

Docket: 2016-255(IT)I

BETWEEN:

SHAHIN SOHEILI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on August 29, 2017, at Vancouver, British Columbia

By: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Shannon Fenrich, Sheida Rezapour

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**JUDGMENT**

The Appeal from the reassessment made under the *Income Tax Act* with respect to the 2010 and 2011 taxation years is dismissed.

Signed at Ottawa, Canada, this 7th day of September 2017.

“Campbell J. Miller”

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C. Miller J.

Citation: 2017 TCC 172

Date: 20170907

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SHAHIN SOHEILI,

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### **REASONS FOR JUDGMENT**

C. Miller J.

[1] Mr. Soheili appeals the reassessment by the Minister of National Revenue (the “Minister”) of his 2010 and 2011 taxation years, in which the Minister denied Mr. Soheili’s 2009 business loss carry forwards of \$29,520 in 2010 and \$5,520 in 2011. The Canada Revenue Agency (“CRA”) initially denied \$35,740 of business loss carry forwards in 2010, but after an audit allowed \$6,120 loss carry forwards from 2009 into 2010. In the Minister’s Reply that allowance is stated to be in error. The loss arises on the disposition of a residential property, which the Minister claims was built as Mr. Soheili’s principal residence, consequently not triggering any business losses at all. Mr. Soheili claims, that while originally the property was intended to be built as the family residence, after a fire at the property during construction, circumstances changed such that the building was to be constructed for commercial sale. Mr. Soheili claimed he no longer intended the property for his family residence. If Mr. Soheili convinces me that the intention did shift, he must then satisfy me that this changes the nature of the property away from personal property and further that he incurred costs of \$1,556,800, not the \$1,235,376 of costs that the Respondent’s auditor allowed.

[2] Mr. Soheili was the sole witness for the Appellant. He was at the relevant time a realtor and a general contractor. He acknowledged that initially he intended to build a large eight bedroom house meant for his family, his brother’s family and their parents. The land for this residence was located on Abbey Drive in Surrey. Mr. Soheili acquired the land in 2005 for \$315,000. Construction commenced in

February 2006. There is some confusion as to who actually built the residence, as Mr. Soheili was the sole shareholder of a company, Homemark, which he stated was in the construction business. He claims to have hired Homemark to be the builder. It was never made clear to me who in fact incurred the expenses (no receipts, no financial records, nor any materials in connection with the construction were provided), but given how I intend to dispose of this case, it is irrelevant.

[3] In October 2006, while under construction, there was a fire at the Abbey Drive property, caused by arson. Mr. Soheili claims this caused a rift with his brother who believed that Mr. Soheili was responsible for hiring the individual whom they suspected was the arsonist. Mr. Soheili testified that his brother dropped out of the picture as far as the ongoing development of the property, and he was therefore left to clear up the mess, as he put it. He claims that at this point, as he was on his own, he made the decision to simply build the residence to sell. He testified that he changed plans from an eight bedroom home intended for two or three families to an executive home with fewer bedrooms. He stated he submitted a new application to the City of Surrey for a building permit evidencing the changes. His brother did not testify nor did he produce a copy of any altered blueprints or the building application. When the property was ultimately listed through foreclosure proceedings, it showed as having eight bedrooms and eight bathrooms.

[4] Mr. Soheili had some difficulty with his insurer in collecting on the insurance arising from the fire, but ultimately a settlement was reached for an undisclosed amount. Mr. Soheili proceeded to invest this amount in the United States. He acknowledged, however, that at this point there was no way he could afford the Abbey Drive residence. He suggested construction costs soared due to the upcoming Olympics. He put the overall cost at over \$1,500,000. The auditor testified that he was only provided support for \$804,741 of construction costs plus \$115,000 of interest costs and \$315,000 for the acquisition of the land, totalling approximately \$1,235,000. Mr. Soheili admitted he does not know where support for the additional \$300,000 expenses can be found.

[5] In March 2008, Mr. Soheili mortgaged the Abbey Drive property along with his then principal residence at Glenside Court in Surrey to Pacific Coast Mortgage for approximately \$1,200,000. A few months later, he took out a second mortgage on both properties for an additional \$300,000 with what he called a private lender, Canadian Western Trust Co. The mortgages on both properties were registered in Mr. Soheili's name.

[6] By January 2009, there were over \$500,000 worth of liens against the Abbey Drive property. Mr. Soheili had Homemark register a lien for \$250,000 against the property as well, an amount he indicated was simply arbitrary.

[7] Mr. Soheili testified that he had an interested buyer prepared to pay \$1,600,000 for the Abbey Drive, but that foreclosure proceedings were started and this same buyer ultimately acquired the Abbey Drive property for \$1,375,000. Mr. Soheili maintains that he allowed this sale by foreclosure below what he believed was market value, as he felt this was the only way he could retain his Glenside Court property. As there was a shortfall of approximately \$244,000 to the second mortgagee, Mr. Soheili borrowed from another lender, Van City to pay out the Canadian Western Trust mortgage in 2010. He still has a considerable mortgage against the Glenside Court property.

