveyance and provided:

> *"NOW THIS INDENTURE WITNESSES THAT:*
>
> *In pursuance of the said agreement and in consideration of the sum of €250,000 the receipt of which is hereby acknowledged, the vendor as beneficial owner hereby grants and conveys onto the purchaser all his right, title and interest in the property ascribed in the schedule hereto to hold the same unto and to the use of the purchaser in fee simple subject to the yearly rent of 2 shilling sterling but indemnified against payment thereof. And the vendor hereby assigns onto the the purchaser the benefit of the covenants for payment of the said rent".*

65. Therefore, all the contractual documentation reflected a standard sale of the freehold interest in the property and nothing about the equity of redemption.

66. The Respondent submitted that part of the mortgagor's, the owner's rights under the mortgage, was the right to redeem the mortgage and to get the full title and that was the basis on which a mortgagor can actually sell something more than the equity of redemption because they have this right of redemption and this was something which made the equity of redemption quite a different sort of interest from the interest that the court was looking at in *Swayne* in considering a leasehold interest. The Respondent proceeded to highlight the following passage of Dr. Conway's book where at paragraph 8.14, it says:

> *"Likewise it is a fundamental aspect of the mortgage transaction that the mortgagor may redeem the mortgage by repayment of the mortgage debt".*

67. The Respondent argued that it was misleading to treat the conveyance as a sale of the equity of redemption, rather than an ostensible sale of the property. Notwithstanding that the property was subjected to a mortgage and continued to be subject of a mortgage but that does not mean that the subject matter of the sale was the equity of redemption. On the contrary, the subject matter of the sale was the half share in the fee simple interest in the Property.

68. Therefore the essence of SDCA, section 41 is that where property was conveyed to the Appellant, and that conveyance was subject either certainly or contingently to the payment or transfer of any money or stock, then whether that money or stock is a charge on the property or not, in this case there was a charge on the property, the undertaking to discharge the mortgage constituted additional consideration.

69. Furthermore, while the rules for capital gains tax and the stamp duty rules are different, it was not possible for the debt assumed to be consideration in respect of which the Appellant could claim a deduction for CGT purposes and not come within the provisions of SDCA, section 41.

70. The Respondent proceeded to open *Mortimer v Commissioners of Inland Revenue* 2 H & C 836, which was one of the cases cited in *Swayne,* the purpose of which was to explain the background to the equivalent provision of the SDCA, section 41. In that case, a property was transferred subject to a contingent liability. It was a mortgage which only became payable if certain persons survived for a limited period of time. The issue therefore was whether a contingent liability, was a mortgage or liability for the purposes of the equivalent of SDCA, section 41. The Court said at page 353:

> *"Whether a deed of 3rd of March 1856 is chargeable with ad valorem duty in respect of a mortgage for £38,000 to which the property is subject. Mr. Coen had been ceased under the Will of Elizabeth Nelphorpe of an estate... and certain property expectant. ….. He afterwards sold his interest in the property subject to the above mortgage to Mr. Mortimer £5,250. The conveyance of it was affected by the indenture of the 3rd of March 1856 and the question is whether this deed is chargeable with ad valorem duty in respect of the mortgage debt. This depends upon the construction of the tenth section of the 1617 Victoria Chapter 59. The section begins by reciting a part of the schedule titled Conveyance of the General Stamp Act which provides that where property is sold and is conveyed subject to a debt or sum of money to be afterwards paid by the purchaser the same shall be deemed to be purchase money in respect whereof ad valorem duty is to be paid. It then no doubt in consequence of the case of the Marquise of Chandos v Commissioners of Inland Revenue recites that it had been decided that ad valorem duty was payable in respect of such debt or sum only when the purchaser is bound to pay the same or to indemnify the vendor against it. And it enacts that when lands to be sold, subject to any mortgage or debt a sum of money such sum or debt shall be deemed the purchase or consideration money or part of the purchase or consideration money as the case may be in respect whereof ad valorem duty shall be paid. Notwithstanding the purchaser shall not be liable to pay it or indemnify the vendor against it. The scope and object of the enactment is clear that upon every purchase ad valorem duty to be paid on the entire consideration which either directly or indirectly represents the value of the free and unencumbered corpus of the subject matter of sale. The real question in this case is whether the debt payable to the insurance company which as well the parties to the conveyance as the parties to this case themselves... mortgage is not a debt within the enacting part of the section".*

71. As such, it was determined that the purpose of the legislation was that *ad valorem* duty should be paid on the entire consideration which directly or indirectly represented the value of the free and unencumbered corpus of the subject matter of sale.

