



MALTA

**Administrative Review Tribunal
Magistrate
Dr. Gabriella Vella B.A., LL.D.**

Application No. 1/12VG

Lucie Gilberte Albertine Julienne Bourgeois

Vs

Commissioner for Inland Revenue

Today, 26th October 2017

The Tribunal,

After having considered the Application submitted by Lucie Gilberte Albertine Julienne Bourgeois on the 5th January 2012, by means of which she requests the Tribunal to cancel and revoke *in toto* the Tax Assessment bearing No. IV111243 issued against her by the Commissioner for Inland Revenue, relative to the purchase of the flat internally numbered 11 forming part of the block of apartments named “Jesmond Court”, in Triq l-Iskuna, Qawra, by virtue of a deed in the records of Notary Malcolm Licari dated 17th March 2009; with costs against the Commissioner for Inland Revenue;

After having considered the documents submitted together with the Application marked Doc. “A” to Doc. “C” at folios 3 to 9 of the records of the proceedings;

After having considered the Reply by the Commissioner for Inland Revenue by means of which he objects to the Applicant’s appeal from the Tax Assessment bearing No. IV111243 issued against her and requests that the same be rejected, with costs against her, since the decision taken by him and the consequent Tax Assessment issued by him are just and in terms of the Law and should therefore be confirmed;

After having heard and considered testimony by the Applicant during the sittings held on the 19th July 2012¹ and on the 20th November 2012² and documents submitted by her at folios 35 to 37 of the records of the proceedings, documents marked Doc. “DGTI1” to Doc. “DGTI4” submitted by the Director General (Internal Revenue) by means of a Note filed on the 5th March 2013 at folios 44 to 55 of the records of the proceedings and testimony by Mr. Mario Cassar A&CE during the sitting held on the 5th March 2013³;

After having considered the Report submitted by the Technical Assistant of the Tribunal, Architect Elena Borg Costanzi, at folios 66 to 68 of the records of the proceedings;

After having noted that the Applicant failed to file her Note of Submissions and consequently neither did the Commissioner for Inland Revenue submit his Note of Submissions;

After having considered all the records of the proceedings;

Considers:

By virtue of these proceedings the Applicant is contesting the Tax Assessment bearing No. IV111243 issued against her by the Commissioner for Inland Revenue, today the Commissioner for Revenue, pertinent to the purchase of the flat internally numbered 11 forming part of a block of apartments named “Jesmond Court” in Triq l-Iskuna, Qawra, by virtue of a deed dated 17th March 2009. By virtue of the said Tax Assessment the Commissioner of Revenue is requesting the Applicant to pay the sum of €975 by way of duty on the additional chargeable value of €27,000 and the sum of €975 by way of additional duty/penalty, for the global sum of €1,890.00. The Applicant is contesting the said Tax Assessment and is requesting the Tribunal to cancel and revoke it *in toto* on the grounds that: (i) the declared value for which she purchased the said property reflects the market value of the property at the time of purchase; and (ii) consequently the duty paid by her on the deed to sale is the duty actually due by her relative to the purchase of the property.

The Commissioner for Revenue objects to the Applicant’s appeal from the Tax Assessment bearing No. IV111243 and requests that the same be rejected since the decision taken by him and the consequent Tax Assessment issued by him are just and in terms of Law and should therefore be confirmed.

From evidence submitted and testimony given during the hearing of these proceedings, there result the following facts:

1. By virtue of a deed in the records of Notary Malcolm Licari dated 17th March 2009, the Applicant purchased the flat internally numbered 11

¹ At folios 31 to 33 of the records of the proceedings.

² Folios 38 and 39 of the records of the proceedings.

³ Folios 56 to 58 of the records of the proceedings.

forming part of the block of apartments named “Jesmond Court” in Triq l-Iskuna, Qawra, for the price of €80,000, together with all its furniture and furnishings for the further price of €20,700⁴;

