

**THE HIGH COURT****REVENUE****[2012 No. 217 R.]****BETWEEN****GERARD HARRAHILL****PLAINTIFF****AND****THOMAS DOYLE****DEFENDANT****AS CONSOLIDATED BY ORDER DATED 4TH OF FEBRUARY, 2013****[2010 No. 460 R]****BETWEEN****GERARD HARRAHILL****PLAINTIFF****AND****THOMAS DOYLE****DEFENDANT****JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 5th day of October, 2017**

1. The proceedings before the court represent a consolidation of two separate actions brought by the Revenue against the defendant, who operated a sand and gravel business. The first set of proceedings issued in 2010 and the second in 2012. In the 2010 proceedings, a summary judgment in the amount of €81,553.92 had originally been claimed, but following an audit undertaken by the Revenue after the commencement of proceedings, the amount claimed was reduced to €18,515.44.

2. The second set of proceedings, issued in 2012, claimed an amount of €46,262 together with interest. An affidavit sworn by Denis Collins of the office of the Revenue Commissioners on the 2nd October, 2012 gave some background to the proceedings. He explained that the claim in the 2012 proceedings was originally for an amount in the sum of approximately €81,000, much of which arose on foot of estimates made by the Revenue Commissioner in the absence of any returns by the defendant. He avers that following the commencement of the 2010 proceedings, the Revenue Commissioner carried out an audit of the defendant's tax affairs, which was conducted in February, 2011. He says that as a result of the audit, the sum claimed in the 2010 proceedings was greatly reduced, leaving a total of approximately €18,000 due and owing by the defendant to the plaintiff in respect of those proceedings. However, at the conclusion of the audit, the Revenue took the view that while some of the liabilities claimed in the 2010 proceedings should be reduced, certain other liabilities (the PAYE/PSRI liabilities for the years 2005, 2006, 2007 and 2008, and the VAT liabilities for November/December 2009), had been underestimated. Accordingly, the balance of those particular liabilities was claimed in the second set of proceedings.

3. The two actions were consolidated on the 4th day of February, 2013 by order of the High Court. The claims for the sums were effectively amalgamated into the present proceedings, with the exception of the sum of €1,266.44 which had been claimed in the 2010 proceedings and which was no longer being pursued.

4. The consolidated statement of claim, dated the 5th of February, 2013, claimed that the defendant was liable for a sum of €63,510, together with interest. When the matter came for hearing before me, counsel on behalf of the plaintiff handed into the court a revised written schedule of figures, which indicated that the total now being claimed by the Revenue was €39,973 together with interest of €14,485, coming to a total of €54,458. However, counsel for the plaintiff stated orally that there were two interest periods (the period up to 2013, and from 2013 - 2016), which the Revenue calculates as amounting to sums of €14,485 and €20,988.13 respectively, giving a total of €75,446.13 now claimed in total.

5. It is clear from the defence, dated the 27th November 2013, that, in broad terms, the defendant's case is that the Revenue failed to apply certain credits arising from overpayments, and that, in total, these various credits and overpayments outweigh the sum now claimed by the Revenue or, at least, can be offset against that sum. In broad terms, it is, I think, fair to say that the Revenue's reply dated the 7th of May, 2015 primarily takes the position that the defendant's claims for credits were time-barred because he submitted the relevant documentation outside the statutory time-period of 4 years. Sections 865A and 865B of The Taxes Consolidation Act 1997 and Section 99 of the VAT Consolidation Act 2010 provide that such credits cannot be claimed after the passage of a period of four years from the date of the chargeable period in relation to which the repayment is claimed.

6. In order to test the merits of the defendant's claim that he had been given insufficient credit for certain payments and was due certain refunds, it was necessary to examine documents submitted to the court in respect of each of his claims. There was oral evidence at the hearing and some cross-examination by Mr. Doyle, who represented himself. However, the matter seems to me to fall primarily to be decided with reference to the documentary evidence that was submitted to the court.

**Alleged set-off from overpayment of €21,151 (Paragraph 4 of the defence)**

7. At para. 4 of the defence, it was pleaded as follows:

"The Defendant has accepted by letter dated the 29th June, 2013 forwarded to the plaintiff's Kildare Revenue District, VAT credits offered as Offsets or Repayments by the plaintiff to the Defendant in Notification letters dated the 16th February, 2012 in the total sum of €32,205, reduced to the sum of €21,151 by the Defendant in his explanation of the VAT credit balances to the Plaintiff as required by the said notifications. This VAT credit balance of €21,151 is claimed by the Defendant as a set off.

