Helena Partnerships Ltd v HM Revenue and Customs [2012] EWCA Civ 569

England and Wales Court of Appeal (Civil Division), Lloyd, Black, Lewison LJJ, 9 May 2012

This was an appeal from a decision of the Upper Tribunal (Tax and Chancery Chamber): see [2011] UKUT 271 (TCC). Helena Partnerships Ltd (Helena) is a registered social landlord, which was incorporated in January 2001. In October 2001 it adopted a new memorandum and articles of association. Its objects were providing housing, accommodation, assistance to help house people, and associated facilities and amenities, and any other object that could be carried out by a company registered as a social landlord with the Housing Corporation, for the benefit of the community. It was not to trade for profit. Later, in November 2004, it changed its memorandum and articles of association again. The issue on this appeal was whether, in the period from October 2001 to November 2004, Helena was established for charitable purposes only, so that its funds were applicable for those purposes. If Helena was not established for charitable purposes only in that period, then it was liable for £6 million of corporation tax on the rents that it received.

Lloyd LJ in his judgement (with which the other judges agreed) said that the appeal 'raised issues of charity law of some importance and difficulty, some of which have been the subject of debate for years' (at [6]). The most important of these was whether the promotion of objects of general public utility is a charitable purpose. The general view has been that the provision and enhancement of a stock of housing accommodation, available for occupation by tenants, and carried out for the benefit of the community, is a charitable object because it is of general public utility.

Helena is a company limited by guarantee, not having a share capital. In July 2002 Helena took a transfer from St Helen's Metropolitan Borough Council (the Council) of a large part of the Council's housing stock, under the UK Government's Large Scale Voluntary Transfer Programme (designed to move former public housing to privatisation). The Council area, in north-west England, was an area of poor socio-economic conditions.

As from 1 July 2002, Helena was registered with the Housing Corporation (a government regulatory body) as a social landlord. Under the agreement for the transfer of the housing stock Helena took on various obligations owed to the Council, including a housing agency agreement, and a nomination rights deed which gave the Council the right to nominate tenants to 75% of vacant properties held by Helena. Helena adopted the Council's pre-existing housing allocation policy, under which housing need was determined by reference to a points system, with points acting cumulatively as indicators of the eligibility for housing of any given applicant.

This did not mean that housing was restricted to the category of charitable purpose consisting of the relief of the poor, the elderly and the infirm. It was agreed between the parties that some of the Council's housing was to be rented to persons who were in need (and therefore in the 'charity' category), but some of it was to be rented to persons not in such need.
Lloyd LJ surveyed the development of charity law in England. He said (at [22] and [66]):

The law as to the purposes that are charitable is notoriously difficult and unsatisfactory, partly because of its historical development. It is strange enough to find that reference needs to be made in the 21st century, well into the reign of Queen Elizabeth II, to the text of the preamble to a statute passed in the last years of the reign of Queen Elizabeth I, the Statute of Charitable Uses 1601, in order to find what categories of purpose should be regarded as charitable. It is all the more odd to do so when one realises that the 1601 statute was passed in order to reform the procedure for enforcing certain kinds of charitable uses, to the exclusion of others which, accordingly, although charitable were not mentioned in the statute or in the preamble...Thus, for the appeal to succeed, Helena's purposes must be found to be within the spirit and intendment of the preamble, directly or by analogy, but the statement that its purposes are to be carried out for the benefit of the community is not sufficient for this purpose.

Helena’s objects at the relevant time were listed at clause 4 of its memorandum. These were:

4.1 housing;
4.2 accommodation;
4.3 assistance to help house people;
4.4 associated facilities and amenities; and
4.5 any other object that can be carried out by a company registered as a social landlord with the Housing Corporation for the benefit of the community.

The Company shall not trade for profit.

Lloyd LJ said in relation to these objects (at [74]–[76], [78], [81]):

