

Principal v Agent

[A1 Lofts Conversions Ltd \[2010\] UKFTT 581 \(TC\)](#)

In a case remitted from the High Court, the First Tier Tribunal has held, based on the primary documents and the wider factual circumstances, that the Appellant supplied loft conversion services as principal rather than an agency supply of project management, and was therefore required to account for VAT on the full amount paid by home owners, rather than on a lesser agency commission amount.

Background

The First Tier Tribunal (FTT) had agreed with HMRC that, on the facts of the case, the Appellant was acting as principal and liable for VAT on the full value of the conversion works on the basis that:

- the Appellant was regarded by house owners as principal in the supplies;
- the house owner's only contract was with the Appellant;
- it was not a contract for the Appellant to negotiate with contractors on behalf of the house owner;
- a house owner giving evidence had considered that his only recourse in the event of a problem was to the Appellant; and
- in the event that the house owner failed to make payment to the Appellant, the Appellant could withdraw all contractors, a situation which would not normally have occurred if the contractors had been engaged to make supplies to the house owners.

On appeal, the High Court remitted the case back to the FTT, having held that the FTT had not approached its findings of fact and analysis of the supplies made by the Appellants and the contractors correctly.

Held

The FTT addressed the principal v agent issue as the High Court had indicated, i.e.:

- how should the contract(s) be construed;

WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO

info@4eyesltd.co.uk

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.

- was the written contract, as construed, the true contract between the parties, or was it a sham, or was it otherwise superseded by some different contract; and
- having determined the parties' rights and obligations, to whom did the contractors supply their services and what services did the Appellant supply to the client?

The FTT found that the contract between the Appellant and the contractors was not a primary document; it did not specify which contractors would work on which projects and did not require the contractors to work on any particular project. As regards the agreement between the Appellant and the home owner, the FTT held that it was not consistent with an agency agreement on the basis that:

- the price was determined by the Appellant without reference to any other party or to quotes from different parties in order to obtain the best price;
- it allowed the Appellant to use the home owner's money entirely at its own discretion, with no fiduciary duty to use the money in the home owner's best interests;
- there was no breakdown of the amounts payable or paid to each party;
- the 'commission' payable to the Appellant was not set out in the contract or elsewhere;
- interest on funds held on account for a client by an agent would normally be for the client's account, but there was no such provision in the Appellant's agreement;
- the Appellant held the copyright in all plans and specifications, which was inconsistent with agency;
- in the event of unreasonable delay, the home owner had the right to give the Appellant, not the contractors, notice in writing to remedy the default; and
- the guarantee of the works pointed to the Appellant being obliged to provide a completed loft conversion.

However, the FTT did not find that the agreement was conclusively a contract for the supply of a loft conversion. The FTT then considered the other facts, in particular:

- a pre-agreement document which described the Appellant's role, and appeared to give the impression that the Appellant was responsible for the works as principal;

WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO

info@4eyesltd.co.uk

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.

- in the same document, the impression was given that the Appellant was guaranteeing the structural work;
- the home owner who had given evidence had signed only the agreement with the Appellant and none with the contractors;
- the home owner was never aware how much was paid to an individual contractor but, if he required additional works, could enter into a separate contract with the contractor directly; and
- the home owner, on completion, had to sign a document stating that the Appellant had completed the works.

The FTT therefore concluded that the contractors provided their services to the Appellant, and the Appellant supplied the completed conversion works to the home owner as principal. Therefore the appeal was dismissed.

Implications

The issue of whether a business acts as principal or agent in a supply can be difficult to determine. In this case, the Appellant sought to argue that the contractors were working directly for the home owners and would be responsible for accounting for VAT on their own work, at least to the extent that they were VAT-registered. The Appellant could be faced with significant VAT costs as a result of the FTT's decision.

Businesses which are in any doubt as to their status as principal or agent are advised to contact 4 Eyes Ltd.

WE HOPE YOU FIND THIS NEWS ARTICLE HELPFUL. IF YOU WOULD LIKE TO REGISTER TO RECEIVE FUTURE UPDATES BY EMAIL THEN PLEASE SEND A REQUEST TO

info@4eyesltd.co.uk

This VAT update is published for the general information of 4 Eyes Ltd personnel, clients and contacts. It provides only an overview of the rules and regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this e-mail will be accepted by the authors or the firm.