

Docket: 2008-1611(IT)I

BETWEEN:

ANTHONY PIGEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 26, 2009, at North Bay, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the appellant: Vincent Shank

Counsel for the respondent: Suzanie Chua

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* with respect to the appellant's 2001, 2002 and 2003 taxation years is allowed in part, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with reasons given from the Bench.

It is further ordered that the filing fee in the amount of \$100 be reimbursed to the appellant.

Signed at Ottawa, Canada, this 2nd day of December 2009.

"Patrick Boyle"

Boyle J.

Citation: 2009 TCC 582
Date: 20091202
Docket: 2008-1611(IT)I

BETWEEN:

ANTHONY PIGEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered from the Bench October 26, 2009, at North Bay, Ontario
and modified for clarity and accuracy.)

Boyle J.

[1] These are my reasons in the informal appeal of Mr. Anthony Pigeau heard in North Bay.

[2] Mr. Pigeau bought a home under a bank power of sale in 1994. He paid \$70,000 for it. During the five years he and his wife lived in it they did significant renovations and improvements to it, including a new roof, windows and siding, reparging parts of the foundation and extending the deck and outbuilding. Inside they replaced the kitchen, updated the bathroom, changed the interior doors and replaced flooring. It is estimated their improvements cost in the range of \$20,000.

[3] In 1999 Mr. Pigeau and his wife purchased a new larger home and he began to rent out their original home on O'Brien Street.

[4] One of the issues before me is to determine the O'Brien Street house's fair market value in 1999 when Mr. Pigeau changed its use from personal use to income-producing property. His position is that it was worth \$98,500 at that time.

[5] The only further evidence he has is a Multiple Listing Service ("MLS") print-out for that area of North Bay at the time.

[6] In 2001 Mr. Pigeau was having unfortunate difficulties with his O'Brien Street tenants. He began proceedings to evict them. The tenants had stopped paying rent. This left Mr. Pigeau unable to meet his mortgage payments to the bank. The bank sent a notice of sale to Mr. Pigeau and his wife, who were jointly registered as legal owners although the parties agree Mr. Pigeau was the sole beneficial owner. The bank demanded repayment in full of the mortgage. The bank also began collecting the rent from one of the tenants.

[7] Mr. Pigeau's grandfather, Antoine Pigeau, was prepared to lend Anthony Pigeau the mortgage arrears. However the bank insisted that the entire defaulted mortgage amount be repaid.

[8] In June of 2001 the grandfather purchased the property. The bank's mortgage was paid off by the grandfather placing a new mortgage on the property with the Caisse Populaire.

[9] The registered Land Titles transfer of the property is signed by Mr. Anthony Pigeau and his wife as transferors and identifies the transferee purchasers as Mr. Antoine Pigeau and Jacqueline Pigeau. The consideration is recorded at \$58,000. At the time the amount required to pay out the bank's mortgage was approximately \$58,900.

[10] Anthony Pigeau, his wife and Antoine Pigeau used the same lawyer on this transaction. The lawyer's reporting letter clearly describes the sale as one from the taxpayer and his wife to his grandfather.

[11] It is the taxpayer's position that section 79 of the *Income Tax Act* (the "Act") dealing with foreclosures, et cetera, deems his proceeds of the 2001 sale to be the approximately \$58,900 owing to the bank under the mortgage. Another issue I must decide is whether section 79 applies.

[12] It is the Crown's position that the *Act* deems the taxpayer's proceeds of his 2001 sale to his grandfather to be the property's fair market value at the time because it was a sale to a related party for less than fair market value. That is the third issue I must decide.

[13] A further relevant fact is that in 2003 the grandfather sold the O'Brien Street home to his daughter, the taxpayer's mother, for \$77,000.

[14] Let me first deal with section 79. By its terms section 79 only applies if a property is acquired by a lender as a consequence of a taxpayer's default. That did not happen in this case. The registered transfer of title and the lawyer's reporting letter are entirely clear that, notwithstanding the bank may have commenced power of sale proceedings, the transfer was not to the bank; it was from the taxpayer and his wife to his grandfather and his wife. I am entirely satisfied that section 79 has no application to the taxpayer's loss of the O'Brien Street property in 2001.

[15] I am satisfied that the Crown is correct that, because the transaction was among related parties, the taxpayer's proceeds in 2001 will be the property's fair market value at that time.

[16] With respect to the fair market values of the O'Brien Street property in 1999 and 2001, there was an absence of any expert or opinion evidence, or any helpful evidence beyond the taxpayer's cost and improvements and the 1999 MLS print-out listings for that area of North Bay, none of which properties I noted were on O'Brien Street.

[17] This is unfortunate and leaves the taxpayer in a difficult position since the Crown did file an expert appraisal report and had its expert appraiser testify.

[18] Mr. Pigeau's accountant did try to enter a recently prepared written appraisal report into evidence. The Crown objected on a number of grounds, including a failure to comply with the rules for notice, the failure of the report to identify the author's expertise as well as the author's unavailability to testify today.

[19] I gave the taxpayer the choice to have the hearing adjourned in order to properly qualify the appraisal report as expert evidence or to proceed today without it. The taxpayer opted to proceed today.

[20] The Canada Revenue Agency ("CRA")'s appraisal report was before the Court and explained by its expert author.

[21] The taxpayer's representative accepted the CRA appraiser's credentials as an expert.

[22] The CRA expert report and testimony was not shown to be unsatisfactory nor otherwise flawed. It included a number of O'Brien Street property sales, and I note none sold for \$90,000 or more in the period right up to 2003.

[23] According to the expert appraisal evidence, the 1999 fair market value of the O'Brien Street property was in the range of \$70,000 to \$75,000. According to the expert appraisal evidence the 2001 fair market value of the property was in the range of \$75,000 to \$80,000.

[24] I accept that those ranges and values are the best evidence I have today. Given the significant renovations and improvements Mr. Pigeau and his wife made to the property after buying it and while living in it, I am prepared to assign the very top of the 1999 range, or \$75,000, to be its fair market value when they moved out and it became a rental property.

[25] Given the 2001 situation with the tenants having damaged the property significantly, I am prepared to assign the bottom end of the 2001 range being, \$75,000, to be its fair market value when it was transferred to the grandfather following default to the bank.

[26] Given that the parties do not have a dispute regarding how the O'Brien Street property value should be allocated between the land and the buildings, the result will be that in 2001 the taxpayer would have realized neither a terminal loss on the building nor a capital gain on the property.

[27] The CRA is to reconsider and reassess Mr. Pigeau's 2001 taxation year in accordance with these reasons.

[28] Thank you Mr. Shank and Mr. Pigeau. Thank you Ms. Chua and Ms. Sproul. Thank you Madam Registrar and Madam Court Reporter.

Signed at Ottawa, Canada, this 2nd day of December 2009.

"Patrick Boyle"

Boyle J.

CITATION: 2009 TCC 582

COURT FILE NO.: 2008-1611(IT)I

STYLE OF CAUSE: ANTHONY PIGEAU v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: North Bay, Ontario

DATE OF HEARING: October 26, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: December 2, 2009

APPEARANCES:

Agent for the appellant: Vincent Shank

Counsel for the respondent: Suzanie Chua

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