TC03948

Appeal number: TC/2012/07501

VAT - creation of company to wind up solicitors practice - transfer of assets of exiting practice to appellant - whether a Transfer of a Going Concern - no - appeal allowed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

HSM LAW LTD **Appellant**

-and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE DAVID S PORTER
MS ELIZABETH POLLARD

Sitting in public at Phoenix House, Leeds on 29 July 2014

Mr Adam, Routledge, a tax consultant, appearing for the Appellant

Mr William Brooke, the presenting officer, appearing for the Respondents

THE DECISION

1. Mr Nigel Hoyle (Mr Hoyle) appealed on behalf of HSM Law Ltd (HSM) against the Respondents' (HMRC) refusal, contained in a letter dated 4 July 2012 to repay £34,185 VAT arising from its purchase of the assets of Brooke North LLP's for £200,000 plus VAT of £40,000. Mr Hoyle said that the purchase by HSM did not amount to a transfer of a going concern so that VAT of £40,000 had to be paid. HMRC said that, as HSM had acquired part of the assets of Brooke North LLP, it had effectively acquired part of its business and the purchase was therefore a transfer of a going concern and no VAT should have been paid. As a result the £40,000 could not be allowed as input tax and no repayment was due to HSM, but that a liability of £5,197,35 had been incurred.

2. Mr Adam Routledge, (Mr Routledge), a tax consultant, appeared for HSM and called Mr Hoyle as a witness, who affirmed. He also produced an opening submission, witness statements for Mr Hoyle and a list of authorities. Mr William Brooke, a presenting officer, appeared for HMRC, produced a bundle for the Tribunal and further authorities. He called Mr Anthony Nickson, the reviewing officer, who gave evidence and also affirmed.

Preliminary issue

3. Mr Routledge applied for a second witness statement to be allowed together with references to the cases set out below. The second witness statement referred to HMS's initial intention to continue Brooke North LPP's business, which had not been viable because it could not obtain sufficient funding. Mr Routledge submitted that this evidence did no more than expand evidence already produced to HMRC. He also confirmed that he had only recently been instructed to act for HSM and although Mr Hoyle, who had had the conduct of the case was a commercial lawyer, he was unfamiliar with the procedures in the Tribunal. Mr Brooke submitted that HMRC would be prejudiced by the production of the second witness statement as it had not had time to consider the same. HSM, through Mr Routledge, was too late in submitting the same. HSM had had sufficient time to have provided the second witness statement before the hearing.

4. We have read the 2nd witness statement and have decided to admit the same as it does no more than expand on information which HMRC already have had sight of. We also allow the four cases, as further cases were also produced by HMRC during the hearing and it is important for both parties that the relevant case law be made available to the Tribunal.

4. We were referred to the following cases:-

Jozef Maria Antonius Spijkers v Gebroeders Benedik Abbatoir CV and others (1986) ECR 1119

Hartley Engineering Ltd v C& E Commissioners (1994) 12385

C & E Commissioners v Padglade Ltd (1995) STC 602

Sawadee Restaurant v C & E Commissioners (1999) 15933

Heyes Limited v The Commissioners of Customs and Excise LON/92/1277P

Mark Young T/A The St Helens (2012) UKFTT 702 (TC)

Moreland & Co PLC LON/91/1653X

J P Neville Engineering 10128

Brenda Massey T/A The Basement Restaurant TC 02520

The Law

5. The VAT Act 1994 provides at section 5 (3) that the Treasury may by order provide that a transaction may be treated as neither a supply of goods nor a supply of services. Such a supply is a transfer from one business to another of the entire or part of the business. That same business, or part of it, to be carried on by the new business.

6. Regulation 5 of Statutory Instrument 1995/1268 (Special a Provisions) Order 1995 provides for a transfer of a going concern, in circumstances where the transfer of part of the business is capable of separate operation and that the assets of that business are to be used by the new business. The new business to carry on the same kind of business, whether or not part of the existing business, as that carried on by the transferring business.

The Facts.

7. Brooke North LLP was a small to medium sized solicitors' practice employing, at its height, 60 to 70 staff with 16 partners. It was turning over some £4,500,000 and was essentially a business law practice specialising in commercial work, related litigation, employment work and some private client work. It was not involved with matrimonial or legal aid work. During the recession, and with the loss of some of its partners, it was placed in special measures by its bank. The partners hoped to restructure the practice by reducing the expenses and improving its clients' base. It also approached its landlord to renegotiate the terms of its lease, but without success. As a result, the partners realised that the business would have to be closed down with all the professional implications that such action would have.

8. They sought to set up a smaller business on a 'pre- pack' arrangement with an administrator, whereby the administrators would, prior to enforcing the administration, agree to the partners arranging for a new practice to take over Brooke North LLP, on pre-agreed terms. Brooke North LPP, as a commercial enterprise, had several companies set up in individual partners' names. One such was HSWM Leeds Limited, which had been incorporated on 3 November 2009. Its business address had been the same as Brooke North LLP at Crown House, 81-89 Great George Street, Leeds. The company's name was changed to HSM LAW Limited, a name made up from the first letters of three partners, Hoyle, Stockdale and Middlemass. An application for VAT registration was made to HMRC by the company indicating that it intended to take over the VAT registration business of Brooke North LLP from 30 September 2011 with estimated taxable supplies of £2,200,000, effectively a transfer of a going concern.

9. Mr Hoyle gave evidence and affirmed. He told us that the partnership bank would not agree to fund the new business and as no other banks were prepared to do so, it had not been possible to continue with those proposals. By September/ October of 2011 it was apparent to the partners that Brooke North LLP would be liquidated by the bank. The partners were concerned, not only that the landlord was becoming very difficult because the rent was substantially in arrears, but also that, if the partnership went into liquidation, there would be a serious consequence to the partners ability to continue to practice. The partners also had personally guaranteed the bank overdraft.

10. The remaining partners decided that:

1. They should attempt to transfer their various clients to other practices so that there would be no need to call in the Solicitors Regulation Authority (SRA).
2. They should each try to obtain employment elsewhere.
3. They should try to recover as much money as they could from existing work and existing clients so that the indebtedness to the bank could be paid down, thereby reducing the amounts that would become due on their personal guarantees.

Mr Holye said that the most practical and responsible alternative was for the partners to use HSM as a vehicle to effectively manage the winding down of Brooke North LLP's affairs. The existing partners of Brooke North LLP were the directors of HSM. The directors/partners involved in winding up the Brooke North LLP business were unpaid and all monies received by HSM were paid to Brooke North LLP's bank to reduce the indebtedness. In HSM's letter of 18 May 2012 addressed to HMRC it was made clear that…. "The LLP carried on the business of a solicitors' practice. HSM law does not carry on such a business. It has no premises, no employees and no clients… All the client files were transferred to other practicing firms of solicitors…"

11. Towards the end of 2011, all the partners and solicitors in Brooke North LLP looked for and found new positions in other local law firms with a view to beginning work in January 2012. Each partner had an individual discipline and took his team with him to the new practices. Nigel Middlemass and Steven Frieze took the litigation department to Schofield Sweeney LLP; Gordon Watson and the private client team went to Ward Hadaway; Mr Hoyle took the commercial team to Blacks and the employment team went to Messrs Raworths in Harrogate. Rodney Dalton, one of the partners, went to work for Lupton Fawcett LLP.

12. Mr Hoyle produced to the Tribunal, a letter dated 13 December 2011, the day before the completion date in the agreement. The letter was from Richard Stockdale to the clients who he had taken with him to Schofield Sweeney LLP. The letter indicated that Brooke North LLP would cease practicing from 23 December 2011. He invited his clients to continue to instruct him at the new practice, or, if they so wished, to nominate another solicitor to act on their behalf. Mr Hoyle told us that the letter was a generic letter agreed between the parties and that he understood that the other partners, at the other firms, had written similar letters in the same time frame.