8. A letter dated the 16th February, 2012 from Kildare Revenue District to Mr. Doyle was exhibited to the court. The letter states "I enclose a summary statement of account for VAT for the periods 1/5/2006 to 30/6/2006 for your information", and provides that there is a statement balance of zero euro and the credit balance of €27,076, stating that, "this balance must be explained before it can be offset or repaid". This letter could certainly not be interpreted as the Revenue "offering" offsets or repayments to the defendant. The court has also seen correspondence from June 2013. In a letter dated the 25th June, 2013, Mr. Doyle wrote to the Revenue about a sum of money of about €32,000 or €33,000, saying "I wish to claim these amounts as offsets and/or repayments in whatever balances we can agree on the entire account". Again, since this is a request made by him to the Revenue, this could certainly not be construed as an "agreement" between him and the Revenue. Further, in a reply dated the 27th of June, 2013, the Revenue official in question denied that the sums were due for offset or repayment. He said that the claim for €6,129 related to the VAT period November/December 2005 and that since the return was lodged on the 4th of February, 2011, this fell outside the four-year time limit and therefore, the sum was not due for offset or repayment. He reached the same conclusion in relation to the sum of €27,076, which related to the VAT period of May/June 2006 and in respect of which, a return had also been lodged on the 4th February, 2011, which was again, outside the four-year time limit. He referred the defendant to s. 99(4) of the VAT, Consolidation Act 2010 as amended, stating that "Revenue's position is that there are no circumstances in which a refund/offset of VAT may be granted that is outside the [four year] time limit." Despite the clarity of that reply, Mr. Doyle wrote to the same official on the 29th of June, 2013 referring to "back credit which had been offered to me" and saying that he formally acknowledged and accepted those amounts. He went on to say that the sums of €27,076 and €6,129 must be amended to the slightly smaller amounts of €15,969 and €5,182, by virtue of the fact that "I must explain the amounts as stated in the letters" and he claimed the amount of €21,151 as an offset of VAT.

9. It therefore appears from the above correspondence that the defendant submitted VAT returns on the 4th of February, 2011 for the VAT periods November/December 2005 and May/June 2006, which, since his claim for overpayment based upon this return fell outside the four-year time limit, could not be allowed. This situation was not, and in any event could not have been, altered by correspondence between the Revenue and the defendant, as the legislation has mandatory effect and the Revenue has no discretion in this regard.

#### **Alleged set-off from overpayment of €4,524 (Paragraph 5 of the defence)**

10. At para. 5 of the defence, it was pleaded as follows: "The defendant has signed VAT returns for leasing agreement VAT rental as agreed by the plaintiff in its letter to the defendant dated 25th March, 2013, for the VAT periods January 2009 to March 2010. The defendant claims a setoff in the sum of €4,524 arising from this."

11. In his affidavit on behalf of the Revenue, Mr. Collins states that no such claim was received by the Revenue Commissioners for any such sum and that accordingly the defendant is not due any credit or allowance in this respect. In his replying affidavit of the 1st February, 2013, the defendant did not specifically address this but reiterated his claim that he did not owe the plaintiff for the sums sought or, indeed any sum of money, and that in fact, that plaintiff may owe him certain sums together with interest.

12. The relevant correspondence in relation to the issue of leasing agreements appears to be as follows. On the 27th February, 2013, the defendant wrote to Revenue requesting information about VAT claims in respect of certain leasing arrangements, including an agreement from July 2009 to March 2010 (lease agreement A) and one from January 2009 to May 2009 (lease agreement B). The equipment which was the subject of each of these agreements was said to have been sold at the behest of Lombard Ulster. On the 25th March, 2013, the solicitors for the Revenue replied, stating that "no VAT returns have been filed from May 2011 to date". In relation to lease agreement A, the letter said that he was entitled to claim a VAT credit of €2,110.80 provided he had VAT Schedules/VAT Invoices in support of this from Lombard Ulster. Referring to lease agreement B, the letter said that he was entitled to claim VAT on the machinery, which was the subject of the lease, provided he had VAT Schedules/VAT Invoices in support of this machinery from Lombard Ulster. It stated that he was not entitled to claim back credit in respect of VAT Schedules/VAT Invoices prior to 1st January, 2009, because the four-year time limit applied.

