

Docket: 2019-3390(IT)I

BETWEEN:

THOMAS BLECHA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on April 10, 2025, at Toronto, Ontario

Written submissions completed June 20, 2025

Before: The Honourable Justice Randall S. Boccock

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nandhini Padmanathan
Erin Strashin

JUDGMENT

WHEREAS the Court has published its reasons for judgment on this date.

NOW THEREFORE THIS COURT ORDERS THAT:

1. The appeal concerning the 2015, 2016 and 2017 taxation years is dismissed because the Appellant did not receive rental income from the property located at 642 Gould Street, Wiarton, Ontario and, accordingly, did not have a source of income under section 3 and subsection 4(1) of the *Income Tax Act* against which he could deduct expenses; and,

2. There shall be no costs.

Signed at Ottawa, Ontario, this 25th day of June 2025.

“R.S. Bocock”

Bocock J.

Citation: 2025 TCC 91
Date: 20250623
Docket: 2019-3390(IT)I

BETWEEN:

THOMAS BLECHA,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Bocock J.

I. Introduction

The property in question

[1] Mr. Blecha, owns a small house at 642 Gould Street (“642 Gould”) in Wiarton, Ontario. He now lives in 642 Gould on his own. During the 2015, 2016 and 2017 taxation years, Mr. Blecha’s mother, Vera, lived at 642 Gould. Mr. Blecha asserts the details of Vera’s occupancy of and payments for 642 Gould make her a tenant. Further, Mr. Blecha believes 642 Gould was a rental property in his hands during the taxation years. As such, he is entitled to deduct various expenses related to the rental property.

Details of the asserted lease: rental losses each year

[2] In each of the appealed taxation years, Mr. Blecha recorded rental income from 642 Gould of \$7200 in each of 2015 and 2016, and \$7000 in 2017. His expenses in each year on account of insurance, maintenance and repairs, property taxes, travel, telephone and utilities and other expenses totaled \$21,510, \$24,818 and \$17,691 in each of 2015, 2016 and 2017, respectively. This resulted in a rental property loss of \$14,312, \$17,619 and \$10,693 in each of the taxation years, respectively.

No source of income as rental property

[3] The Minister of National Revenue is having none of this. Mr. Blecha was reassessed to disallow all expenses related to the rental property, to reduce his rental income in each year to nil. The primary basis for the reassessment is that the property is not a rental property in Mr. Blecha's hands, and he derived no income as a source of income within the meaning of section 3 and subsection 4(1) of the *Income Tax Act* ("ITA"). Conversely, if there is no source of income no expenses may be deducted. The Minister's alternative basis for the reassessment, should the Court find that Mr. Blecha undertook rental activities concerning 642 Gould, is that such claimed expenses and/or capital costs are only to be allowed to the extent such expenses were:

- i. not personal in nature: paragraph 18(1)(h) of the ITA;
- ii. incurred for the purpose of gaining or producing income from the property paragraph 18(1)(a) of the ITA;
- iii. not capital costs which exceeded his rental income and his rental loss: subsection 1100(11) of the *Income Tax Regulations*; and,
- iv. reasonable in the circumstances: section 67 of the ITA.

Submission in two parts to afford clarity of positions

[4] At the hearing of the appeal on April 10, 2025, the parties were prepared and did make final submissions on the issue of whether 642 Gould was a rental property generating a source of income. The same was not necessarily true concerning what specific rental expenses or capital costs should be allowed, if, and only if, the court were to conclude the property was a rental and generated a source of income. Given that the Respondent was not able to make category by category submissions on the quantum of what expenses were reasonable, logically, the Appellant was unable to respond. Accordingly, the Court directed as follows:

- i. on or before May 20, 2025, the Respondent [shall] provide written submissions not to exceed 10 pages (excluding authorities) concerning the Minister's basis, given the evidence, on which specific rental expenses should be disallowed and why, should the Court find the property is a rental property; and,

- ii. on or before June 26, 2025, the Appellant shall provide his submissions on which specific rental expenses should be allowed and why, should the Court find the property is a rental property.