13. Brooke North LLP's partners were anxious to recover any cost that the practice was due to receive up to its demise. It was decided that the rest of the assets of Brooke North LLP would be purchased by HSM for £200,000 and that that business would be responsible for collecting the appropriate funds from those solicitors to whom the various clients had been passed. Separate arrangements had been made with each of the practices

and apart from Ward Hadaway, which took an additional percentage for completing each matter for the clients transferred to it, all the other practices raised a bill against the individual clients that they had taken over and accounted to HSM for that part of the work carried out by Brooke North LLP prior to the practice closing down.

14. Mr Hoyle told us that the partners had arranged a 'draw down provision' with Brooke North LLP's professional insurers so that, if any claims were made in a period of 6 years from the practice closing, the partners would be covered. Richard Stockdale had received a response from the SRA in response to his enquiry as to whether HSM needed to carry professional indemnity insurance. The response is contained in an email dated 29 August 2012 from Eve Morton, a supervisor, and stated:

> "I have now heard from our financial regulation Policy department ….Their view is that where HSM will not be conducting private practice in its own right, but will instead be used to administratively wind down Brooke North LLP, it may not need to have its own policy of qualifying insurance. I would, however, suggest that you qualify the position with Ethics…."

15. Ms Morton had raised concerns with regard to 'clients' money' but, in his letter to her of 24 September 2012, Mr Stockdale explained that the only clients' money to be held by HSM related to amounts owed to clients, who could not be traced. Efforts were to be made to trace the clients and if they could not be found the funds would be transferred to charity. Mr Stockdale also confirmed in an email dated 11 January 2013 that he had been told by Ms Morton that there was no need for HSM to be registered with the SRA.

16. Mr Hoyle produced a copy of the sale agreement dated 14 December 2011 and a subsequent deed dated 20 December 2011 assigning Brooke North LLP's book debts to HSM. As pointed out by Mr Nickson in his evidence, the agreement transferred all Brooke North LLP's book debts, Work-in-progress, confidential information, equipment, goodwill, records, name, intellectual property rights, all claims against former members, all insurance claims and the rights to any refunds in respect of rates, insurances and otherwise. We note, however that it specifically recited at recital C:

> "(C). The parties have agreed that the Assets shall be transferred to the Buyer on the Completion Date (14 December 2011) on the terms described in this agreement. The Buyer does not intend and will not be in a position to carry on the Business after the Completion date but intends to realise the Assets and assist in the orderly cessation of the business (Brooke North LLP's solicitors practice)

17. Mr Nickson gave evidence and affirmed. He confirmed that he is an assurance officer with HMRC also involved with pre-credibility checks on VAT repayment returns. He had seen the VAT summary for HSM and was concerned with regard to the £40,000 claimed by way of input tax on the sale to HSM. He had therefore asked to see the agreements and having checked HMRC's guide lines, the legislation and discussed the facts with his colleagues he had decided that the Agreement represented a transfer of part of Brooke North LLP's business as a going concern and that, in those circumstance, the repayment application would be denied.

18. In cross-examination, he accepted that he was not familiar with the way in which solicitors ran their businesses. However, he was familiar with work-in-progress and had taken the view in relation to that and the other aspects so the business. He had noted that HSM had originally been set up to carry on a solicitor's business; that all the remaining

assets of the business had been transferred to HSM; that all the partners were directors and solicitors of HSM. In those circumstances, he had come to the view that Brooke North LLP had transferred part of its business to HSM and that that had amounted to a transfer of the same as a going concern and the VAT of £40,000 was not due and could not form part of a repayment.

19. It also became apparent that HMRC's policy department had become involved and it had asked Mr Nickson to raise further questions in an attempt to resolve the matter without a need to appear before the Tribunal. Additional matters were raised in a letter from HMRC to HSM dated 12 December 2012 and had included requests for a breakdown of the book debts; full details of the work-in-progress; details of all the assets transferred; a valuation of the goodwill and details of the work carried out by the other solicitors. Mr Nickson confirmed that as he was the officer in charge of the investigation he was responsible for the decision even though Policy might have been the guiding hand behind the enquiries.

