

THE HIGH COURT

REVENUE

[2026] IEHC 682

[Record No. 2023/73R]

IN THE MATTER OF A CASE STATED PURSUANT TO SECTION 949AQ

TAXES CONSOLIDATION ACT 1997, AS AMENDED

BETWEEN

DANIEL DOOLAN

APPELLANT

AND

THE REVENUE COMMISSIONERS

RESPONDENT

Judgment of Ms. Justice Siobhán Stack delivered the 16th day of October, 2026.

Introduction

1. This is an appeal from a Determination of the Tax Appeals Commissioner (“TAC”) of 16 November, 2022. The Case Stated turns on a net issue as to whether a contract for sale entered into between the appellant as vendor of the one part and a purchaser of the other part was “conditional” within the meaning of s.542 (1)(b) of the Taxes Consolidation Act 1997, as amended (“TCA”).

2. The contract was one dated 22 December, 2015, for the sale of a property in Kilcock, County Kildare, for the price of €125,000. The appellant had bought the property in 2002 for €500,000, so this represented a significant loss of €375,000.

3. It was thought, however, that this cloud might have a silver lining. The appellant had made a gain of €296,450 on the sale of shares in the tax year 2015, and this disposal had incurred a charge to capital gains tax in the sum of €81,074. If the appellant could write off the loss on the sale of the premises against the gain on the disposal of shares, he would reduce his capital gains tax liability more or less to nil.

4. The problem for the appellant was that, in order to offset the loss against the gain on the shares, he had to show that the loss on the disposal of the property was incurred in the tax year 2015. Only losses incurred in the same or an earlier tax year may be offset in this way.

5. Generally speaking, the disposal of lands is deemed to have taken place on the date of the contract rather than on the date of the conveyance or transfer, if that is a different date: s. 542 (1)(a). In this case, the date of the transfer of the lands was different as that did not occur until 2017. In any event, given that the contract was only signed on 22 December, 2015, it was highly unlikely that it could ever have been completed in 2015, even if it was not subject to significant special conditions, which it was.

6. It was, therefore, in the appellant's interest to contend that the disposal of the lands was deemed to take place on the date of the contract, as is the usual rule.

7. The problem for the appellant was that s. 542 (1)(b) of the TCA provides for an exception to this rule, as follows:

"Where the contract is conditional (and in particular where it is conditional on the exercise of an option), the time at which the disposal and acquisition is made shall be the time at which the condition is satisfied." [Emphasis added.]

8. Revenue was of the view that the contract for sale was “conditional” within the meaning of s. 542 (1)(b) because it was subject to the following special conditions:-

*“6. The vendor and purchaser agree and acknowledge that to the date of this agreement insufficient information and documentation have been provided to satisfy the purchaser in relation to title/planning/lease/other matters pertaining to the property in sale. In the event that the purchaser is not satisfied in this regard by 30 June 2016 **OR** in the event that the purchaser decides at an earlier date that the seller is unwilling and/or unable to satisfy him in this regard the purchaser may elect to withdraw from the purchase envisaged by this agreement without interest, cost or penalty by so notifying the vendor and in such instance he shall have his booking and contract deposit returned to him in full.*

7. The vendor shall use best endeavours to satisfy the purchaser in relation to such title/planning/lease/other matters pertaining to the property in sale to enable the purchaser’s satisfaction with same. Without prejudice to the generality of this the vendor shall lodge an application for retention permission to cover all and any unauthorised usage of the property no later than the 15th January 2016 and shall progress and prosecute this application as quickly as possible.

In the event that the vendor is unwilling and/or unable to satisfy the purchaser in relation to such title/lease/other matters pertaining to the property in sale to enable the purchaser’s satisfaction with same prompting the buyer to withdraw, the vendor shall refund the purchaser his reasonable surveying and legal costs incurred in connection with the purchase transaction being no more than a maximum of €3000 plus VAT.”

9. Revenue therefore assessed the appellant to capital gains tax on the disposal of the shares and, on appeal, TAC agreed that the contract was “*conditional*” and found that the disposal of the lands was deemed to have taken place in 2017.