2. Due notice of the transfer was given for the Commissioner for Inland Revenue on the 27th March 2009⁵;
3. The Commissioner for Revenue engaged an Architect – Mr. Mario Cassar – for purposes of holding an inspection in the property in order to determine the market value of the same at the time of purchase;
4. Mr. Mario Cassar sent two notices to the Applicant informing her that he was going to hold an inspection of the flat purchased by her. By means of the first notice he informed her that an inspection was going to be held on the 9th September 2009 and by means of the second notice he informed her that an inspection was going to be held on the 17th February 2010⁶;
5. After inspecting the premises acquired by the Applicant, Mr. Mario Cassar valued the same at the time of purchase at €107,000. He submitted his report to the Commissioner for Revenue on the 14th October 2009⁷;
6. Since the value declared in the deed of transfer is less than 85% of the value determined by Mr. Mario Cassar, the Commissioner for Revenue, in terms of Section 52(1) of Chapter 364 of the Laws of Malta, issued a Tax Assessment against the Applicant requesting her to pay the sum of €975 by way of duty on the additional chargeable value of €27,000 and the sum of €975 by way of additional duty/penalty, for the global sum of €1,890.00⁸;
7. The Applicant objected to this Tax Assessment by means of letters of objection dated 12th November 2009⁹, 2nd December 2009¹⁰ and 26th April 2010¹¹;
8. With regard to the said objections Mr. Mario Cassar observed that *regarding the points in section ii (of the Applicant’s objection letter) I did not tell the T.P. that everything was ok. I don’t know the price paid by T.P. Yes in 5 minutes I can value such apartment easily. Original value stands*¹²;
9. By virtue of a decision dated 6th December 2011¹³, the Commissioner for Inland Revenue rejected the objections put forth by the Applicant and confirmed the Tax Assessment bearing No. IV111243 and reiterated the request for payment of the sum of €975 by way of duty on the additional chargeable value of €27,000 and the sum of €975 by way of additional duty/penalty, for the global sum of €1,890.00;

⁴ Doc. “A” at folios 3 to 5 of the records of the proceedings.

⁵ Doc. “DGTI1” at folios 45 to 47 of the records of the proceedings.

⁶ Doc. “LB2” and Doc. “LB3” at folios 36 and 37 of the records of the proceedings.

⁷ Doc. “DGTI2” at folio 48 of the records of the proceedings.

⁸ Doc. “B” at folio 6 of the records of the proceedings.

⁹ Doc. “DGTI3” at folio 49 of the records of the proceedings.

¹⁰ Folio 50 and 51 of the records of the proceedings.

¹¹ Folio 52 of the records of the proceedings.

¹² Doc. “DGTI4” at folio 55 of the records of the proceedings.

¹³ Doc. “C” at folios 7 to 9 of the records of the proceedings.

10. Since the Applicant is still contesting the Commissioner's decision and consequent Tax Assessment, she filed the present proceedings.

In support of her appeal from the Tax Assessment bearing No. IV111234, the Applicant submitted a number of adverts purportedly being adverts of apartments similar to or slightly bigger than the flat she purchased which were on the market more or less during the same period when she purchased her flat and were being advertised for prices in the same region, and in certain cases slightly lower, as the purchase price declared in the deed to sale¹⁴. In spite of the considerable number of adverts submitted by the Applicant, the Tribunal cannot accept the same as satisfactory proof that the purchase price declared in the deed of sale in the records of Notary Malcolm Licari dated 17th March 2009, reflects the market value of the flat purchased by the Applicant at the time of purchase. The Tribunal cannot accept these adverts as satisfactory evidence of the foregoing because: (i) most of the adverts are not dated and therefore the values shown on them cannot be considered to be values relative to the period 17th March 2009, which is the date when the Applicant purchased her flat; (ii) the adverts which are dated are for periods which are much later than 17th March 2009, sometimes even twelve months later, and therefore are not comparable to the value as at 17th March 2009; and (iii) those adverts indicated by the Applicant as being adverts for properties on the market during the same month and year as the date of purchase of the flat acquired by her or a month prior to the date of purchase, cannot be taken at mere face value since the Applicant herself declared, during testimony given during the sitting held on the 20th November 2012¹⁵, that *I started collecting this information from the date I received the claim from the Commissioner of Inland Revenue, which original claim was dated 22nd October 2009, that is several months after the date when the Applicant purchased her flat.*

Apart from submitting these adverts, the Applicant also criticises the way the Architect engaged by the Commissioner for Revenue carried out the inspection of the property, and consequently she contests his valuation and consequent Tax Assessment issued by the Commissioner. Under cross examination during the sitting held on the 19th July 2012¹⁶, the Applicant stated *he [Mr. Mario Cassar] did inspect the property from the inside however, it was a quick thing and he did not take any form of measurements for the apartment* and again when testifying during the sitting held on the 20th November 2012¹⁷, the Applicant claimed *when the architect came to view the property the first time he did not inspect the property, we stayed in his car and he started taking notes, I asked him to come upstairs in order to be able to view the apartment from inside but he told me that he was busy. As a matter of fact he did come up and took a drink however, he did not inspect the apartment and*

¹⁴ Testimony given during the sitting held on the 19th July 2012, folios 31 and 32 of the records of the proceedings and during the sitting held on the 20th November 2012, folios 38 and 39 of the records of the proceedings and documents marked Doc. "LB" a folio 35 of the records of the proceedings.

