

Docket: 2011-2978(IT)I

BETWEEN:

LAWRENCE P. KUNTZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on July 2, 2013 at Edmonton, Alberta

By: The Honourable Justice Judith M. Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: **Debjani** Poddar (student-at-law)  
Paige Atkinson

---

**AMENDED JUDGMENT**

**(The Judgment is amended solely to correct the name of counsel. The text has not been changed.)**

It is ordered that the appeal with respect to an assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed. Each party shall bear their own costs.

Signed at **Toronto, Ontario** this **18th** day of July 2013.

“J. M. Woods”

---

Woods J.

Citation: 2013 TCC 218

Date: 20130718

Docket: 2011-2978(IT)I

BETWEEN:

LAWRENCE P. KUNTZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**AMENDED REASONS FOR JUDGMENT**

**(The reasons are amended solely to correct the name of counsel. The text has not been changed.)**

Woods J.

[1] Lawrence Kuntz has appealed an assessment made under the *Income Tax Act* for the 2008 taxation year. The questions to be determined are whether the Minister of National Revenue properly disallowed a principal residence exemption and properly imposed a penalty for late-filing the income tax return.

*Principal residence exemption*

[2] In 2008 Mr. Kuntz realized a taxable capital gain in the amount of \$32,880 on the sale of a mobile home. He submits that the gain qualifies for the principal residence exemption.

[3] The Crown submits that the principal residence exemption is not available because Mr. Kuntz never lived in the home.

[4] The mobile home at issue was purchased by Mr. Kuntz in May 2006. He testified that the home had previously belonged to his mother and that it was leased to third parties at the time of his purchase.

[5] Mr. Kuntz stated that he intended to move into the home after a few months.

He therefore terminated the lease after a period of time and the tenants moved out at the end of March, 2007.

[6] Mr. Kuntz stated that he started repair and renovation work on the property after the tenants moved out. The work was completed in May 2008.

[7] Mr. Kuntz testified that he was approached to sell the property about the time that the renovations were complete. He stated that he agreed to sell because the renovations had been difficult and he was no longer interested in living in the home. The sale took place in June, 2008.

[8] Throughout this period, Mr. Kuntz lived in a rental apartment which he has occupied since 1999.

[9] Mr. Kuntz stated that after the tenants moved out in March 2007, he purchased new appliances for the mobile home and he brought a few pieces of furniture from his apartment. However, he never stayed overnight or ate meals at the home and a contractor told him that it was not possible to stay there because the renovations would be extensive. In addition, Mr. Kuntz stated that the home was unfit for occupancy due to misuse by the former tenants.

[10] In his income tax return for 2008, Mr. Kuntz claimed rental income in the amount of \$262 and a net rental loss of \$8,858. He testified that this should have been the loss for the prior year since the property was not rented in 2008.

[11] I would conclude that the principal residence exemption was properly denied by the Minister because the mobile home was not “ordinarily inhabited” by Mr. Kuntz. The requirement that the home be ordinarily inhabited is found in the definition of principal residence in section 54 of the *Income Tax Act*. The relevant portion is reproduced below.

**54. Definitions** - In this subdivision,

[...]

“**principal residence**” of a taxpayer for a taxation year means a particular property that is a housing unit, a leasehold interest in a housing unit or a share of the capital stock of a co-operative housing corporation acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation and that is owned, whether jointly with another person or otherwise, in the year by the taxpayer, if

(a) where the taxpayer is an individual other than a personal trust, the housing unit was ordinarily inhabited in the year by the taxpayer, by the taxpayer's spouse or common-law partner or former spouse or common-law partner or by a child of the taxpayer, [...]

(Emphasis added)

[12] The legislative provision above does not specify a particular length of time that the principal residence must be inhabited, but it does specify that the residence must be occupied as a residence by the owner or a related person. This is clear by the term “inhabit” which generally means to occupy as an abode (Shorter Oxford English Dictionary). In this case, the mobile home was never lived in by Mr. Kuntz. He may have intended to live in the property at some future point, but that never occurred. In circumstances such as these, the principal residence exemption is not available.

#### *Late-filing penalty*

[13] Mr. Kuntz was assessed a penalty under subsection 162(1) of the *Income Tax Act* for failure to file the 2008 income tax return on time. The amount of the penalty that was assessed is \$1,044.06.

[14] Subsection 162(1) provides:

**162. (1) Failure to file return of income** - Every person who fails to file a return of income for a taxation year as and when required by subsection 150(1) is liable to a penalty equal to the total of

(a) an amount equal to 5% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(b) the product obtained when 1% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the date on which the return was required to be filed to the date on which the return was filed.

[15] According to the testimony of the litigation officer assigned to this matter, the computer records of the Canada Revenue Agency (CRA) record that Mr. Kuntz' 2008 income tax return was filed electronically on July 22, 2009 (See Ex. R-3). The return was due on April 30, 2009.

[16] Mr. Kuntz indicated that he had no evidence to dispute this but stated that he thought the return was filed on time by his accountant. This brief and vague testimony is not sufficient to overcome the evidence led by the Crown.

[17] Based on the evidence as a whole, I would conclude that the penalty that was assessed is properly imposed.

*Conclusion*

[18] In light of the conclusions above, the appeal will be dismissed.

Signed at **Toronto, Ontario** this **18th** day of July 2013.

“J. M. Woods”

---

Woods J.

CITATION: 2013 TCC 218

COURT FILE NO.: 2011-2978(IT)I

STYLE OF CAUSE: LAWRENCE P. KUNTZ and  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: July 2, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF **AMENDED REASONS**  
**FOR JUDGMENT:** July **18**, 2013

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: **Debjani** Poddar (student-at-law)  
Paige Atkinson

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Ontario