Docket: 2015-2968(IT)G

BETWEEN:

AGNES THOMPSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on **September 28, 2017**,
at Prince George, British Columbia

Before: The Honourable Justice B. Russell

Appearances:

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| Counsel for the Appellant: | R. Daniel Lyons |
| Counsel for the Respondent: | Jeff Watson |

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## AMENDED JUDGMENT

The appeal from the assessment raised August 23, 2013 per section 160 of the *Income Tax Act* (Canada) is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the bases that the $22,353 of renovation expenses is to be added to the consideration figure as assessed by the Minister; and the $7,200 property management amount allowed by the Minister is to be reduced by 50%.

**This Amended Judgment is issued in substitution for the Judgment dated March 29, 2018**

Signed at Ottawa, Canada, this 6th day of May 2018.

"B. Russell"

Russell J.

Citation: 2018TCC64
Date: 20180329
Docket: 2015-2968(IT)G

BETWEEN:

AGNES THOMPSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR JUDGMENT**

Russell J.

Introduction:

[1] Agnes Thompson, the Appellant, appeals an assessment raised 23 August 2013 per section 160 of the *Income Tax Act* (Canada). The issue, as one of the counsel said, is solely as to "numbers" - what are the fair market value of the property transferred and the value of consideration given for same.

[2] There is no issue that the transferor and transferee - mother and adult son - are non-arm's length individuals *vis-à-vis* each other. There is no issue that at the date of transfer, December 8, 2005, the transferor son, Randy Thompson, was a Canadian tax debtor from his 2000 and 2001 taxation years. The tax debt as of the date of assessment (well after the December 8, 2005 date of transfer) was assumed by the Respondent as being $42,213, and this is not disputed.[1] And there is no issue that a transfer did occur on the said date when the son, resident in Mexico, transferred by conveyance of title his sole ownership in a house on Stevens Drive in Prince George, B.C. (the subject property) to his mother the Appellant, a resident of Prince George.

[1] The actual tax debt from Randy's 2000 and 2001 taxation years, as of the 2005 taxation year when the transfer occurred, was not provided but it is understood that that is the sole debt from which the cited August 23, 2013 debt amount derives.

Evidence:

[3] The virtually entirely unchallenged evidence of the sole witness, the Appellant, at all material times a realtor in Prince George, was that her son Randy had owned the subject property for some time when in 2001 he moved to Mexico. Before leaving, he had rented the subject property to, in his mother's 2017 words, "terrible characters", with monthly rent to be paid into his bank account. The rent was to be used to pay the monthly mortgage on the subject property. However no rent payments were being made. The Appellant and Randy received a "final demand" letter dated November 23, 2001 from local counsel for TD Bank as mortgagee of a mortgage on the subject property advising arrears of $8,219 had to be paid within 10 days or legal proceedings (foreclosure proceedings) would be commenced.

[4] The Appellant thereupon went to the subject property. It readily became evident the house was being used as a site for a marijuana "grow-op". This entailed serious damage to the interior of the house including holes cut into walls and floors. Also the furnace had been adapted for use as a blower to dispense the odour of the operation into a sewer. Electrical wiring had been re-routed, and a false wall with a room behind it had been constructed. There was excessive moisture throughout. The Appellant has experience as a realtor with houses in this city that had been used as grow-op sites. She said there was sometimes a 30-40% decrease in the property value of such premises. Upon being discovered, the occupants "renting" the subject property shortly thereafter in December, 2001 departed.

[5] A further letter from bank counsel, dated January 8, 2002 was received. It advised that the balance due and owing on the mortgage for principal only as of January 3, 2002 was $111,313. Provided the amount of $10,529 was paid within 10 days, there would be no foreclosure for the stated larger sum. No payments were being made on the home and it was vacant. The Appellant and Randy discussed the situation, and the Appellant ended up providing the bank a series of her own post-dated cheques in 2002 to take care of mortgage payments due and coming due. In 2003 she also made payments with Randy occasionally assisting. He was working in Mexico as a realtor in the aftermath of the 9/11 attacks, and the economy there was difficult.

[6] During the 2001 to 2004 period the Appellant also funded renovations to the subject property to repair the substantial grow-op damage. Various invoices were introduced, organized by KPMG, showing a total expenditure for this purpose during this period of $22,353. Randy did not send money for any of these repairs,

which were paid for by the Appellant. In 2006 (shortly after she acquired the property in late 2005), a new $1,498 furnace was installed.

[7] The house was not rented during this period. The Appellant's daughter with young child moved in in late 2002. She looked after 4 or 5 monthly bank payments a year until the subject property was transferred to the Appellant in December 2005.

[8] The City of Prince George 2005 property tax notice for taxes due July 8, 2005 showed an assessment value of the subject property of $136,700. The B.C. provincial 2005 property assessment notice shows an assessed market value, as of July 1, 2004, of the same amount - $136,700. Randy had listed the house October 1, 2001 for $140,000 (no problems re "grow-op" existed or were known at that time), but it had not sold. The Appellant said that in 2002 it would not have sold for $136,700, given the need for substantial repairs due to serious grow-op damage.

