

BETWEEN:

ARJAN ZIU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 4, 2009 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Ian Theil

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years is dismissed.

Signed at Toronto, Ontario this 12th day of March 2009.

“J. Woods”

Woods J.

Citation: 2009 TCC 147
Date: 20090312
Docket: 2008-825(IT)I

BETWEEN:

ARJAN ZIU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] This appeal concerns rental losses claimed by Arjan Ziu for the 2003, 2004 and 2005 taxation years. The amount of the losses in dispute are \$4,307, \$6,502 and \$6,579 for each of the years, respectively.

[2] Mr. Ziu and his wife, Maria Shkrebic, purchased a principal residence in Mississauga, Ontario in the 2000 taxation year. All of the purported losses were claimed by Mr. Ziu, even though the residence was jointly owned.

[3] In income tax returns for each of the taxation years at issue, Mr. Ziu claimed a rental loss which was calculated by taking gross rents less rental expenses.

[4] The rental expenses were computed by including the expenses of maintaining the residence less a deduction for personal use. The only year in which some personal use was factored in was the 2003 taxation year. In that year, Mr. Ziu submits that 50 percent of the home expenses were personal and not deductible.

[5] According to the notice of appeal, the following facts support the deductions that were claimed:

- (a) in 2003, Mr. Ziu and his wife decided to rent out the basement due to financial difficulties;
- (b) in 2004 and 2005, the financial difficulties continued and the couple decided to move in with Ms. Shkrebic's sister and rent out the whole of the personal residence;
- (c) the tenant for the upper two floors was destructive and was evicted;
- (d) the upper floors were vacant for four months;
- (e) in 2005 a new tenant was found for the upper floors but his rental payments fell into arrears; and
- (f) Mr. Ziu and his wife moved back into the residence in mid January 2006 and they planned to rent it out only if it could not be sold.

Analysis

[6] In order to succeed in this appeal, Mr. Ziu must establish that he did in fact carry on a rental operation on the property and that losses were incurred in respect to that activity in the amounts claimed in the income tax returns.

[7] The principles to be applied are set out by Supreme Court of Canada in *Stewart v. The Queen*, 2002 SCC 46, 2002 DTC 6969. In particular, *Stewart* provides that if there is a personal aspect to an activity, the taxpayer must establish that his predominant intention was to earn a profit.

[8] The evidence in this appeal consists of the testimony of Mr. Ziu and Ms. Shkrebic, and documents introduced as a joint book of documents. To a large extent, the documents consist of material provided by Mr. Ziu to the Canada Revenue Agency.

[9] Upon a review of the evidence, I have concluded that the documents and the testimony are both troublesome for Mr. Ziu's position.

[10] Some of the difficulties are: (1) that the positions taken by Mr. Ziu at various times are not consistent, (2) that the testimony in chief was so brief that it was not

convincing, and (3) the testimony of Mr. Ziu and his wife was contradictory in certain respects.

[11] I would note the following as examples.

[12] First, a rental questionnaire provided to the auditor suggests that the entire residence was rented to one tenant throughout the period at issue. This is inconsistent with the purported facts in the notice of appeal.

[13] Second, the rental questionnaire states that the residence was first rented in January 2003. This is inconsistent with a statement of real estate rentals for the 2002 taxation year that was included in the joint book of documents.

[14] Third, the gross rents as stated in the income tax returns are less than the rent purportedly received from the basement tenant (Ex. AR-1, Tab 8).

[15] Fourth, the notice of appeal states that in 2004 Mr. Ziu and his wife moved in with Mr. Ziu's sister-in-law because of financial difficulties. This is inconsistent with the position taken at the hearing that Mr. Ziu and Ms. Shkrebic actually separated and lived at separate residences.

[16] Fifth, the testimony of Mr. Ziu and his wife was inconsistent in respect of the manner in which the couple moved out of the residence. Mr. Ziu testified that trucks were used to move and Ms. Shkrebic testified that they simply used cars to move their clothing.

[17] Sixth, the documents contain two type-written letters purportedly signed by the basement tenant. The letters are identical except for a hand-written notation on one. I have given these letters no weight because the purported tenant was not called as a witness. I would also comment that the hand-written notation which refers to upstairs tenants until March 2005 was not supported by either witness at the hearing.

[18] Where does that leave us? There is very little reliable evidence at all in this appeal concerning the purported rental operation. The appeal must be dismissed on this basis.

[19] However, I would also comment that even if the basement had been rented out for the entire period, this does not assist Mr. Ziu in this appeal because he has not established that the expenses properly attributable to this rental operation exceeded the rents received.

[20] In argument, counsel for the Minister suggests that a proper allocation of expenses to a basement apartment would be 30 percent. If expenses relating to the residence are allocated between business and personal on this basis, counsel submits that this would not give rise to a rental loss in any of the taxation years. Mr. Ziu has not convinced me that this approach is incorrect.

[21] For these reasons, the appeal will be dismissed.

Signed at Toronto, Ontario this 12th day of March 2009.

“J. Woods”

Woods J.

CITATION: 2009 TCC 147
COURT FILE NO.: 2008-825(IT)I
STYLE OF CAUSE: ARJAN ZIU and
HER MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: March 4, 2009
REASONS FOR JUDGMENT BY: The Honourable Justice J. Woods
DATE OF JUDGMENT: March 12, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Ian Theil

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada