TC07715

CAPITAL GAINS TAX – disposal of three residential properties in three consecutive tax years – whether the properties had been the appellant's residences – whether her occupation of the properties had the necessary degree of permanence, continuity or expectation of continuity – held on the evidence that it did not – sections 222 and 223 Taxation of Chargeable Gains Act 1992 not applicable – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/03210

BETWEEN

AQEELA HASHMI **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE ALASTAIR J RANKIN

The hearing took place on 11 May 2020. With the consent of the parties, the form of the hearing was V (video) with all parties attending remotely using the Tribunal video platform. A face to face hearing was not held because of the Government lockdown due to the Covid-19 pandemic and the Directions of the President of the Tribunal. The documents to which I was referred are a Documents Bundle containing 218 pages, a witness statement by Mohammed Akram dated 23 January 2020 with paragraphs numbered, correspondence from Slough Borough Council and others submitted on behalf of Mrs Hashmi after the date stipulated in the Tribunal's Directions and a photograph of a Mercedes car parked in a driveway in front of a garage.

I directed that the hearing should be in private on the basis that it was not in the public interest during the pandemic to hold a face to face hearing open to the public and that it was in the public interest for the hearing to go ahead remotely which by necessity meant it must be in private.

Mr Mohammed Akram for the Appellant who was also present but did not take any part in the proceedings.

Mr Ben Blakely, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents. Mr Paul Marks, litigator of HM Revenue and Customs was also in attendance as was Mrs Joanne McGuigan of HM Revenue and Customs' Fraud Investigation Service.

DECISION

INTRODUCTION

1. Three preliminary issues were dealt with at the outset. First, HMRC's "View of the Matter" was dated 11 March 2019. Mrs Hashmi's appeal was dated 9 May 2019 and so was strictly outside the 30 day time limit. However as Mrs Hashmi's then agents, Haigh Hudson, Chartered Certified Accountants, had indicated in an email dated 12 April 2019 that she was going to "take the matter to the tribunal" Mr Blakely indicated that HMRC was not objecting to the late appeal proceeding. I therefore gave permission for the appeal to proceed.

2. Secondly, Mr Blakely indicated that he was not objecting to the admission of the witness statement made by Mr Akram which should have been submitted by 24 January 2020 but was not received until 13 February 2020 even though it was dated 23 January 2020. As HMRC was not objecting I gave permission for the witness statement to be admitted.

3. Thirdly, Mr Blakely objected to the admission of letters dated 17 December 2013, 15 January 2014 and 14 April 2014 from Slough Borough Council, a letter dated 6 April 2014 from Gas Safe Register, a Council Tax Payment Card (undated), a Summons for Non Payment of Council Tax dated 8 January 2015, a letter dated 26 March 2018 from British Gas and a photograph of a Mercedes car parked outside a driveway in front of a garage. Mr Blakely objected to the admission of these papers on the ground that they could all have been submitted in time to be included in the bundle of documents which would have allowed HMRC to comment on their contents. Mr Akram claimed the correspondence and the photograph of the car proved that Mrs Hashmi was living at the properties referred to in the correspondence. As the Council Tax Payment Card and the Summons for Non Payment were already included in the Documents Bundle there was no issue with them. I decided to refuse permission for the other documents to be admitted.

BACKGROUND

4. This is an appeal by Mrs Hashmi against three capital gains tax assessments made by HMRC pursuant to s29 of the Taxes Management Act 1970 (TMA 1970) for the tax years ended 5 April 2014. 5 April 2015 and 5 April 2016. The assessments were all issued on 21 November 2018.

5. The 2013/14 assessment was for £3,911.22 following the sale of property at 8 Crown Leys, Aylesbury. The 2014/15 assessment was for £16,474.54 following the sale of property at 40 Mirador Crescent, Slough. The 2015/16 assessment was for £21,058.52 following the sale of property at 42 Farm Crescent, Slough. In addition to the capital gains tax assessments HMRC had raised penalty assessments under schedule 24 of the Finance Act 2007, Schedule 41 of the Finance Act 2008 and Schedule 55 of the Finance Act 2009. However these penalty assessments were not the subject of this appeal.

6. HMRC in their Statement of Case supplied dates of purchase and dates of sale of these three properties. Mr Akram, who was married to Mrs Hashmi at the time of her ownership of them disputed the accuracy of the dates but accepted they were indicative of the periods of ownership.