13. By letter dated the 29th June, 2013 to the Revenue, the defendant stated "your letter dated 25th March, 2013 affirms the submissions to be made by me on VAT returns in respect of VAT rental amounts relating to the following lease agreements" and goes on to refer to lease agreement A and B. By letter dated the 2nd July, 2013 to the Revenue, he enclosed VAT3 forms for the VAT periods November 2008 to March 2010 in the total sum of €5,364, which were supplementary to the return filed by this accountant on his behalf. He said that the supplementary forms relate to leasing agreement rentals not previously claimed, "details of which have been agreed with you with the exception of the sum of €840.04 in respect of 2008 rentals".

14. The position regarding returns made with regard to the relevant period appears to be as follows: He originally made returns for some of these VAT periods on the 5th of May, 2011 and made supplemental returns for the period November 2008 to March 2010. He also exhibited a number of returns dated the 1st of July, 2013 in respect of this period. The last set of returns does not, apparently, feature on the Revenue computer system. Evidence was heard from Mr. Collins that if the return is not complete it is sent back to the taxpayer with a letter, though he acknowledged that he did not work in this section of the Revenue Commissioners and could not be sure. Mr. Doyle states that he had a conversation with a Revenue official who told him to send in these returns and that he sent them in in July 2013. The court was not shown any evidence of a rejection letter sent to Mr. Doyle for the relevant returns. It would appear he did send them within the 4-year period but that this was, for whatever reason, not recorded by the Revenue system either as accepted or rejected because it was wrongly filled out or incomplete.

15. In the circumstances, I am inclined to find on the balance of probabilities that the defendant's claim was made within the four-year time period and that this particular amount should be offset against the principal sum claimed by the Revenue.

#### **Alleged set-off of €1,424.88 arising from residue returned by Revenue Sheriff (Paragraph 7 of the defence)**

16. At para. 7 of the defence, it was pleaded that the defendant had received correspondence from the Revenue Sheriff dated 12th April, 2013, showing a balance due to him in the sum of €1,424.88, which was returned to the Revenue by the Revenue Sheriff as a residue of payments made by the defendant to the Revenue Sheriff.

17. The reply to the defence pleads that the sum in question was remitted by the Revenue to the plaintiff on or about the 18th October, 2017 and was then allocated against his liability to P35 tax for the year 2003.

18. The letter of 12th of April, 2013 was not provided to the court. From the book of correspondence that was provided, it appears that this figure was first raised by the defendant in a document prepared by him, which he attached to the letter of 25th June, 2012, already referred to. Under the heading "Allowances offered from Revenue to Tom Doyle", is included an entry "cheque forwarded by Revenue Sheriff to Revenue as per Sheriff's statement €1,424.88". The defendant again raised the issue with the Revenue in his letter of 29th June, 2013, where he said "I enclose copy of conformation of the return of said cheque to Revenue by the Revenue Sheriff for your convenience". In further correspondence to the Revenue on the 2nd July, 2013, he noted "that the sum of 41,424.88 has not

been allocated”.

19. By letter dated 19th October, 2007, the Revenue acknowledged receipt of a payment of €1,424.88 with a receipt of payment of the 27th September, 2007. This would suggest that the amount in question was remitted to the Revenue by the Sheriff around the 27th September, 2007 and received by the Revenue official, Mr. Harrahill, on or about the 19th October, 2007. By a letter dated the 30th October, 2013, the Revenue included a summary of Mr. Doyle's account for the PAYE/PRSI tax year 2003 and included the figure of €1,424.88 as a credit balance. On the basis of the last two letters, it would appear to me on the balance of probabilities that the sum in question was credited to Mr. Doyle sometime in October 2007 and this sum does not therefore fall to be offset against his liabilities.

**Alleged credits due as a result of VAT overpayments in amounts of €840 and €3,837 (paragraph 8 of the defence)**

20. At para. 8 of the defence, it was pleaded that the defendant had made two further claims for VAT credits which had not been allowed. The first was for a sum of €840 in respect of leasing agreement VAT rentals for the VAT period November to December 2008, for which returns had been filed. Secondly there was a sum of €3,837 representing an overpayment in respect of the VAT period September 2005 to October 2005; this, on the basis that a payment in the sum of €5,000 had been allocated by the Revenue to this VAT period, whereas the VAT return filed for this period was in fact €1,163.

