

R(SB) 4/91
(Davies v. Social Security Commissioner)

Mr. M. J. Goodman
3.3.89

CSB/1220/1988

CA (Woolf LJ)
26.9.89

Estoppel – whether available against a Department of the Crown performing statutory obligations

The applicant had taken out a loan for business purposes and claimed interest thereon as a housing requirement for supplementary benefit purposes. The social security Commissioner decided on Commissioners file No. CSB/1220/1988, on appeal from the social security appeal tribunal, that he was not so entitled because interest on the loan was not “eligible interest” under regulation 15(3) of the Supplementary Benefit (Requirements) Regulation 1983, except so far as it came within the concession in regulation 15(4) (since revoked) in respect of a mortgage taken out for business purposes and charged on his interest in the home. That concession was available to him for six months only as he intended to sell his interest in the home to discharge his business liabilities and the concessionary period was essential to enable the interest in the home to be realised on reasonable terms. On application to the Court of Appeal for leave to appeal, the applicant argued that, as an administrative mistake on the part of the Department of Social Security had resulted in interest on the mortgage being taken into account for a period substantially longer than the six months allowed by the aforementioned concession in regulation 15(4), and as the mortgage had in fact been taken out for business purposes, the Department were estopped from arguing that he was not entitled to a housing requirement in respect of the interest since their so paying the interest beyond the ending of the six months period had caused detriment to him.

On 26 September 1989 Woolf LJ refused leave to appeal of the Court of Appeal on the grounds that:

1. the detriment which the applicant claimed to have suffered was insufficient for the purposes of the law of estoppel;
2. even if estoppel would otherwise have been available, the Department, in making payments to the applicant, were exercising their statutory obligation as a Department of the Crown, and it was well established that in ordinary circumstances that could not give rise to estoppel against the Crown. Were such estoppel available, the applicant would effectively be given a claim against the Department for benefit to which he would not otherwise be entitled.

JUDGMENT OF THE COURT OF APPEAL

LORD JUSTICE WOOLF: This is an application for leave to appeal out of time by Mr. Arthur John Davies from a decision of the social security Commissioner Mr. Goodman, the decision being on 3 March 1989. The applicant would be technically out of time for appealing but I do not consider that should prevent him from appealing if he has got an arguable appeal. There is no culpable delay on his part. However, so far as the merits of his appeal are concerned the social security Commissioner dismissed the appeal for two reasons, one is that because the loan, as was found as a fact by him, was taken out by Mr. Davies for business purposes technically no interest was appropriate to be taken into account as a requirement, except for a period of six months under a concession contained in regulation 15(4). In fact, however, through

an administrative mistake on the part of the Department his interest on a mortgage was taken into account for a substantially longer period than that.

In those circumstances Mr. Davies submits that if the loan was in fact taken out for business purposes the Department is estopped from arguing that now, having paid the interest for a substantial period causing him to suffer detriment.

As to whether or not the interest is in fact arising under a mortgage which was taken out for business purposes, that is a question of fact and not a matter for which in any event there would be a right of appeal to this court.

So far as the estoppel argument is concerned Mr. Davies had in my view insurmountable difficulties for two reasons. First of all although he contends that he has suffered detriment as a result of the Department taking into account the interest and making payments which they should not have done, in my view this could not result in Mr. Davies being prejudiced in a way which would amount to a sufficient detriment for the purposes of the law of estoppel. The second reason is (and this is the second ground relied on by the Commissioner) that even if the estoppel would be otherwise available the Department, in making payments to him, are performing their statutory obligations as a Department of the Crown. It is well established that in ordinary circumstances there cannot be estoppel against the Crown in relation to a matter of this sort, and so I am afraid Mr. Davies cannot rely on that matter as a basis for appealing. There is also the difficulty that, although the matter can be dressed up in a different way, what Mr. Davies is contending is that the estoppel would give him a claim against the Department for benefit to which he would not otherwise be entitled. As is always said in these matters, estoppel can act as a shield but it cannot act as a sword, and in effect Mr. Davies would be relying on the estoppel as a sword in order to get money from the Department to which he would not otherwise be entitled.

I am afraid I must dismiss this application for leave because it discloses no arguable point of law.

Order: Application dismissed.