20. As a result of his enquiries, Mr Nickson was satisfied that the sale to HSM represent a sufficient part of Brooke North LLP's business for it to be treated as a separate business and amounted to a transfer of a going concern. We found Mr Nickson's evidence to be honest and straightforward. He confirmed at the end of his evidence that having heard the further details at the appeal, he would still have come to the same conclusion.

21. Judge Porter said that he did not understand the structure of the transaction, although completion of the sale was 14 December 2011, there had been a further period of 17 days until actual cessation of the business even though all the asset, as identified in the agreement had been transferred to HSM. Mr Hoyle explained that the partners had expressed concern regarding the activities of the landlord and were anxious to transfer the assets before there was either a receivership or liquidation in place. He confirmed that fees had been sent out to Brooke North LLP's clients on Brooke North LLP's bill heads during the period 14 December to 31 December, the cessation date. The monies so collected had been paid directly into Brooke North LLP's bank account to pay down the overdraft. He explained that all the partners and staff were to commence their new employment at the beginning of January, hence the cessation date of 31 December 2011.

22. Mr Nickson also confirmed that he had considered raising an inaccuracy penalty arising from HSM's actions but decided not to do so as the penalty regime had just been changed and he did not consider that HMS had acted deliberately giving rise to the repayment. He accepted that that appeal related to a very specific point of law as to whether a part of the business had been transferred to HSM.

Mr Brooke's submissions.

23. Both Mr Brooke and Mr Routledge referred us to the employment case of *Kenmir Ltd* and we think it would be helpful to consider that case first. This is the test repeatedly applied by the Tribunals:

> "In deciding whether a transaction amounts to a transfer of a business regard must be had to its substance rather than its form, and consideration must be given to the whole of the circumstances, weighing the factors which point in one direction against those which point in another. In the end the vital consideration is whether the effect of the transaction was to put the transferee in possession of a going concern the activities of which he could carry on without interruption. Many factors may be relevant to this decision though few will be conclusive in themselves. Thus, if the new employer carries on business in the same manner as before this will point to the

existence of the transfer, but the converse is not necessarily true because a transfer may be complete even though the transferee does not chose to avail himself of all the rights which he acquires thereunder. Similarly an express assignment of goodwill is strong evidence of a transfer of the business but the absence of such an assignment is not conclusive if the transferee has effectively deprived himself of the power to complete. The absence of an assignment of the premises, stock-in-trade or outstanding contracts will likewise not be conclusive. If the particular circumstances of the transferee nevertheless enables him to carry on substantially the same business as before."

24. Against that background, Mr Brooke submitted that HSM always intended to effect a transfer of the business of Brooke North LLP. He referred specifically to the VAT application showing the intention of taking over the business. He submitted that it was possible to take over only part of the business. HSM was responsible for collecting monies due from Brooke North LLP's existing clients and to raising accounts accordingly. The business was run by the same solicitors and within guidelines agreed with the SRA.

25. Mr Brooke commented on and referred us to the following cases:

- In *Jeyes Limited* Jeyes decided to dispose of its bottling business. The buyer built an adjacent factory with an interconnecting conveyor belt between the buildings. It then absorbed the existing business into its overall business. The Tribunal observed that "If what Customs contended was that because the purchaser carried out the blow moulding process as a separate operation but the appellant did not it could not be the same kind of business, we would not agree"
  Mr Brooke submitted that part of Brooke North LLP's business was to get paid and to recoup monies by ensuring that the client work was completed and appropriate payments made.

- In *Morland & Co* 98 public houses owned by an investment company, Estates, but run by Courage Group Ltd, a brewery, were transferred to a brewery group. The Tribunal held that although 98 Public Houses were sufficient to form part of a business, Estates had not sold a going concerned as it was in a different type of business to that of the brewery. Mr Brooke submitted that in the present appeal the agreement to sell referred to all the remaining assets owned by Brooke North LLP, prior to its liquidation, which were sufficient to form part of the business.

