

Citation: 2010 TCC 76
Date: 20100219
Docket: 2009-2399(IT)I

BETWEEN:

KENNETH I. RENAUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Edited from the transcript of Reasons for Judgment delivered orally from the Bench on December 4, 2009 in Windsor, Ontario)

Campbell J.

[1] This is an appeal respecting the 2007 taxation year of the Appellant. The facts are, for the most part, undisputed. The Appellant owned a property at 518 Arquette Street in McGregor, Ontario as his principal residence until he took a new position in 2007 with his employer, Canadian National Railways.

[2] The Appellant started work at this new location in April, 2007 and built a new residence at 47 Anderson Street, Cache Bay, Ontario.

[3] In July, 2007 the Appellant rented his former principal residence located on Arquette Street in McGregor. Therefore, during the 2007 taxation year, although the Appellant changed the use of the Arquette residence to an income producing property, he did not, in fact, sell it. In computing his income for the 2007 taxation year, the Appellant claimed amounts related to moving expenses.

[4] The issue is whether the Appellant is entitled to deduct moving expenses beyond the amount allowed by the Minister of National Revenue (the "Minister"). The Minister denied the claim for the amounts of \$583.00 in

legal fees and \$1,897.13 in land transfer taxes on a new home purchase on the basis that they were not deductible amounts within the meaning of paragraph 62(3)(f).

[5] The Appellant's position is that he is entitled to deduct these amounts under paragraph 62(3)(f) because he did sell his former principal residence at Arquette Street within the meaning of paragraph 45(1)(a) of the *Income Tax Act* (the "*Act*") because in 2007 there was a change of character from a principal residence to a rental and, therefore, the property was considered a deemed disposition of the Arquette property. He submits that the amounts are selling costs in respect of the Arquette residence within the meaning of paragraph 62(3)(f). Because the dictionary meaning of the word "sold" references the "past tense of sell" as well as the phrase "to dispose of", this includes, according to the Appellant, a deemed disposition.

[6] The Appellant's Agent referred to the opening words of subsection 45(1) which state:

For the purposes of this subdivision the following rules apply:

to propose that since paragraph 62(3)(f) is part of this section in the *Act*, this provision should also be applied where, in addition, paragraph 62(3)(f) does not specifically exclude subsection 45(1).

[7] The Minister's position is that, since the Arquette residence never sold in 2007, the expenses claimed by the Appellant cannot be allowed pursuant to the wording of paragraph 62(3)(f) which refers to a "sale" but does not encompass a deemed disposition.

[8] The wording contained in paragraph 62(3)(f) of the *Act* states, and I will read that into the record:

62.(3) In subsection (1), "moving expenses" includes any expense incurred as or on account of

...

62.(3)(f) where the old residence is sold by the taxpayer or the taxpayer's spouse or common-law partner as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty (other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence,

...

[9] The wording contained in paragraph 62(3)(f) is straightforward and unambiguous. It clearly refers to a sale of a residence which, according to the Shorter Oxford English Dictionary, defines the word “sold” as “disposed of by sale”. The only word employed in this provision is the word “sold” and in applying a plain language interpretation to paragraph 62(3)(f), it would be inappropriate to extend the word beyond what the provision clearly purports to do and what Parliament intended. A variety of other words could have been used in paragraph 62(3)(f) to extend the meaning to be given to the provision but, since it does not do so, it is inappropriate to extend the meaning of sold to include a deemed disposition as the Appellant would have me do. The language contained in each of these provisions is entirely different and there is no intent or specific language in either provision that directs one to reference or incorporate in any way the other provision.

[10] Counsel for the Respondent referred me to the case of *Havlik Enterprises Ltd. v. M.N.R.*, 89 D.T.C. 159, where Justice Rip, as he then was, in discussing the words “deemed to have paid” quotes J. Beetz in *The Queen v. Verrette*, [1978] 2 S.C.R. page 845, as follows:

A deeming provision is a statutory fiction; as a rule it implicitly admits that a thing is not what it is deemed to be but decrees that for some particular purpose it shall be taken as if it were that thing although it is not or there is doubt as to whether it is. A deeming provision artificially imports into a word or an impression an additional meaning which they would not otherwise convey beside the normal meaning which they retain where they are used ...

[11] Pursuant to subsection 45(1), where the Arquette residence changed its use from a principal residence to a rental income producing property, while title to the asset remained with the Appellant, it is not a sale as contemplated by paragraph 62(3)(f) except where subsection 45(1) has deemed it to be disposed of and therefore a transaction attracting tax consequences which it otherwise would not. However, paragraph 62(3)(f) contains straightforward language by employing the word “sold” and the facts which were agreed upon disclose that the Appellant did not sell the Arquette residence in 2007 when he acquired his new residence in Cache Bay. Therefore, the amounts claimed cannot be selling costs in respect of the sale of the Arquette residence within the meaning of paragraph 62(3)(f) and, as such, are not deductible.

[12] For these reasons, the appeal is dismissed without costs.

Signed at Ottawa, Canada, this 19th day of February 2010.

“Diane Campbell”

Campbell J.

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COURT FILE NO.: 2009-2399(IT)I

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APPEARANCES:

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