The real issue is as to the balance between public benefit and benefit to individuals arising from the undertaking of all or any of Helena's objects. This type of issue has arisen in numerous previous cases, of which we were shown several. The argument was about whether or not the benefits afforded to individuals (often referred to as private benefits) were subordinate to the public benefit, so that the latter was to be seen as the real object of the relevant body. Most charitable purposes provide particular benefits to individuals, whether to the poor person in need of support, the student in need of education, or the patient in need of treatment, to take a few obvious examples. That is the way in which the public benefit is provided...public benefit is a prerequisite of charity, but the provision of particular benefits to particular individuals is justified as a way of providing benefits to the public by virtue of, first, the availability of the provision and, secondly, the selection of those who are to benefit on an objective basis which does not depend on any private or particular nexus of the beneficiary with the trust, the founder, the other beneficiaries or any given individual...So, in the case of Helena, the identification of those who were to occupy its accommodation would be decided (in many cases) according to the allocation policy previously used by the Council. This would not be limited to those in particular need, but there would be objective criteria of selection involving no private or
personal element... Without attempting to lay down any rigid distinctions, there are charities which provide direct benefits to individuals, whether by way (for example) of the relief of the poor, the elderly or the infirm, education of students at schools or universities, or medical treatment in hospitals. These are the charities that provide direct benefits...They are justified as being for the public benefit on the basis that it is desirable that there should be such provision for those in particular need or, in the case of education, that it is a good thing that the population should receive education. There are other charities which provide less, or nothing, in the way of identifiable benefits to individuals, where the benefit is either entirely general (animal welfare, as instanced above, which is justified as promoting the moral improvement of the public generally) – these are cases of wider benefit as classified above – or the benefit is general although some individuals may obtain more benefit than others, such as bridges, sea-walls or fire brigades, again only by way of example – these provide indirect benefits as classified above. In the case of the first category of charities, it is seen as for the public benefit that the direct benefit to individuals should be available for, and provided to, those in need. In the latter cases, which include various examples of public works, the carrying out of the works is seen as for the public benefit, because of the public or general need, and the indirect benefit to individuals is incidental to that of the public, because of the nature of the operations in question and the way in which their benefits are experienced...In any given case, whether any benefit obtained by an individual as a result of the carrying out of the objects of the body in question is subordinate to public benefit will depend on the nature of the objects, the terms of the constituent document, and the nature of the benefits accruing from the carrying out of the objects.

His Lordship held that Helena's objects could not be charitable. There were two reasons for this. First, the provision of housing (other to those in real charitable need) was not within the intendment of the Preamble of Elizabeth either on its own or by analogy with other heads of charity. In particular, there was no analogy with the provision of public works of the kind envisaged in the Preamble, such as bridges and sea-walls. The provision of housing had too much individual private benefit – the direct benefit to individuals far outweighed the indirect public benefit of a provision of suitable housing stock. The private benefit accruing to the individual occupiers was not merely incidental or subsidiary to any public benefit in having housing stock available. It was ‘benefit for its own sake, not incompatible with benefit to the community, but not subordinate to it’ (at [108]).

His Lordship pointed out that the provision of housing was a right recognised under Article 8 of the European Convention on Human Rights. He took the view that this confirmed that housing brought with it a significant private benefit that went far beyond the benefit that individuals obtained from charitable operations which might fall within the fourth head of charity (from Pemsel’s case) under the general law. He concluded that the provision of housing could only be a charitable purpose if there is a direct benefit attached to it which was otherwise charitable.

Therefore, the appeal was dismissed because:
1. The objects of Helena were not sufficiently for the public benefit.
2. The provision of housing stock for occupation of tenants generally is not a charitable purpose because it did not come within the fourth head of charity in Pemsel’s case.
3. The reason it did not come within the fourth head of charity was that it was not within the spirit and intendment of the Preamble to the Statute of Elizabeth 1601, either directly or by analogy with the public works listed in the Preamble. There was no general public utility involved.
4. There was no general public utility because the degree of individual benefit afforded by the provision of housing was so substantial that it could not properly be regarded as subordinate to the public benefit of the availability of a stock of suitable housing.
5. It was not sufficient that the operations of Helena should be required to be for the benefit of the community. They could qualify as such without being charitable. In order to be charitable the benefit provided must be of an appropriate kind, which was not so in this case.

Therefore, as its purposes were not charitable, Helena Partnerships Ltd would be liable for corporate taxation on the rents collected within the nominated period.

The case may be viewed at: http://www.bailii.org/ew/cases/EWCA/Civ/2012/569.html

Implications of this case

The four heads of charity referred to in this case were established in Commissioners for the Special Purposes of Income Tax v Pemsel [1891] AC 531. In that case, it was said that charity ‘in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads’ (at 583-4). In this case, Lloyd LJ referred to the fourth head of charity, that for other purposes beneficial to the community. The provision of housing was not such a purpose, unless it was for the truly needy, such as the poor, disabled, or the elderly. In this case, there was no public benefit in the provision of housing to a mixed group of individuals. All the benefit was private (benefiting those individuals), so there was no charity involved.