72. In this context the Respondent submitted that the free and unencumbered corpus of the subject matter of sale in this case is **NAME REDACTED's** half interest in the property, free and unencumbered and the Appellant's undertaking to discharge the entire of the mortgage and to release **NAME REDACTED** from his obligation was part of the consideration which directly or indirectly represented the value of that half interest. The €470,000 that the Appellant undertook to release **NAME REDACTED** was consideration in exactly the same way for stamp duty purpose as the €250,000 cash that he paid over and that was the intent of the legislation to ensure that such a loan did not escape liability to stamp duty as otherwise only part of the value of the property would be stampable.

73. The Respondent proceeded to open *IRC v City of Glasgow Bank Liquidator*s (1881) 8 R (Ct of Sess) 389, which considered a provision in the 1870 act equivalent to SDCA, section 41. The headnote in that decision is set out on page 390 and reads:

> *"It was agreed that he should convey to the liquidators certain heritable subjects belonging to him, his interest in which after deducting a bond over them for £2,400 was valued at £2,350. He executed a conveyance of the subjects accordingly bearing that it was in extinction of his debt to the extent of £2,350".*

74. Therefore, the issue in *City of Glasgow Bank* was whether the liquidators had to pay stamp duty on the transfer of the land by reference to just the £2,350 or also by reference to the £2,400 which was more than the actual debt on which they had accepted the compromise.

75. The court held that both were to be taken into account under what is now SDCA, section 41 where it was confirmed at page 391:

> *"Now, the Commissioners are of opinion that this was a conveyance on sale, and that the property was conveyed in consideration of the debt or liability of the grantor to the grantee to the extent of £2350, and subject to the payment of money, to wit, £2400, charged on the property, and that the said debt or liability and the said money they deemed the consideration in respect whereof the conveyance was chargeable with the ad valorem conveyance on sale duty.*
>
> *The liquidators, on the other hand, at whose request this case has been stated, maintain that the ad valorem stamp with which the deed ought to be impressed is*

upon the sum of £2350, being the amount of the contributory's liability to them, the discharge of which they say is the proper and only consideration of the conveyance.

And it appears in the present case that the burden of £2400 upon the property in question is constituted by a bond and disposition in security granted by a previous owner of the estate, and unless there had been some mode of transferring the personal obligation against Mr Dove, the granter of the disposition, he of course is not personally bound for payment of that debt, although he would have a very sufficient interest to pay off the debt, because it constituted a burden upon what has now become his property. Under this statute, 55 Geo. III., it was, I think, very naturally held, in the case of the Marquis of Chandos v. Commissioners of Inland Revenue, 1851, 20 L. J. Exch. 269, by the English Court of Exchequer, that where there was no personal obligation upon the purchaser it was not intended by the Act that the amount of the burden should be taken as part of the consideration of the conveyance. It was in consequence of the judgment so pronounced that an enactment of a very different kind was introduced into the next Stamp Act, 16 and 17 Vict. cap. 59, by the 10th section of which, after reciting that portion of the 55 Geo. III. which I have already read, and proceeding upon this further consideration, "Whereas it has been held and determined that the said ad valorem duty is payable in respect of any such sum or debt only where the purchaser is personally liable or bound, or undertakes or agrees, to pay the same, or to indemnify the vendor against the same, and it is expedient to alter and amend the law in this respect," the statute proceeds to enact that " Where any lands or other property shall be held and conveyed subject to any mortgage, wadset, or bond, or other debt, or to any gross or entire sum of money, such sum of money or debt shall be deemed the purchase or consideration money"

76. And then on page 392:

"*Now, that is a very plain alteration of the previous enactment, and provides that the burden subject to which the estate is conveyed shall be deemed to be part of the purchase money, whether the vendee be personally liable to pay for it or not*"

77. At 393, the court explained the rationale of the section:

"If any other rule were adopted, it is quite plain that the fair incidence of this tax would be altogether frustrated and defeated. A proprietor has an estate worth £20,000. There is a bond upon it for £10,000. He sells that estate, and the purchaser pays to him the difference between the amount of the bond and the value of the estate, so that the bond being for £10,000 he pays £10,000. The day after he obtains infeftment he pays off the bond. Well, the practical result of that is that he has paid £20,000 as the purchase money of this estate, and he has obtained a conveyance with an ad valorem stamp of the value of £10,000. That is a simple defeating of the purpose and intention of the Legislature as expressed in this clause, and therefore I

think, upon the plain meaning of this section, that there was no intention whatever to go back upon the enactment of the 16 and 17 Vict., and to restore the enactment of the 55 Geo. III., which is what the liquidators are contending for."