[5] The parties provided their submissions, and the Court now renders its judgment.

Test concerning rental property income: two part test

[6] The critical legal test to determine whether Mr. Blecha has a source of income from the property, 642 Gould, is embedded in a Supreme Court of Canada case, *Stewart v. R.* 2002 TC 6969. It involves a two-stage process to determine whether a taxpayer has a taxable source of income. In short, two questions must be answered:

- i. it is the activity of the taxpayer undertaken in pursuit of profit, or is it a personal endeavour?
- ii. If it is not a personal endeavour, is the source of income a business or property?

First part of “Stewart” test

[7] Concerning the first part of the test, the Court is to distinguish between commercial and personal activities. Despite the nature of an undertaking containing hallmarks of a hobby or personal pursuit, if the venture is executed and is sufficiently businesslike in fashion, then it will be considered a source of income. The questions this raises for Mr. Blecha’s appeal are:

- i. did Mr. Blecha manifestly intend to make a profit from the activity; and,
- ii. did he do so by embracing objective standards of commercial-like behavior?

Factors to consider

[8] The objective factors mentioned in subparagraph (ii) above are frequently described as:

- A. the profit and loss record in recent years;

- B. the taxpayers experience and training;
- C. the taxpayer's actual conduct pursuing the venture;
- D. the capability of the venture to show profit.

Examining the property

[9] An examination of the facts concerning 642 Gould as the venture in question is required. Originally, Mr. Blecha and his ex-wife owned the property jointly. Mr. Blecha became the sole owner of the property after marriage breakdown. Vera (the mother) was the occupant of the property starting in approximately 2012. Until 2014, Vera only occupied the property seasonally.

[10] 642 Gould was in disrepair. Mr. Blecha was required to improve the electrical, replace the hot water tank, cracks in the walls, painting, windows and lights. Vera occupied one bedroom and the living areas while the second bedroom was used for storage of tools, paint and other supplies for curing the repairs.

Catastrophe arises and hampers the "landscape"

[11] In April 2014, Mr. Blecha described a catastrophe. This involved severe leakage and seepage of external groundwater into the basement of 642 Gould and around the outside and its below grade foundations. Photographs of the property were produced showing the external excavation, foundation repair, installation of weeping tile and landscaping. The photos illustrated considerable reconstruction of the external surfaces of the below grade foundation walls. This included the need for temporary wooden walk bridges and ramps over the culvert between the foundation walls and the surrounding earth to allow entry into the premises.

Mr. Blecha says he mitigated the damage

[12] Although the remediation and reconstruction were considerable, and most would consider the property uninhabitable during the period, Vera continued to live at 642 Gould. Mr. Blecha asserts that the below-market rent during the three years in question, and particularly the slight reduction in 2017, was entirely reflective of an adaptive business response which in most instances otherwise results in a vacant property. Such a situation would be more, not less, uneconomical and un-businesslike.

Only base “rent” was paid

[13] In addition to the approximately \$600 a month paid by Vera to Mr. Blecha, no utilities, taxes or other expenses were assumed by her.

Mr. Blecha spent much time on site

[14] Mr. Blecha is a contractor, and specifically an electrician by trade. Accordingly, much of the interior electrical and similar improvements were made by him. Further, when Mr. Blecha was performing such improvements, he would sleep at 642 Gould on a mattress in the spare bedroom otherwise converted to a storeroom. Since Mr. Blecha worked during the week, most of these improvements and other supervision of contractor work occurred on the weekends.

No “other” tenant but Vera

[15] Ultimately when Vera passed away in 2021, 642 Gould remained vacant and was never rented to a third-party. In 2024, Mr. Blecha moved to 642 Gould and it remains his principal residence to this day.

