



LEGAL BRIEFING

Neil Martin Ltd v Revenue & Customs Commissioners

Court of Appeal, Chadwick LJ, Smith LJ, Wilson LJ [2007] EWCA Civ 1041

The Facts

This was an appeal from a decision that the Commissioners for Her Majesty's Revenue and Customs (the "HMRC") could not be liable for breach of statutory duty or for breach of a common law duty of care in failing to process an application for a sub-contractor's tax certificate within a reasonable time.

There were numerous delays in the processing of Neil Martin Ltd's ("Martin Ltd") application for a CIS6 certificate. These delays included posting the certificate to an incorrect address, treating signed CIS3 and CIS8 forms as applications for a registration card (CIS4) and errors in processing the application for a CIS6 certificate.

It was not disputed that HMRC had made some administrative errors in the processing of Martin Ltd's application for the CIS6 certificate and that, as Martin Ltd received the CIS6 certificate later than it should have done, it is likely to have caused some loss. Martin sought redress for this loss and issued court proceedings to recover its loss.

The Issues

The following issues were decided by the Court:

1. Did HMRC's failure to act in accordance with Section 561 (2) of the Income and Corporation Taxes Act 1988 ("ICTA") give rise to a private law cause of action sounding in damages?
2. Did HMRC owe a direct common law duty of care to Martin to process its application for a certificate under section 561(2) with reasonable expedition? If so, did the acts of HMRC constitute a breach of that duty?
3. Was HMRC vicariously liable for the negligent acts of its employees committed in processing Martin Ltd's CIS6 application?

The Decision

The appeal was allowed.

Words could not be read into Section 561(2) of the ICTA to the effect that a certificate had to be issued to Martin Ltd within a reasonable time of the application. Section 561(2) also did not, of itself, impose a duty to issue a tax certificate to an applicant to process an application with reasonable expedition. Therefore the trial judge was correct to hold that HMRC did not owe a common law duty of care to process the section 561(2) application with reasonable expedition.

However, there was a common law duty of care owed in respect of the HMRC employee who chose to complete the declaration in support of an application for a registration card (pursuant to CIS4) on the CIS3 form without either Martin Limited's or Neil Martin's authority. This went beyond an administrative

mistake made in the ordinary course of processing the application under section 561(2) ICTA.

Comment

This is an unusual case as, although there were numerous administrative errors made during the course of processing the application, no liability was attached to those administrative errors. The judge emphasised that these errors were administrative mistakes made during the ordinary course of processing the application. However, as an employee had made a decision to complete a declaration on the CIS3 form that the application was for a CIS4 card, this was more than an administrative error and liability attached to this error. Although delays frequently occur in the processing of applications for certificates, unless there is something more than an administrative error, such as completing a declaration without authority, any losses sustained from these delays will not be recoverable from the HMRC.

Charlene Linneman
January 2008