78. The Respondent argued that that passage of the judgement was a simple explanation of the mischief against which SDCA, section 41 was directed and was applicable to the facts in this appeal where **NAME REDACTED's** interest was worth €720,000 approximately and sold for €250,000 with another €470,000 charged on that interest and that liability was assumed by the Appellant. Therefore, the Appellant paid € 250,000 to **NAME REDACTED** and by paying the €470,000 to the bank gets an unencumbered interest in **NAME REDACTED's** share of the property. That is exactly the same as the hypothetical transaction that is described in *City of Glasgow Bank*. Therefore, the purpose of the SDCA, section 41 would be defeated if the Appellant was only charged stamp duty on the €250,000 because it would not reflect the full value of the property.

79. In this context the Respondent argued that it was clear that the Appellant was personally liable to pay for the obligation which he took over from **NAME REDACTED** and he did, in fact, pay it. As such SDCA, section 41 clearly states that once the estate or the land is subject to a burden such as a mortgage, it is deemed to be part of the purchase money even if the purchaser was not liable to pay it. Therefore, the fact that there was a mortgage charged over **NAME REDACTED's** interest in the land would in fact be sufficient to trigger a SDCA, section 41 liability.

80. The Respondent proceeded to distinguish *Swayne* on the basis that the payment of a mortgage is not necessarily incident to the ownership of freehold property. The payment of the mortgage is an obligation under the Deed of Mortgage, it is not something which attaches to the property itself. Furthermore, it is not a permanent obligation because the concept of the equity of redemption is that the mortgagor can discharge the mortgage and pay the debt and be freed from the mortgage at any time, in which case the mortgage no longer attaches to the property.

81. The Respondent submitted that *Swayne* does not support the Appellant's position, and is in fact directly contrary to it. In S*wayne*, the Inland Revenue argued unsuccessfully that, where leasehold property was conveyed subject to a ground rent, that rent was part of the consideration for stamp duty purposes. Both the Divisional Court and the Court of Appeal rejected the Revenue's argument. Bruce J. in the Divisional Court distinguished between a liability like ground rent, which was permanent and inherent in the property, and a mortgage or other incumbrance which could be discharged and opined at page 341:

"But when we come to look at the preceding words in the section - "conveyed to any person in consideration wholly or in part of any debt due to him" - which govern the words "or subject to the payment of any money," it seems to me that it is reasonable

to construe the section as pointing to a liability to pay money arising in some way other than as incident to and inseparably connected with the property conveyed. Where a lease for years subject to the payment of an annual rent is conveyed or assigned, the very property conveyed is in its nature a qualified property, and the liability to pay rent arises out of the nature of the estate conveyed. The liability to pay is not in the nature of a charge or incumbrance on the property; it does not even arise out of any independent stipulation that the money shall be paid; it is inherent in the nature of the property, and can never be extinguished so long as the character of the property remains. The history of the legislation on this subject, I think, confirms the view that I have expressed. It is related in the judgments delivered by the Lord President and the other judges of the Court of Session in the case of Commissioners of Inland Revenue v. Liquidators of City of Glasgow Bank. Where property is incumbered and is sold subject to the incumbrance, or even subject to a bond or condition that certain money shall be paid in futuro, then upon payment off of the incumbrance, or upon payment of the money stipulated to be paid in futuro, the purchaser obtains an estate discharged from the incumbrance, or bond, or condition, and the money so paid in discharge of the incumbrance, or bond, or condition is paid indirectly as part of the purchase-money of the estate, and therefore it is right that the sums of money, upon the payment of which the purchaser is able to obtain an unincumbered estate, should be taken into consideration as forming part of the purchase-money and be added to the amount paid by the purchaser as the price of the incumbered estate, or as the price of the estate sold burthened with the condition of the payment of money in futuro. It was to meet cases of this kind that from time to time various provisions have been made by the Legislature, the last of which is contained in the section now under consideration."