- *J P Neville Engineering* related to whether a person taking over a business had to be treated as having taken over the earlier business as a going concern and therefore be bound by that business' VAT position. There the Appellant had worked as a subcontractor for the owner of the business. When he realised the owner was in difficulties, he contacted all the principal contractors and renegotiated the terms of the original deals set up by the owner. The appellant also took a new lease and the only payment made to the owner was for the remaining steel used in the business. The Tribunal held that in the circumstances there was no transfer as a going concern. Mr Brooke submitted in this appeal HSM had continued to issue invoices to the various successor firms to recoup money owed to Broke North LLP giving rise to the transfer of a going concern.

- In *Mark Young*, another case deciding whether that appellant should be deemed to have continued the existing business as a restaurant for the purposes of the previous owners VAT. Judge Barbara Mosedale said at paragraph 45.

> "45. There was no direct transfer of any goodwill by Bonne Bouche. Whether the goodwill Bonne Bouche had was attached to the premises or the chef or both, Mr Young had the benefit of it as the new business had both the same premises and the same chef."

Mr Brooke submitted that in this appeal the goodwill was also transferred and HSM could operate part of Brooke North LLP's business.

- In *Brenda Massey* Mrs Massey had unwillingly continued her previous tenant's restaurant business as she had not been able to find another tenant. Judge Lady Judith Mitting decided that as a payment had been made for fixtures and fittings and the same business was operating in the restaurant there had been a transfer as a going concern. Mr Brooke submitted that although Mrs Massey never intended to take over the business it was still decided that there was a transfer of a going concern.

26. Mr Brooke submitted that it is not necessary for the entire business to be taken over it was sufficient for a part of it to be acquired. In the present circumstances, even though all the clients had been handed over to other solicitors, HSM had been set up to ensure that all the appropriate payments would be made to Brooke North LLP. HSM ensured that it would be able to do that by having sold to it all the assets referred to in the agreement, which include not only the means to enforce such payment but any goodwill and the name of the business. Effectively, HSM carried on the business of Brooke North LLP with the same partners acting as directors in the company. In the circumstances, the Tribunal should find that there has been a transfer of part of a going concern and it should dismiss the appeal.

Mr Routledge's submissions

27. Mr Routledge submitted that HSM was established to facilitate the completion of the work-in-progress for Brooke North LLP, which ceased trading from the end of 2011 due to financial reasons. Brooke North LLP, upon realising that there was a potential for the partnership to come to an end, set about planning for that eventuality in mid to late 2011, which included exploring numerous options, all with the aim of safeguarding the work-in-progress and ensuring that ongoing obligations pursuant to SRA regulations were adhered to.

28. On 13 December 2011 Mr Stockdale sent a letter to the clients that he was to take with him. A similar generic letter had been written by the other solicitors in relation to the work they were taking with them. Mr Routledge accepted that HSM had originally been set up to take over the clients of Brooke North LLP, but it had been unable to so because it could not achieve the necessary funding. Instead, HSM was used after the transfer of all the clients to the various other firms to realise the payment of fees due from those solicitors for the work done by Brooke North LLP. The intention of both parties to the 14 December 2011 agreement was never for HSM to carry on Brooke North LLP's business.

29. The issue for the Tribunal is did the sale of the assets from Brooke North LLP to HSM constitute the transfer of a going concern? Mr Routledge also referred us to several cases. He referred to *Kenmir Ltd* and emphasised that "..in the end, the vital consideration is whether the effect of the transaction was to put the transferee in possession of a going concern the activities of which he could carry on without interruption…" The Tribunal needed to bear in mind the 'could have' test as the sale of the assets to HSM did not provide HSM with the potential to carry on the same business as Brooke North LLP.

30. In *Jozf Maria Antonius Spijkers* Mr Spijkers had not continued to be employed by the acquiring abattoir, which took over the business of the original owners. The case was referred to the European Court who stated::

> "10 …The Netherland's government emphasizes that, having regard to the social objective of the directive, it is clear that the term 'transfer' implies that the transferee actually carries on the activities of the transferor as part of the same business.
>
> 11. That view must be accepted. it is clear from the scheme of directive 77/187 and from the terms of Article 1 (1) thereof that the directive is intended to ensure the continuity of employment relationships existing within a business, irrespective of any change of ownership. It follows that the decisive criterion for establishing whether there is a transfer for the purposes of the directive is whether the business in question retains its identity.
>
> 12. In consequence, a transfer of an undertaking, business or part of a business does not occur merely because its assets are disposed of, instead it is necessary to consider, in a case such as the present, whether the business was disposed of as a going concern, as would be indicted, inter alia, by the fact that the operation was actively continued or resumed by the new employer, with the same or similar activities."