¹⁵ Folios 38 and 39 of the records of the proceedings.

¹⁶ Folios 31 and 32 of the records of the proceedings.

¹⁷ Folios 38 and 39 of the records of the proceedings.

left almost immediately. The architect in actual fact acceded to my apartment twice however, even when he came the second time it was a very quick inspection. As I said during the second inspection he did accede to the apartment however he had a quick look around and left immediately.

As a matter of fact, Mr. Mario Cassar did not contest the Applicant's claim that he inspected the flat in question in a matter of five minutes, on the contrary in his minute to the Commissioner of Revenue, dated 26th March 2010 – exhibited as Doc. DGTI4 at folio 55 of the records of the proceedings – Mr. Cassar clearly stated – *Yes, in 5 minutes I can value such apartment easily.* From testimony given by Mr. Cassar himself it also results that as claimed by the Applicant he did not take any particular measurements or take note of any particular characteristics of the flat in question. In fact when he testified during the sitting held on the 5th March 2013¹⁸, he was not in a position testify with specific reference to the flat in issue and he could not specifically say on what basis he valued the said flat at €107,000. Upon being asked *Do you remember when you inspected this property?* and he replied *No.* On being prompted further *No recollection whatsoever?* Mr. Cassar replied *No, this is dated 2009, I used to carry out about hundreds of these, no I can't recollect this particular case.* In view of his lack of specifics regarding the inspection of this particular flat, the Commissioner's legal counsel was obliged to ask Mr. Cassar the following question *in general, maybe you don't remember this particular case, but in general, can you tell us what you take into consideration when you arrive at your valuations?* His very generic reply was *the location, the type of property and the size of the property.*

The Tribunal deems that the testimony given by Mr. Cassar is not at all sufficient to **confirm** the correctness of the value of €107,000 as being the market value of the property acquired by the Applicant by virtue of a deed in the records of Notary Malcolm Licari dated 17th March 2009 on the deed of purchase. Whilst it is true that the onus of proving that a Tax Assessment issued by the Commissioner of Revenue is excessive lies on the *taxpayer*, applicant in proceedings before this Tribunal, the Commissioner must however still convince the Tribunal that the Tax Assessment issued by him was *a priori* and still is rational and reasonable and not an Assessment which is based on a valuation which is not and cannot be substantiated by the very person who gave the valuation and which does not seem to be specifically linked to the particular characteristics of the property as required by Regulation 3 of Subsidiary Legislation 364.06 as applicable at the time pertinent to these proceedings.

In view of this the Tribunal deems that the value which more closely reflects the market value of flat purchased by the Applicant at the date of purchase – that is the 17th March 2009 – is the value of €100,000 determined by the Technical Assistant of the Tribunal, Architect Elena Borg Costanzi. From the

¹⁸ Folios 56 to 58 of the records of the proceedings.

report submitted by Architect Borg Costanzi it results that she founded her valuation of €100,000 on the following considerations: *the undersigned considered all the submissions throughout the proceedings, with special reference to the size of the apartment which is around 85 square metres, is finished, having a long corridor leading to a small sitting room, dining room/kitchen, and two small bedrooms with one bathroom. The internal clear height of the apartment is 2.6 metres which is less than the minimum permitted by law. This may be conceded to through an application to MEPA¹⁹.* From the said Report it clearly results that contrary to Mr. Cassar, Architect Borg Costanzi founded her valuation on the characteristics which are pertinent to the flat purchased by the Applicant and not on general and generic considerations.

When the above facts are considered in the light of that provided for in Section 52(1) of Chapter 364 of the Laws of Malta, it follows that the Applicant is bound to pay the sum of **€700** representing duty on the additional taxable value of €20,000 [in view of the fact that the declared price of €80,000 is less than 85% of the value of €100,000²⁰, which the Tribunal is considering as the market value of the flat purchased by the Applicant at the time of purchase, a residual additional taxable value of €20,000 results], together with the further sum of **€700** representing additional duty/penalty in terms of Section 52(4) of Chapter 364 of the Laws of Malta as applicable at the time pertinent to these proceedings.

For the above-mentioned reasons the Tribunal, whilst rejecting the Applicant's request for the cancellation and revocation *in toto* of the Tax Assessment bearing No. IV111243 issued against her by the Commissioner for Revenue, varies the said Tax Assessment by reducing the additional taxable value to €20,000 and consequently by reducing the duty due to €700 and additional duty/penalty due to €700.

Costs pertinent to these proceedings are to be borne equally between the Applicant and the Commissioner for Revenue.

MAGISTRATE

DEPUTY REGISTRAR

¹⁹ Folio 67 of the records of the proceedings.

²⁰ 85% of €100,000 amounts to €85,000.