[8] Mr. Soheili claims he had significant business losses on the sale of Abbey Drive in 2009, \$35,740 of which he carried forward to 2010 and \$5,520 of which he carried forward to 2011. The Minister, relying on the auditor's determination of supportable costs, determined that Mr. Soheili only incurred losses of \$6,120 which was allowed to be carried forward to the 2010 taxation year and reassessed accordingly. The Minister's position on appeal is that no amount should have been allowed, as this was a sale of a personal property. Mr. Soheili's position was that either he or Homemark incurred these legitimate losses and he is entitled either to the business loss carry forwards directly or, if Homemark incurred the costs, he is entitled to allowable business investment losses. He further argues that he is entitled to interest expenses on the remaining mortgage on his Glenside Court property in 2010 and 2011, as the mortgage was to pay out the original second mortgage on the Abbey Drive property, which he claims was incurred to build the Abbey Drive residence. He failed to provide any documentary evidence detailing any interest costs.

[9] I will deal first with who incurred the costs of construction. I did not receive copies of any invoices nor saw any corporate records, financial or otherwise. Mr. Soheili's testimony with respect to Homemark was, at best, sketchy. The company never filed a return after 2007 and, according to Mr. Soheili, simply faded away. I find this was Mr. Soheili's project. He owned the land and the mortgages were registered in his name. Not unlike many small businesses, there was likely little distinction to be made by Mr. Soheili between his endeavours and that of the company. The role of Homemark is confused to the point of being irrelevant and I treat it as such. If there was any business or venture in the nature of trade, it was Mr. Soheili's.

[10] The question is whether the Abbey Drive residence was personal property, a property intended to be the family residence or was part of a business venture by Mr. Soheili in his role as a general contractor. The Respondent argues first that Mr. Soheili never intended the Abbey Drive property to be sold commercially. Second, the Respondent relies on the case of *Solomons v Canada*<sup>1</sup> to argue that because the project started off as a personal rather than business venture, which Mr. Soheili acknowledges, then it remains such notwithstanding circumstances, the fire, caused Mr. Soheili to switch gears, as he could no longer afford to proceed on the basis of building the family residence.

[11] Dealing with the Respondent's first position, I have not been convinced by Mr. Soheili that in fact there was any change of intention after the fire. My reasons for this conclusion are manifold. First, in his testimony in chief, Mr. Soheili claimed that he altered plans to go from an eight bedroom home suitable for three branches of his family to a five bedroom home, more suitable for one family wanting an executive home. The listing of the home on foreclosure, however, showed there was indeed still eight bedrooms, three described as master bedrooms, along with eight bathrooms. This is more in keeping with the original plans. Mr. Soheili told me that he could go to the City of Surrey to get copies of the building application and blueprints which would show the changes. It is always regrettable that Appellants do not come fully prepared for their day in court. Mr. Soheili was well aware that an issue was the nature of the Abbey Drive property, business or personal, and therefore the purported altered plan would be most significant. The only credible evidence I am left with is in the form of the listing that simply does not support Mr. Soheili's explanation.

[12] Second, Mr. Soheili made no mention to the auditor at their interview in May 2012 of any change in intention. Mr. Sandhu, the auditor, referred to his notes which makes no reference to any such intention for the property other than as a family residence and he recalled no such mention.

[13] Third, Mr. Soheili called no other family members, his brother or any others to provide any corroboration of his story.

[14] Fourth, in two cases where he was sued by suppliers, the judgments, one in 2011 and another in 2013 (Dynasty Kitchen Cabinets and Miracle 786 Flooring), both indicate that, based on Mr. Soheili's testimony, the property was intended for

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<sup>1</sup> 2003 DTC 505.

the family's residence. The Dynasty decision was ultimately vacated but the trial judge's finding on this point remains on the record.

[15] I conclude the property retained its original status as personal property and was not part of any business or adventure in the nature of trade. I dismiss Mr. Soheili's Appeal on that basis.

[16] I wish to comment further, however, on Mr. Soheili's lack of proof for his expenses, even if I had found that this was a commercial venture. As mentioned previously, there is approximately a \$300,000 discrepancy between what the auditor found as costs of construction versus what Mr. Soheili claims. The only evidence Mr. Soheili relied upon to support these additional costs was the fact that he had to borrow so much. This is simply insufficient proof. Again, while recognizing it can be difficult for a taxpayer acting on his own behalf to appreciate what evidence is required to prove their point, this case was about the quantum of expenses. Mr. Soheili knew that, yet could provide no evidence to support his claim of costs in excess of \$1,500,000. I add this lack of corroborative evidence to his testimony that he took insurance proceeds and invested them in the United States to confirm my view that simply saying he borrowed so much money to go towards building the residence falls well short of any standard for proving the issue of the amount of construction costs. He could just have likely invested more in the United States. No, Mr. Soheili has simply been unable to satisfy me he incurred the costs he claims, and I could also dismiss his Appeal on that basis.

[17] The Appeal is dismissed.

Signed at Ottawa, Canada, this 7th day of September 2017.

“Campbell J. Miller”

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C. Miller J.

CITATION: 2017 TCC 172  
COURT FILE NO.: 2016-255(IT)I  
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THE QUEEN  
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DATE OF JUDGMENT: September 7, 2017

APPEARANCES:

For the Appellant: The Appellant himself  
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