The case takes a different view of the facts from *Kenmir Ltd* and the 'could be' test. The European Court clearly considered how the transferee 'looks' after the transfer of the assets. HSM bore no resemblance to Brooke North LLP whatsoever it is not clear whether or not any members of the public were even aware of HSM's existence.

31. In *Sawadee Restaurant,* a VAT case, the appellant established a business running a Thai Restaurant a few months after it had purchased the restaurant, which had previously been run as a Japanese restaurant. The Tribunal found that the change of use from Japanese to Thai was materially different. The Chairman Mr Gordon Coutts stated:

> "The test in the view of this tribunal is not whether the business "could be" carried on without interruption, but is properly to be found in the words of the statute and the context of VAT legislation whether the transferred matters, if any, "are to be" carried on as a business."

The tribunal considered that the "could be" test is plainly wrong, that the intention of the transferors is an important part of the process in establishing whether or not a transfer of a going concern has taken place. Mr Gordon-Coutts went on to say:

> " *Kenmir* was also, it must be remembered, an employment law case, dealing, obviously, with different legislation and indeed different social objectives from VAT legislation."

32. *Hartley Engineering* considered that the test in *Kenmir Ltd* was not so easily applied to VAT cases as the VAT provision goes on to add the words "where the assets are to be used by the transferee in carrying on the same kind of business." Chairman Mr Paul W de Voil went on to say:

> "…If you tell me that I could be electrocuted tomorrow, I shall have to agree with you; accidents do happen. If you tell me that I am to be electrocuted tomorrow, my attitude to what you are saying will be different. "Are to be" suggests an intention – presumably that of the transferee and presumably at the moment of transfer."

The tribunal considered that the most appropriate course was therefore to look at the intention of the parties to the transfer at the time it took place. A similar test should be applied by this Tribunal in this appeal.

33. In *Padglade Ltd* the owner of the original business and the new business were one and the same. The original business was in financial difficulties and the owner decided to transfer the assets to the new business in order to ease that pressure. Office furniture and equipment, a motor van and a fork lift truck were sold to the new company together with some textiles and completed textile items. The tribunal found that there had not been a transfer of a going concern. On the appeal to the Queen's Bench Division Mr Justice Schiemann referred to the decision in
Customs and Excise Commissioners v Dearwood Ltd [1986] STC 327 stating:

> "It was held, and I respectively agree, that the fact that the taxpayer had an intention in the future to change the business was irrelevant. The words 'in the future' are clearly important since the transferee's immediate intention is relevant under Article 12 (1) (b) (ii). When answering the question "Are the assets to be used by the transferee in carrying on the same business?" evidence of the transferors' intention will usually be relevant. This case does not decide to the contrary."

34. Mr Routledge submitted that HSM never intended to undertake a similar business to that of Brooke North LLP as shown from the correspondence produced in evidence and confirmed by Mr Hoyle. In HSM's letter of 18 May 2012 addressed to HMRC it was made clear that…. "The LLP carried on the business of a solicitors' practice. HSM law does not carry on such a business.it has no premises, no employees and no clients… All the client files were transferred to other practicing firms of solicitors…"

35. Mr Routledge submitted that the sale of the assets was not a transfer of a going concern because the assets transferred were not being used to carry on the same kind of business. Brooke North LLP were a firm of regulated solicitors, HSM were not. At no time did HSM provide any legal advice to the clients of Brooke North LLP. As far as the clients were concerned, their work was being carried out by the other firms of solicitors. Furthermore, none of the employees of Brooke North LLP were transferred to HSM.