21. In the Revenue's reply, it was pleaded that no claim was made to the Revenue for credit and/or a refund in the sum of €840, as alleged, and that any such claim made now would be precluded by reason of the lapse of time. I pause to observe that it was noted earlier that the sum of €840 that was discussed by Mr. Doyle in his letter of the 2nd of July, 2013 to the Revenue. It was disallowed as falling outside the four-year time period.

22. It was also pleaded in the Revenue's reply, that the return for the VAT period September/October 2005 was due on the 19th November, 2005 and in the absence of any return, an estimate was raised by the Revenue Commissioners in the sum of €5,000 on the 4th April, 2007, and that, following enforcement, the defendant made payments of €2,695.35 on the 3rd January, 2008 and €2,304.65 on the 28th of January, 2008 (a total of €5,000) and subsequently filed a return on the 4th February, 2011, describing the sum payable in the amount of €1,374 for the VAT period September/October 2005. It was pleaded that the resulting overpayment in the sum of €3,626 was allocated by the Revenue against the defendant liability in respect of VAT periods March/April 2008 and May/June 2008.

23. The documents submitted to the court in respect of the periods March/April 2008 and May/June show that amounts of €670.00 and €2,955.32 were allocated for those periods respectively, arising out of overpayments for September/October 2005. This amounts to €3,625.32.

24. In the circumstances, the sums in question do not fall to be offset against the amount now claimed by Revenue.

**Alleged offset arising from overpayment of €14,399 (paragraph 9 of defence)**

25. At para. 9 of the defence, it was pleaded that the defendant had been advised in "recent communication" with the Collector General's Office that there were amounts of €7,199 and €7,200 totalling €14,399 standing as overpayments in respect of PAYE/PRSI for the tax years 2003 and 2004 to the credit of the defendant's account since January 2011, subsequent to the filing of nil balances for this taxable period by the defendant in December 2010.

26. The Revenue pleaded by way of reply that in respect of PAYE/PRSI for the year ending the 31st of December, 2003, the due date for filing a return was on the 15th of February, 2004, and that in the absence of any such return, a P35 estimate was raised by the Revenue on the 25th June, 2005 in the sum of €7,199. This was duly discharged by the defendant between the 3rd of August, 2006 and the 26th of October, 2007. The defendant subsequently filed a P35 return for the year ending 31st of December, 2003 on the 14th of December, 2010, disclosing no liability. The Revenue pleaded that the defendant had not made any claim for a refund in respect of any overpayment to date and any such claim is now time-barred. The Revenue also pleaded that in respect of PAYE/PRSI for the year ending 31st December, 2004, the due date for filing a return was on the 15th February, 2005 and in the absence of any such return a P35 estimate was raised by the Revenue 16th June, 2006 in the sum of €7,200, which was duly discharged by the defendant between the 26th October, 2007 and the 3rd January, 2008. The defendant subsequently filed a P35 return for the year ending 31st December, 2004 on the 14th December, 2010 disclosing no liability. Again the P35 Section noted in their letter on the 9th, July 2013 that this return was received in October 2009. Again, the Revenue pleaded that the defendant made no claim for a refund in respect of any overpayment to date and that any such claim was now time-barred.

27. The documents exhibited to the court show that by letter dated the 1st July, 2013, Mr. Doyle wrote to the P35 overpayments section requesting that the €14,399 sum be applied to PAYE/PRSI payments due by him for the years 2005 – 2008 inclusively, and that the balance be remitted to him. He received a reply from a Mr. Andrew Wiley, working for the P35 section of the Revenue Commissioners on the 9th July, 2013, explaining that under Ss. 865A and 865B of the Taxes Consolidation Act 1997, Mr. Doyle was not entitled to the amounts due to his returns falling outside the four- year time limit and that the Revenue were barred from crediting the amount in any case, by virtue of the same Act. In a further letter, dated 3rd December, 2013 to the Revenue Commissioners, Mr. Doyle stated that he accepted the offer made of €14,399, in spite of the exchange of letters in July explaining the Revenue were unable to do this. Thus, while it appears that he did make a claim in respect of this sum, it was not and could not be allowed by Revenue by reason of the claim having been made outside the four-year time limit. Accordingly, this sum does not fall to be offset against the amount claimed.

28. I will hear the parties as to the final order to be made, having regard to the re-calculation of interest arising from my finding that the principal sum to be recovered needs to be adjusted to remove the amount of €4,524.00, as discussed at paragraphs 10-15 above.