82. Therefore, if the obligation was incident to the property and inseparably connected with it, it was not within SDCA, section 41. But it was not incident to it and if it is not inseparably connected with it then it is potentially within SDCA, section 41.

83. Therefore, the position considered in *Swayne* is in complete contrast to the position in this appeal as the liability to pay was in the nature of a charge or incumbrance in the property as a mortgage. It arose out of an independent stipulation, in other words, in accordance with the mortgage deed and the loan arrangement that the money should be paid. It was not inherent in the nature of the property, as the nature of the property sold per the contract and per the conveyance was the fee simple interest. The mortgage liability was not inherent in the nature of that property. Most importantly, the mortgage could be extinguished by repayment and the character of the property, the fee simple, remained unchanged.

84. **NAME REDACTED's** interest in the property was sold subject to the incumbrance and it was sold subject to a condition that money would be paid in the future. In other words, the liability would be assumed and paid by the Appellant. On the payment of the money

stipulated to be paid in the future, the Appellant obtained an estate discharged from the incumbrance. The money paid in discharge of the incumbrance, the mortgage, was paid indirectly as part of the purchase money of the estate. It was therefore correct that it be treated as money on the payment of which the Appellant was able to obtain an unencumbered estate and that it should be taken into consideration as forming part of the purchase money for stamp duty purposes.

85. The decision of Wills J. was very much in agreement with Bruce J. in the manner in which he looked at the nature of the property sold and concluded at page 344:

> *"What Mills had to sell was a leasehold, not unburdened, but subject to a liability for the purchaser to be distrained upon for 3l. 16s. 6d. annually. He could not convey any portion of the land subject to this undivided sum otherwise than as subject to this burden, and it made no difference whether or not he said in his conveyance that he conveyed subject to the burden, or any part of it."*

86. The Respondent concluded that the burden of the rent actually attached to the land in *Swayne*, whereas the liability for the mortgage does not attach to the land in the same way. It was something which could be overridden by repayment and was not a permanent fixture or a permanent feature of the interest in the land. Therefore, *Swayne* was not on point with this appeal and was clearly distinguishable.

Analysis

Substantive Issue

87. SDCA, section 41 provides:

> *"Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to such person, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance on the property or not, the debt, money or stock shall be deemed the whole or part, as the case may be, of the consideration in respect of which the conveyance is charged with ad valorem duty."*

88. Based on the contractual documentation, the interest conveyed to the Appellant was the Property held in fee simple. As highlighted by the Respondent and a matter acknowledged by the Appellant, there was no reference in the contractual documentation to the conveyance of the equity of redemption. Therefore, to give effect to the Appellant's submission would require that I disregard the contractually prescribed arrangements.

89. By agreement dated 20 May 2008, **NAME REDACTED** agreed to dispose of his interest in the Property to the Appellant for a consideration of €250,000. In addition, Special Condition 5 in the contract of sale stated:

> "*The Purchaser shall assume the full burden of all debt in relation to the property and shall procure the release of the Vendor from and against any and all bank or other liabilities associated with the property."*

90. Therefore, contrary to the Appellant' argument, **NAME REDACTED's** fee simple interest in the Property was acquired by the Appellant by contract dated 20th May 2008 for €250,000 together with the undertaking to assume **NAME REDACTED's** element of the debt charged on the Property. The obligation to discharge the mortgage constituted an indirect payment as part of the purchase money in accordance with SDCA, section 41 and as such was to be taken into account as forming part of the consideration for stamp duty purposes.

91. It is also significant that during the hearing, the agent for the Appellant acknowledged that the essence of the bargain between the Appellant and **NAME REDACTED** was the €250,000 cash and the assumption of the mortgage debt.

92. Therefore, the Appellant's argument that his financial position was exactly the same before and after the transaction fails to take into consideration the Appellant's right of contribution from **NAME REDACTED**. If the bank sought to enforce the debt against the Appellant while he and **NAME REDACTED** were co-owners, the Appellant might have been forced to discharge the loan, but he could have pursued **NAME REDACTED** for a contribution as a legal right.