36. The new solicitors invoiced the clients for the full amount of the work done. HSM then invoiced Schofield Sweeney LLP for that part of the fee representing the time spent on the transaction by Brooke North LLP before the transfer of the work to Schofield Sweeney LLP. Ward Hadaway LLP received a percentage of 30% to 47.5% of the Brook North LLP work and invoiced the clients for the full amount. Ward Hadaway LLP subsequently accounted to HSM quarterly. HSM was not in a position to act as a solicitors practice because it carried no professional insurance nor was if registered with the SRA.

37. Mr Routledge submitted that on the facts the context of the case law and legislation the sale was simply a sale of the assets of one business to another and did not amount to a Transfer of a Going Concern and the appeal should be upheld.

The decision

38. We have considered the law and the evidence in the round and we allow the appeal. Mr Brooke takes the view on behalf of HMRC that the transfer of all the assets identified in the Agreement of 14 December 2011 amount to the transfer of part of the solicitors' business. Brooke North LLP had got into financial difficulties and the partners were concerned to retain their professional qualification, to ensure that their clients' work was

properly completed and that the partners received some payment for the work carried out by Brooke North LLP before the 31 December 2011. The business of a solicitor is to take instructions from a client; to consider the law and the facts; to advise the clients accordingly and where possible bring the transaction to a satisfactory conclusion for the clients.

39. Brooke North LLP was no longer able to do that and the partners arranged for the separate businesses within the practice to be transferred, with the appropriate clients, to the new solicitors. This meant that the clients' work would be properly completed and no financial loss would occur for the clients. HSM could not carry out that work, even though the only remaining owners were the solicitor/ directors. This is because HSM would have needed to carry professional insurance; be regulated by the SRA; have a full complement of staff, equipment and office premises from which to operate. All HSM could do was to orchestrate the closing down of the business; the collection of appropriate monies due to Brooke North LLP, thereby reducing the partners liability to the bank. The position is very similar to the facts in *Padglade.*

40. We were concerned that HSM appeared to have carried on the Brooke North LLP's business between the completion date and the end of December 2011. Mr Hoyle told us that the agreement had been completed on 14 December 2011 because of the partners' difficulties with their landlord. All the partners were to move to the new practices in the New Year. He had raised accounts on Brooke North LLP's invoices and paid any money received into the Brooke North LLP bank account. We note that the agreement at clause 2.3 allowed Brooke North LLP to continue to run the business for its own use until the 31 December 2011. As a result the business was not being run for the benefit of HSM, which was only able to use the entirety of the assets after the 31 December 2011.

41. We accept that it is possible for part of a solicitors business to be transferred. When the various partners took their departments to the other solicitors' practices they took part of the Brooke North LLP business with them. After 31 December 2011 all that remained was the right to collect and distribute the fees due to Brooke North LLP paid in the main to HSM from those various solicitors. We do not consider that HSM activities represented in any way part of a solicitors' practice. It carried no insurance; it was not regulated by the SRA; it had not clients it could address directly; it gave no legal advice; it had no employees and no premises. The partner's intention was to arrange for an orderly demise of the Brooke North LLP practice, which could hardly be the same kind of business as Brooke North LLP had been running.

42. The only decision by which we are bound is that of the Queen's Bench in *Padglade Ltd* in which Mr Justice Schiemann stated:

> " neither of these cases is authority for the proposition that the intention of the transferor of the goods is irrelevant when considering whether there was a transfer of a business or the transfer of a part of the business. It is not conclusive one way or the other, but it is one of the factors which the tribunal is entitled to take into account when taking a broad view of the circumstances of the whole"

43. We are in no doubt that the partners intended to wind down the Brooke North LLP business in as orderly a manner as they could. As a result, they arranged for all the clients' businesses to be transferred to other solicitors. They arrange for all the staff to be re-employed elsewhere. All that was left was to obtain as much money as they could for the work, which had been carried out by Brooke North LLP and pay it to the bank, to reduce the partnership debt and thereby their liabilities under their personal guarantees. By no stretch of the imagination could that activity form part of a solicitors business nor could it

be part of a going concern as the concern had already gone. Taking all the facts into account, including the intention of the parties, we allow the appeal.

44. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

DAVID S PORTER
TRIBUNAL JUDGE

RELEASE DATE: 21st August 2014