Whether the contract was “conditional” within the meaning of section 542 (1)(b), TCA

10. On appeal, TAC, in effect, accepted the argument of Revenue that the contract amounted, in substance, to an option enjoyed by the purchaser to purchase the property at a particular price if it was satisfied as to planning, title and such other matters as might concern it. As is apparent from s. 542 (1)(b), above, options have been specifically identified as contracts which are “*conditional*”. TAC was therefore satisfied that the contract was “*conditional*” within the meaning of s. 542 (1)(b) and that the condition had not been satisfied until 2017, when the sale was completed.

11. The appellant now appeals to this Court and the four questions which fall for determination are:

1. Did TAC err in law in holding that the sales contract was a conditional contract?
2. Did TAC err in law in holding that the provisions of s.542 (1)(b) TCA 1997 applied to the disposal of the premises?
3. Did TAC err in law in holding that the capital loss incurred on the disposal of the premises did not arise in the tax year 2015?
4. Did TAC err in law in upholding the Respondent’s assessment to CGT in the sum of €81,074 for 2015?

The fourth question is answered by reference to the interpretation of s. 542 (1)(b), which is the substantive issue posed by the first three questions in the Case Stated.

12. The appeal before TAC was heard and the Determination issued prior to the delivery by the Supreme Court of its judgment in *Flaherty v. Revenue Commissioners* [2026] IESC 4, which – needless to say - is binding on this Court and now constitutes the seminal authority on the meaning of the phrase “*where the contract is conditional*” in s.542 (1)(b) of the TCA, upon which this appeal by way of Case Stated turns. However, the reasoning of TAC is consistent with the interpretation of s. 542 (1)(b) in *Flaherty* and I am satisfied that TAC did not err in law in finding the contract dated 22 December, 2015, to be “*conditional*”, such that the disposal of the property is deemed to have taken place in a tax year subsequent to the 2015 tax year.

13. In *Flaherty*, the contract for sale was quite different to that under consideration here, being one for the sale of a fishing vessel, together with related fishing capacity and equipment, the transfer of all of which was regulated by law. It is not, therefore, necessary to consider the specific facts of *Flaherty*, or the contractual terms which were under consideration there.

14. However, the analysis and interpretation by the Supreme Court (*per* Murray J.) in that case of s. 542 (1)(b) is clearly material. At para. 44, the learned judge stated (citing Parker L.J. in *Hatt v. Newman (Inspector of Taxes)* [2000] STC 113, at p. 118), that s.542 (1)(b) seeks to distinguish between: -

“*A condition that prevents ‘certain contractual obligations arising when the contract was concluded’ and one that does not.*”

15. At para. 47, it was stated that, when s.542 (1)(b) refers to a case in which the “*contract is conditional*” it is using those words to describe something slightly different from the “*conditional contract*” referred to in cases governed by the law of contracts such as *O’Connor v Coady* [2004] IESC 54, [2004] 3 I.R. 271. As Murray J. explained, where the meaning of s.542 (1)(b) is an issue: -

“There must be some contractual obligation, but the principal performance will be conditional on some event... And in the context in which s.542(1)(b) is to operate, that principal performance will be the disposition of an asset. There will be a contract, in other words, but no contract imposing obligations on the vendor to sell, or the purchaser to buy the asset until the event specified in the condition has occurred.”

16. Finally, at para. 48, Murray J. stated that the fact that s.542 (1)(b) is directing its attention to this type of situation was best demonstrated by what he described as *“the paradigmatic example described in the section – that of the option”*. As Murray J. further explained, in the case of an option, there is no contract for sale until the event happens, but there is, nevertheless, a contract.

Application to this case

17. In this case, it is, in my view, quite evident that the purchaser had a very wide discretion as to whether or not he would proceed with the purchase of the lands in sale. The purchaser had a choice, at any point up to at least 30 June, 2016, to withdraw from the contract if he wished. (This deadline may have been extended but, since any later date would also have fallen in a tax year later than the 2015 tax year in any event, nothing turns on whether any such extension took place.)

18. Critically, the breadth of the matters which the purchaser was entitled to investigate and of which he was entitled to be satisfied prior to becoming bound to purchase the property at all is quite striking. In essence, these were all matters relating to the title and planning, including issues relating to the lease under which the property was held. The exceptionally wide extent of the discretion enjoyed by the purchaser is demonstrated by the inclusion of the catchall phrase *“other matters pertaining to the property in sale”*, which is contained in Special

Condition 6. This, on the face of it, gave the purchaser an untrammelled right, at any time prior to 30 June, 2016, to withdraw from the sale.