93. The Appellant's position changed after he assumed the full burden of the debt. Thereafter, **NAME REDACTED** was released from the liabilities associated with the property and the Appellant lost the right of contribution and became solely liable for the entire amount outstanding on the loan. As such the Appellant's financial liabilities increased as a consequence of assuming **NAME REDACTED's** debt on the property.

94. Furthermore, all of the jurisprudence supports the Respondent's position specifically the following passage from *Swayne* where Bruce J. determined at page 341:

> *"The history of the legislation on this subject, I think, confirms the view that I have expressed. It is related in the judgments delivered by the Lord President and the other judges of the Court of Session in the case of Commissioners of Inland Revenue v. Liquidators of City of Glasgow Bank. Where property is incumbered and is sold subject to the incumbrance, or even subject to a bond or condition that certain money shall be paid in futuro, then upon payment off of the incumbrance, or upon payment of the money stipulated to be paid in futuro, the purchaser obtains an estate discharged from the incumbrance, or bond, or condition, and the money so*

paid in discharge of the incumbrance, or bond, or condition is paid indirectly as part of the purchase-money of the estate, and therefore it is right that the sums of money, upon the payment of which the purchaser is able to obtain an unincumbered estate, should be taken into consideration as forming part of the purchase-money and be added to the amount paid by the purchaser as the price of the incumbered estate, or as the price of the estate sold burthened with the condition of the payment of money in futuro."

95. Therefore, the Appellant's attempts to distinguish *City of Glasgow Bank* on the basis that the issue of co-ownership was not considered in that case is incorrect. Similarly, I do not agree with the Appellant that the *Swayne* decision which occurred after the *City of Glasgow* case was on all fours with this appeal. As noted by the Respondent, the position considered in *Swayne* is not the same as the matter in this appeal as the mortgage on the Property was a charge or incumbrance that arose out of an independent stipulation and was not inherent in the nature of the property sold. The interest per the contract and per the conveyance was the fee simple interest and most importantly, the mortgage could be extinguished by repayment and the character of the property remained unchanged.

96. In direct contrast, the issue in *Swayne* concerned the conveyance of a leasehold property subject to a ground rent where at page 341, Bruce J. confirmed:

"Where a lease for years subject to the payment of an annual rent is conveyed or assigned, the very property conveyed is in its nature a qualified property, and the liability to pay rent arises out of the nature of the estate conveyed. The liability to pay is not in the nature of a charge or incumbrance on the property; it does not even arise out of any independent stipulation that the money shall be paid; it is inherent in the nature of the property, and can never be extinguished so long as the character of the property remains"

97. Therefore, in this appeal, **NAME REDACTED's** interest in the Property was sold subject to the incumbrance and on condition that money would be paid in the future. The money paid in discharge of the incumbrance, the mortgage, was paid indirectly as part of the purchase money for the Property. Therefore, the €470,000 that the Appellant undertook to release **NAME REDACTED** from that debt was consideration in exactly the same way for stamp duty purpose as the €250,000 cash that he paid over. Therefore, that undertaking is to be taken into consideration as forming part of the purchase money for stamp duty purposes.

Time limit

98. It was highlighted by the Respondent that while the Appellant was remiss with the obligation to file his appeal within 30 days from the date of the assessment, the Respondent permitted the late appeal. Thereafter, the Appellant raised the issue of time limits against the Respondent in an attempt to seek a determination that the assessment issued out of time. While there is a common law maxim that requires a person "*who comes into equity must come with clean hands*", the Tax Appeals Commission is not entitled to apply the principles of equity.

99. SDCA, section 159C restricts the period within which the Respondent may make enquiries or raise assessments to 4 years from the date on which the instrument was stamped. This restriction does not apply where the Respondent has reasonable grounds for believing that any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to the relevant instrument.

100. The Appellant submitted that the Respondent had ample time and opportunity to raise assessments within the 4 year time limit. The Respondent countered by highlighting that the express wording of SDCA, section 159C(4) disapplies the time limit where the Respondent had reasonable grounds for believing that there was neglect.

