

## **Contract Law: VAT Inclusive or Exclusive?**

The Case of CLP Holding Company Ltd –v- (1) Rajinder Singh (2) Parvinder Kaur [2014] EWCA Civ 1103

### The Facts

CLP Holding Company Ltd ('the Seller') owned a freehold property known as 72 Rolfe Street, Smethwick ('the Property') and was VAT-registered.

Ordinarily, any sale of the Property by the Seller would be treated by the Value Added Tax Act 1994 as an 'exempt supply' and would not have any VAT implications. However, the Seller had opted to waive the exemption from VAT in respect of the Property.

In 2002, the Seller offered to sell the Property to Mr Singh and Ms Kaur ('the Purchasers') for £130,000 and, in January 2003, the Seller's solicitor sent the Purchasers' solicitor a draft contract for sale.

Negotiations then ceased until December 2005 when the Seller's solicitor wrote to the Purchasers' solicitor to advise that he was waiting for the Seller to confirm the purchase price. The Purchasers' solicitor replied by stating he understood the purchase price was £130,000 and that this sum had already been paid to the Seller.

In March 2006, the Seller's solicitor (a) stated the Seller had signed the contract of sale stating a purchase price of £130,000 in readiness for exchange of contracts (b) acknowledged the Seller had received all of the purchase price of £130,000 and (c) suggested the Purchasers should pay the Seller's conveyancing costs of £350.00 *plus VAT*.

On 29 August 2006, the parties exchanged contracts for sale. Completion of the sale took place on the same day.

The contract for sale formed two parts – special conditions and general conditions. The special conditions:

1. Defined the words '*Purchase Price*' as £130,000 and no indication was given that any other sum was payable. (Indeed, a section of the contract for sale provided for '*Other payments / allowances*' that could have been, but was not, completed).
2. Required the Seller to sell, and the Purchasers to purchase, the Property at the '*Purchase Price*'.
3. Required a party who defaulted on completion to pay the non-defaulting party's additional costs of £100.00 *plus VAT*.

4. Stated the special conditions shall prevail if there is any conflict between the special conditions and the general conditions.

The general conditions stated '*All sums made payable by the contract are exclusive of VAT*'.

For the sake of completeness, the transfer deed stated the Seller had received the purchase price of £130,000 from Purchasers.

In late 2007, HMRC asked the Seller to account for the VAT applicable to the sale of the Property taking into consideration he had opted to waive the exemption from VAT.

In March 2008, the Seller wrote to the Purchasers requesting payment of an additional £22,750 (after applying the then applicable rate of 17.5% to the purchase price). The Seller sought to rely on the general condition that stated '*All sums made payable by the contract are exclusive of VAT*'.

The Purchasers refused to pay the Seller and so the Seller issued proceedings claiming the additional sum of £22,750.

On 20 December 2013, His Honour Judge Oliver-Jones QC held the Seller's claim had no real prospect of success and so he dismissed the claim and gave Judgment to the Purchasers. The Seller appealed against HHJ Oliver-Jones QC's decision.

#### The Court of Appeal's Judgment

Lord Justice Kitchin handed down the Court of Appeal's Judgment on 31 July 2014 to which Lady Justices Gloster and Arden agreed.

The Court of Appeal recognised that it was required to interpret the contract for sale so as to identify what the parties meant by the language they used.

The Court accepted that the Seller's liability to pay VAT to HMRC should fall on the Purchasers. However, the Court interpreted the contract for sale as a whole in the light of all the relevant circumstances of the case which included the following:

1. There was no suggestion the Seller had ever communicated to the Purchasers that it had opted to waive the exemption from VAT in respect of the Property.

2. There was no suggestion the Purchasers, as individuals, knew or ought to have known the sale of the Property would be subject to a VAT charge.
3. A purchase price of £130,000 for the Property had been agreed in principle a considerable time before completion, the Purchasers had paid the Seller the sum of £130,000 before completion, the Seller's solicitor had acknowledged the Seller had received all of the purchase price of £130,000 and there was no suggestion that VAT might still be payable and, in particular, that the Purchasers would be liable for such VAT.
4. The special conditions contained in the contract for sale defined the words '*Purchase Price*' as £130,000, no indication was given that any other sum was payable and the special conditions prevailed over the general conditions.

The Court of Appeal concluded by stating '*... from the perspective of the reasonable person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, ... such a person would conclude that the parties intended that nothing was, or could become, payable by [the Purchasers] over and above the specified purchase price of £130,000.*'.

In the circumstances, the Court of Appeal dismissed the Seller's appeal.

### The Message

It is widely accepted that if a business is registered for VAT and it supplies goods or services to a purchaser then that business must account to HMRC for VAT and the amount of VAT payable by the business to HMRC is either:

1. The relevant part of a VAT inclusive price for the goods or services; or
2. The VAT on top of the price of the goods or services because the price is expressly stated to exclude VAT.

The message for such VAT-registered businesses is straight-forward:

1. If you wish to retain the full amount of the price quoted for the goods or services to be sold or supplied to the purchaser, ensure the written contract you rely upon states the price is '*plus*' or '*exclusive of VAT*'.
2. If, similar to the Seller's contract in the case of *CLP Holding Company Ltd*, the price quoted is referred to on more than one occasion in your written contract, then ensure all prices are consistent and that all prices state the price is '*plus*' or '*exclusive of VAT*'. This will avoid any uncertainty arising as to whether the price is VAT inclusive or exclusive.

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