19. As a result, the principal obligation of the purchaser, which was to purchase the property in sale, was not – in substance or in reality – binding on the purchaser until after the purchaser had had an opportunity to investigate the very wide range of matters set out in the special conditions above. As Murray J. put it in *Flaherty*, there was a contract between the parties, but performance of the *principal* obligation – to purchase the lands - was conditional on the purchaser subsequently becoming satisfied to proceed.

20. As I have said, the Determination in this case predated the judgment in *Flaherty*. Nevertheless, the key finding – that the contract for sale was, in reality, an option to purchase, exercisable at the discretion of the purchaser – is entirely consistent with the reasoning in *Flaherty*.

21. TAC referred to the decision of this Court in *Hand v. Greaney* [2004] IEHC 391, where Clarke J. (as he then was) referred to a contract which was subject to obtaining a final grant of planning permission in terms satisfactory “*in all respects to the purchaser in his absolute discretion*” as being, in substance, an option.

22. If that is so, then *a fortiori*, the contract for sale which TAC was considering was certainly, in substance, an option, as the purchaser had a discretion which appears to have been entirely untrammelled and covered a wide range of matters, not confined to planning alone, and covering almost anything a purchaser might normally enquire about before signing a contract in the first place. Whereas in *Hand v. Greaney*, the purchaser had to be happy with the scope and conditions of the planning permission, in this case, the purchaser could elect not to proceed if dissatisfied with anything relating to the property in sale. The only restriction seems to have been that he had to communicate that to the vendor no later than 30 June, 2016.

23. I should add that there was considerable reliance at the hearing on the fact that the vendor was obliged by Special Condition 7 to apply for retention permission but there was no condition that such permission would be granted. It is unnecessary to consider this particular aspect of Special Condition 7 as Special Condition 6 and the remainder of Special Condition 7 afforded a discretion to the purchaser which went far beyond the question of whether the necessary application for retention permission had been made within the time specified. (It also perhaps misses the point that even the obligation to apply for retention does not appear to have been satisfied until early 2016.)

24. Submissions were also made to the effect that TAC had erred in finding that the contract was invalid because it was concluded well before the appellant became registered as full owner. In making this finding, TAC also took into account that the property was not held in trust for the appellant prior to this time.

25. Insofar as TAC was of the view that a valid contract for sale can be entered into only by a person who is already registered as owner, counsel for the appellant is correct in pointing out that it has been accepted that the nature of a transfer is such that a transferee for value enjoys significant rights prior to registration: *Camiveo Ltd. v. Dunnes Stores* [2015] IESC 43, [2015] 2 I.R. 698. These would include the right to transfer the property on the basis that the vendor was the person entitled to be registered as full owner. I am far from clear, however, that the mere fact of non-registration was the only matter which convinced TAC that the contract was invalid. In particular, I am unclear on whether the appellant was in fact, as of the date of the contract for sale, the person entitled to be registered as full owner of the lands. In any event, there is no specific appeal from the finding that the contract for sale was invalid.

26. None of this is particularly material, however, as, at para. 38 of the Determination, TAC made it perfectly clear that it was finding, on an entirely alternative basis, that the contract (if valid) was in the nature of an option in any event, and was therefore one to which s. 542 (1)(b)

applied. The issue as to the capacity of the vendor to sign a valid contract for sale before he became registered as full owner therefore had no bearing on the correctness of TAC's central finding that the entire contract was in substance an option to purchase and was "*conditional*" within the meaning of s. 542 (1)(b).

27. In my view, therefore, TAC was correct in finding that the contract for sale was, in substance, an option to purchase, and was therefore a contract which was "*conditional*" in the sense in which that term is used in s. 542 (1)(b), TCA. As a result, the disposal is not deemed to have occurred until the condition is complied with. TAC found that the condition was not complied with until 2017 and there is no appeal against that finding.

Conclusion

28. In view of my conclusion that TAC did not err on any of the issues raised in this appeal, the answers to each one of the four questions contained in the Case Stated must be: No.