101. SDCA, section 159C(1) defines "neglect" *inter alia* as "*a failure to disclose…all the facts and circumstances affecting the liability to duty of such instrument".* Therefore as noted by the Respondent, SDCA, section 159C(4) states:

> *"The time limit referred to in subsections (2) and (3) shall not apply where the Commissioners have reasonable grounds for believing that any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to any relevant instrument which is the subject of any enquiries, action or assessment."*

102. As such, subsection (4) disapplies the time limit prescribed by subsections (2) and (3) where the Respondent had reasonable grounds for believing that there was any form of fraud or neglect. Those provisions provide:

> *(2) The making of enquiries or the taking of other action by the Commissioners for the purpose of satisfying themselves as to the correctness or otherwise of the charge arising, either directly or indirectly, to stamp duty in respect of a relevant instrument may not be initiated after the expiry of the relevant period.*

(3) Notwithstanding any other provision in any other section of this Act, an assessment made in connection with or in relation to any relevant instrument may not be made after the expiry of the relevant period."

103. In considering the documentation furnished to the Respondent, I have concluded that the Appellant misinterpreted SDCA, sections 8 and 41 with regard to the information to be furnished to the Respondent and the charge to stamp duty respectively. Furthermore, the judgement in *Swayne* does not support the Appellant's argument and is quite clear from *City of Glasgow Bank* that the conveyance of a property subject to a mortgage is chargeable to *ad valorem* duty. In this regard I have concluded that there was neglect on the part of the Appellant that was sufficient to permit the Respondent to invoke SDCA, section 159C(4).

104. While the Respondent could have raised the assessment within the prescribed 4 year time limit, it is significant that there was neglect in the presentation of the deed for stamping. It is also highly relevant that there was no response to the Respondent's letter of 20th April 2011 before the assessment issued on 5th November 2012. Therefore, it is not appropriate for the Appellant to highlight the failure of the Respondent to raise the assessment within the prescribed time without acknowledging his own failure to have responded to the Respondent's correspondence of 20th April 2011. Furthermore, the raising of the assessment did not unduly prejudice the Appellant as he was aware that the issue of the underpayment of Stamp Duty had not been resolved.

105. When pressed, the Appellant acknowledged that if he was acting for a seller of property, where the mortgage debt was assumed, he would have sought bank consent and would probably have made reference to that position in the conveyancing document.

106. It is also necessary to distinguish the Appellant's reliance on *Droog*. As noted by the Respondent, the taxpayer in *Droog,* at the end of the 4 year period, thought that his affairs were closed. The Appellant in this appeal never got that closure in relation to his stamp duty affairs because he knew that the transaction was still under audit at the end of that period.

107. Furthermore, as observed by Clarke J. in *Droog* at paragraph 7.4:

"the wording of s.955(2) as it stood in 2007 is clear. Section 955(2)(a)(i) says that no additional tax shall be payable by the chargeable person after the end of the relevant four year period. That provision is expressed in clear and unambiguous terms. It is in addition to the prohibition on raising further assessments. The section clearly prohibits the imposition of any additional tax burden outside the four year period in the case of a person who has made a fully compliant return. [Emphasis added]*"*

108. I am therefore of the view that if the Appellant is seeking the protection of SDCA, section 159C(3), he must have fully complied with his statutory obligations. As

considered above, the Appellant failed to disclose his undertaking to assume the mortgage debt contrary to SDCA, section 8, and therefore extinguished his entitlement to the protection afforded by SDCA, section 159C(3).

Determination

109. The Appellant acquired **NAME REDACTED's** interest in the Property held in fee simple by contract dated 20th May 2008 for €250,000 together with the undertaking to assume **NAME REDACTED's** element of the debt charged on the Property pursuant to Special Condition 5 of that contract in the sum of €470,000. The money paid in discharge of the mortgage was paid indirectly as part of the purchase money for the Property and therefore in accordance with SDCA, section 41 that undertaking is to be taken into consideration as forming part of the purchase money for stamp duty purposes.

110. The Appellant has misinterpreted of SDCA, sections 8 and 41. Furthermore, the judgement in *Swayne* does not support his argument and is quite clear from *City of Glasgow Bank* that the conveyance of a property subject to a mortgage is chargeable to *ad valorem* duty on the consideration including the amount outstanding on the mortgage. In this regard, I have concluded that there was neglect on the part of the Appellant sufficient for the Respondent to invoke SDCA, section 159C(4).

111. This appeal is therefore determined in accordance with Taxes Consolidation Act 1997, section 949AK and the assessment stands.

Conor Kennedy
Appeal Commissioner
24th June 2019

No request was made to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.