

Docket: 2012-719(IT)G

BETWEEN:

MEHDI ELIYIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on January 30, 2014, at Vancouver, British Columbia

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Karen Truscott

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**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* for the Appellant's 2008 taxation year is dismissed.

Costs are awarded to the Respondent.

Signed at Toronto, Ontario, this 14<sup>th</sup> day of May 2014.

“V.A. Miller”

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V.A. Miller J.

Citation: 2014TCC125  
Date: 20140514  
Docket: 2012-719(IT)G

BETWEEN:

MEHDI ELIYIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

V.A. Miller J.

[1] The issue in this appeal is whether the Appellant received a taxable capital gain of \$176,000 in 2008 from the sale of real property.

[2] The witnesses were the Appellant, who gave his testimony through an interpreter; Erfan Eliyin, the Appellant's son; and, James Roque, an employee with the Canada Revenue Agency ("CRA") who was the auditor in this case.

[3] According to documents registered with the Land Title Office of British Columbia, the Appellant purchased the property at 24258 16th Avenue in Langley, British Columbia (the "Property") on October 27, 2004 for \$648,000. He transferred the Property to Erfan Eliyin, his son, on April 8, 2008 for \$1,000,000.

[4] It was not disputed that the gain realized by the Appellant was \$352,000.

[5] The Appellant did not report the sale of the Property in his 2008 tax return.

[6] It was the Appellant's position in both his notice of objection and his notice of appeal that the Property was his principal residence and the gain which he realized on its disposition was exempt from tax. However, at the hearing of the appeal, the Appellant altered his position. He no longer argued that the Property was his principal residence. Instead, he stated that he changed the title to the Property to his son's name but he remained the beneficial owner of the Property.

[7] I will first discuss the Appellant's position as to whether he transferred legal and beneficial ownership of the Property to his son and then I will discuss whether the Appellant is entitled to claim the principal residence exemption.

### Trust Agreement

[8] According to the Appellant, the title to the Property was transferred to his son so that he, the Appellant, could obtain his equity in the Property. He submitted a document called "Trust Agreement" dated April 8, 2008. It was signed by the Appellant and his son Erfan. The document purported to make the Appellant the beneficial owner of the Property and Erfan the registered owner of the Property. The last sentence on the document reads: "At any time, at the request of Mahdi<sup>1</sup> Eliyin, Erfan Eliyin will transfer the property located at 24258 16th ave, Langley, B.C. as directed."

[9] The "Trust Agreement" was not registered with the Land Title Office. According to Erfan, this document was not disclosed to the Bank of Montreal who gave him the mortgage loan to purchase the Property. It was not disclosed to counsel for the Respondent until the hearing of the appeal. The only testimony I received with respect to this document was from the Appellant and his son Erfan and I find that their evidence was self serving.

[10] Furthermore, according to the transfer deed for the Property, the Appellant transferred both the beneficial and legal title in the Property to Erfan on April 8, 2008. In the instrument of transfer, he acknowledged that the Freehold Estate transferred to Erfan was fee simple.

[11] As a result, I have given no consideration to the "Trust Agreement" in my final decision in this appeal.

### Principal Residence

[12] I heard the following evidence with respect to whether the Property was the Appellant's principal residence in 2008.

[13] When he purchased the Property, the Appellant lived at 2295 Parkway Blvd., Coquitlam, B.C. It was his evidence that he did not live in the housing unit on the Property in 2004 or 2005. He rented out the Property in 2006 and he reported rental income of \$38,400 and rental expenses of \$35,120.74 on his 2006 income tax return. The rental expenses claimed by the Appellant included the

entire amount of his mortgage interest, property taxes and insurance for the year with respect to the Property. I was not told whether the Appellant claimed capital cost allowance on the housing unit on the Property. The Appellant also had a tenant for six months in 2007 but it was not reported on his income tax return for that year. He stated that he and his younger son lived in the housing unit on the Property in 2007 but he didn't specify the length of his stay. His younger son has multiple sclerosis and they found that the Property was too remote so they moved back to Coquitlam. The Appellant gave no evidence that he resided in the housing unit in 2008.

[14] The Appellant submitted the following documents which showed his address as the Property: a Permit dated April 14, 2008 from the township of Langley; his notices of assessment for the 2006 and 2007 years; a letter dated April 20, 2010 from the Township of Langley confirming that the Appellant had completed his obligations with respect to the Permit referenced above; and, an insurance policy dated October 29, 2004 to October 29, 2005 for the house on the Property.

[15] The Permit submitted by the Appellant was issued by the township of Langley for the restoration of the housing unit and barn on the Property. According to the Permit, damage to the housing unit and barn had resulted from an illegal activity discovered on the Property during a Public Safety Inspection.

[16] It was the Appellant's evidence that the insurance for the period 2005 to 2007 and all utilities for the Property were in the name of Vince Sawden who lived on the lower level of the housing unit. According to the Appellant, Vince Sawden was not a tenant but was the caretaker of the Property.

[17] According to Mr. Roque, he reviewed the CRA databases and found that in the years 2004 to 2008, none of the information slips (T3, T4, T4A, T4E, T5, T5007 and T5008) submitted to the CRA from independent third parties (CIBC, Work Safe BC, Government of BC and TD Green Line) listed the Appellant's address as the Property. The information slips listed 3150 Dawson CRT, Coquitlam as the Appellant's address in 2004 to 2008 inclusive.

### Analysis

[18] The Property consisted of 5 acres which contained a 2-level house and two barns. The entire gain of \$325,000 from the sale of this Property is exempt from tax only if the Appellant has established that the Property was his principal

residence and the land in excess of one-half hectare was necessary for his use and enjoyment of the Property as a residence.

[19] The question is whether the Appellant has established that the housing unit on the Property was his principal residence.

[20] Section 54 of the *Income Tax Act* (“Act”) defines principal residence as follows:

“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 cooperative 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 former spouse or by a child of the taxpayer,

[21] In order for the Property to qualify as the Appellant's principal residence in 2008, the following conditions must be satisfied:

- (a) He must have owned the Property in 2008;
- (b) He must have ordinarily inhabited the housing unit on the Property in 2008;
- (c) The Appellant must have designated the Property as his principal residence for 2008;
- (d) The Appellant's designation of the Property as a principal residence must have been made in his tax return for 2008.

[22] The Appellant met only the condition in (a). There was no evidence that he lived in the housing unit on the Property in 2008.

[23] There was no evidence from which I could conclude that the housing unit on the Property was the Appellant's principal residence in 2008. He did not designate the Property to be his principal residence in his tax return. He did not file an election under subsection 45(3) when he allegedly changed the use of the Property from a rental property to his principal residence.

[24] For all of these reasons, the appeal is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 14<sup>th</sup> day of May 2014.

“V.A. Miller”

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V.A. Miller J.

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<sup>1</sup> I note that the in the style of cause in the Notice of Appeal, the Appellant’s name was spelled “Mehdi” whereas he signed the Notice of Appeal as “Mahdi”.

CITATION: 2014TCC125  
COURT FILE NO.: 2012-719(IT)G  
STYLE OF CAUSE: MEHDI ELIYIN AND  
HER MAJESTY THE QUEEN  
PLACE OF HEARING: Vancouver, British Columbia  
DATE OF HEARING: January 30, 2014  
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller  
DATE OF JUDGMENT: May 14, 2014

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Karen Truscott

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pentney  
Deputy Attorney General of Canada  
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