Deep down there was commercial-like activity

[16] In submissions, Mr. Blecha argued that 642 Gould was a venture undertaken in pursuit of profit and not a personal endeavour. His mother as the only tenant, the history of the ownership, the catastrophic flood and the need for extensive remediation and renovation are unfortunate circumstances which otherwise obscure the business nature of the rental property and its generation of a source of income.

There was no source of income

[17] Regrettably, the Court cannot agree with this. In doing so, the Court identifies the following facts discerned from an examination of the documentary evidence presented by Mr. Blecha at the hearing:

- i. all receipts for rent have certain deficiencies and oddities: the recipient is Vera and Mr. Blecha has not signed the receipts as payee; all amounts are in cash, sometimes in amounts as large as \$1200 as rent paid in advance; the rental deduction amounting to \$200 granted to Vera is paid incongruously at the end of the three year rental term while the disruptive effect of construction occurred mostly in 2015 and 2016;

- ii. the municipal realty taxes, quite apart from utilities and other expenses borne by Mr. Blecha, were in excess of \$2000 per annum and represented 30% of the rent collected and yet all such expenses were paid by the landlord;
- iii. even personal utilities such as telephone and cable TV were borne by Mr. Blecha;
- iv. there is no provision in the lease granting Mr. Blecha a right to occupy one of the bedrooms for storage and/or weekends stays even though he did;
- v. the considerable improvements to the property undertaken between 2015 and 2017 did not result in a rent increase or, if they did, no evidence was provided in that regard (beyond an assertion it did increase in 2018); and,
- vi. no other tenant or occupant ever lived at 642 Gould (or was sought out) other than Vera and later Mr. Blecha, despite it remaining vacant from 2021 to 2024, a period during which 642 Gould was apparently fully renovated and when many renters were seeking rural settings, remotely connected, because of COVID-19.

This uneconomical arrangement was not commercial in nature

[18] In summary, the facts speak loudly in this regard: the all-inclusive, gross lease at below-market value, the intrusive nature of the renovations, construction and on-site renovator during weekends, no advertising of the property for rental at any time, the non-arm's-length relationship between landlord and tenant, the casual and irregular documentary evidence concerning actual evidence of normal rent payments and the almost incongruent agreement to that of the alleged "landlord and tenant" all belie an intention to profit and a business-like motive.

More prominent objectives than a rental property

[19] All of these factors point to conclusions of;

- i. an endeavour undertaken to conveniently enhance, improve and reconstruct a dwelling for future purposes rather than as a contemporaneous rental property; and,

- ii. the existence of an un-marketed and unprofitable 642 Gould at which an electrical contractor could remodel a property and otherwise contribute to the goal of contributing to his mother's habitation.

[20] Such an arrangement, while quite laudable and loving, is not a business venture undertaken in pursuit of profit. Instead, it was quite personal. It involved, in the short-term, Mr. Blecha's aged mother and an arrangement for appropriate cost sharing and, in the long term, a project to remodel a house for Mr. Blecha's new primary residence. As a personal endeavour, it is not otherwise transformed into a business venture. There is no demonstrable profit and loss record, no business-like approach to marketing, leasing or presenting the property for rental or future possibility of earning a profit in light of all the circumstances.

[21] For these reasons, the appeal is dismissed on the basis that the property did not generate a source of rental income from property under section 3 and subsection 4(1) of the ITA. As such, none of the expenses or capital costs can be deducted or depreciated because no source of income exists.

[22] There shall be no costs.

Signed at Ottawa, Ontario, this 25th day of June 2025.

"R.S. Bocock"

Bocock J.

CITATION: 2025 TCC 91

COURT FILE NO.: 2019-3390(IT)I

STYLE OF CAUSE: THOMAS BLECHA AND HIS
MAJESTY THE KING

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 10, 2025

REASONS FOR JUDGMENT BY: The Honourable Justice Randall S. Boccock

DATE OF JUDGMENT: June 25, 2025

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nandhini Padmanathan
Erin Strashin

COUNSEL OF RECORD:

For the Respondent: Shalene Curtis-Micallef
Deputy Attorney General of Canada
Ottawa, Canada