[9] The Appellant testified that the property was not transferred to her sooner, so as to allow time to establish a solid mortgage payment history. Thus, a future mortgage would reflect a reasonable interest rate based on that payment history rather than a high interest rate due to association with a mortgaged property that had almost been foreclosed upon.

[10] The Minister of National Revenue (Minister) assessed under section 160 in the amount of $42,213 (amount of Randy's tax debt at time of assessment). The Minister denied the property renovation expenses as constituting consideration, on the basis the expense documentation did not show they related to the property, nor did they show that the Appellant personally had paid the expenses. The Minister did allow $200 per month ($7,200 in total) for deemed management fees for the property, and also $1,371 for insurance payments. However, these adjustments were not enough to move the amount of consideration below the amount of tax outstanding in the 2005 year of the transfer, extended to the August 23, 2013 assessment date. The Minister assessed on the basis the fair market value of the subject property at date of transfer was $150,000 and consideration received was $95,901 being almost entirely the remaining principal amount of the mortgage assumed.

[11] In argument Appellant's counsel submitted that the fair market value of the subject property at the December 8, 2005 time of transfer was not $150,000 as the Minister had assumed. He submitted that its fair market value at date of transfer

was at highest $136,700 and there should be a further deduction from this figure to take into account the damage that had been done to the house by the grow-op.

[12] As for amount of consideration, Appellant's counsel submitted that the actual amount of the mortgage assumed was the $111,313 figure above, when foreclosure was threatened. Also, the Appellant put extra money into the house to renovate ($22,353), so that the subject property in due course could be sold. She had "all the hassle". The $111,313 plus the $22,353 plus the amounts the Minister had already recognized for insurance ($914) and property management ($7,200) brought the total for consideration to a figure in excess of the fair market value of the subject property, he submitted, hence there was no basis for a section 160 assessment. The Appellant had to renovate for the sake of her professional reputation as a realtor; she could not be associated with a failed house. They had to wait until 2005 to do the transfer as the Appellant had not earlier had sufficient money to assume the mortgage.

[13] Respondent's counsel submitted that $104,000 is the total that the Minister had allowed for consideration. Counsel acknowledged that the Appellant had done the $22,353 of repairs for the subject property, which the Minister had not previously accepted. Counsel noted that the evidence that the daughter had lived in the house was new information and if known earlier could have impacted the deemed property management adjustment the Minister had made.

Analysis and Decision:

[14] I first address the matter of the fair market value of the subject property, as of the December 8, 2005 transfer date. The house had been assessed for mid-2004 a market value of $136,700. The house had been on the market in 2001 for $140,000, but had not sold. This was just at the time of the 9/11 tragedy, which the Appellant said cooled the real estate market including in Prince George for a considerable time thereafter. The house also was seriously damaged by the grow-op in late 2001 and by late 2005 had been substantially renovated, with the Appellant's daughter and child living there for much of the last two or so years prior to date of transfer. The evidence provides no indication that the $136,700 assessment market value as of mid-2004 is reflective of any drop in value due to the grow-op damage.

[15] However, all of this is eclipsed in my view, by the Appellant's signed statement (Ex. R-1, tab 5) in "Land Title Act Form A (Section 181(1))" of December 8, 2005 (the date of transfer), that the "market value" of the subject

property was $150,000. Plus, she is a realtor. She should know. I have no basis to second guess her figure. This is the figure also that the Minister used. I am not persuaded by the Appellant's position now that the fair market value was actually less, inferring she was in error in making the said statement on December 8, 2005.

[16] Turning to the matter of consideration, in my view on the particular facts of this case, I would add the $22,353 of renovation expenses to the consideration figure as assessed by the Minister. This is on the same basis presumably that the Minister allowed a deemed property management amount of $200 per month totalling $7,200 as part of the Minister's consideration calculation; that being recognition of her continuing care for and maintenance and repair of the residential structure as necessary, during a period immediately proximate to the subject transfer itself on December 8, 2005.

[17] However, I would reduce by 50% the $7,200 deemed property management amount allowed by the Minister, in light of the use of the subject property by the Appellant's daughter and young child during much of the renovation period.

[18] On the basis of the foregoing this informal procedure appeal is allowed, without costs.

Signed at Ottawa, Canada, this 29th day of March 2018.

"B. Russell"

Russell J.

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| CITATION: | 2018TCC64 |
| COURT FILE NO.: | 2015-2968(IT)G |
| STYLE OF CAUSE: | AGNES THOMPSON AND HER MAJESTY THE QUEEN |
| PLACE OF HEARING: | Prince George, British Columbia |
| DATE OF HEARING: | **September 28, 2017** |
| REASONS FOR JUDGMENT BY: | The Honourable Justice B. Russell |
| DATE OF JUDGMENT: | March 29, 2018 |
| DATE OF AMENDEMENT: | May 6, 2018 |

APPEARANCES:

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| Counsel for the Appellant: | R. Daniel Lyons |
| Counsel for the Respondent: | Jeff Watson |

COUNSEL OF RECORD:

For the Appellant:

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| Name: | R. Daniel Lyons |
| Firm: | |

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| For the Respondent: | Nathalie G. Drouin<br>Deputy Attorney General of Canada<br>Ottawa, Canada |