7. HMRC claims that Mrs Hashmi's principal private residence has been 132 Shaggy Calf Lane, Slough throughout the three tax years. Her Notice of appeal to this Tribunal gives her address as 132 Shaggy Calf Lane.

8. HMRC considers there was a loss of tax for each of the three years, the loss was brought about carelessly and that none of the three properties qualified for principal private residence relief.

THE LEGISLATION

9. Section 7 TMA 1970 states:

> 7 Notice of liability to income tax and capital gains tax.
>
> (1) Every person who—
>
> (a) is chargeable to income tax or capital gains tax for any year of assessment, and
>
> (b) falls within subsection (1A) or (1B),
>
> shall, subject to subsection (3) below, within the notification period, give notice to an officer of the Board that he is so chargeable.

10. Section 7(1C) goes on to state:

> In subsection (1) "the notification period" means in the case of a person who falls within subsection (1A), the period of 6 months from the end of the year of assessment.

11. Section 34 TMA 1970 includes the following:

> 34 Ordinary time limit of 4 years.
>
> (1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to income tax or capital gains tax may be made at any time not more than 4 years after the end of the year of assessment to which it relates.

12. Section 36(1) TMA 1970 includes the following:

> 36 Loss of tax brought about carelessly or deliberately etc
>
> (1) An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).
>
> (1A) An assessment on a person in a case involving a loss of income tax or capital gains tax —
>
> (a) brought about deliberately by the person,
>
> (b) attributable to a failure by the person to comply with an obligation under section 7
>
> may be made at any time not more than 20 years after the end of the year of assessment to which it relates (subject to any provision of the Taxes Acts allowing a longer period).

13. HMRC submitted that Mrs Hashmi failed to complete a tax return for the year ended 5 April 2014 in accordance with s.7 and in accordance with s.36(1A)(b) the time limit for raising an assessment is 20 years from 5 April 2014. For the tax year ending 5 April 2015 HMRC had issued a Notice to file but no return was received. Therefore HMRC submitted that the ordinary time limit of four years applies in accordance with s.34. As Mrs Hashmi submitted a return for the year ending 5 April 2016 again HMRC submitted that the ordinary time limit of four years applies.

14. Section 29 TMA 1970 includes the following:

29 Assessment where loss of tax discovered

(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment —

(a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or

(b) that an assessment to tax is or has become insufficient, or

(c) that any relief which has been given is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.

(2) Where—

(a) the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, and

(b) the situation mentioned in subsection (1) above is attributable to an error or mistake in the return as to the basis on which his liability ought to have been computed,

the taxpayer shall not be assessed under that subsection in respect of the year of assessment there mentioned if the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, he shall not be assessed under subsection (1) above—

(a) in respect of the year of assessment mentioned in that subsection; and

(b) in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

(4) The first condition is that the situation mentioned in subsection (1) above was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf.

(5) The second condition is that at the time when an officer of the Board—

(a) ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under section 8 or 8A of this Act in respect of the relevant year of assessment; or

(b) in a case where a notice of enquiry into the return was given—

(i) issued a partial closure notice as regards a matter to which the situation mentioned in subsection (1) above relates, or

(ii) if no such partial closure notice was issued, issued a final closure notice,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

15. As no returns had been submitted by Mrs Hashmi for the tax years ending 5 April 2014 and 5 April 2015, HMRC submitted that s.29(2) does not apply to the assessments for those two years and the return submitted for the year ending 5 April 2016 was submitted carelessly as there was no mention of a capital gain.

16. Finally s222 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) states:

222 Relief on disposal of private residence.

(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—

(a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or

(b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.

(5) So far as it is necessary for the purposes of this section to determine which of 2 or more residences is an individual's main residence for any period—

(a) the individual may conclude that question by notice to an officer of the Board given within 2 years from the beginning of that period but subject to a right to vary that notice by a further notice to an officer of the Board as respects any period beginning not earlier than 2 years before the giving of the further notice.

17. Section 223 TMA 1970 provides:

223 Amount of relief

(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling house or part of a dwelling house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 36 months of that period.

18. The word 'residence' is not defined in the legislation. In *Levene v Inland Revenue Commissioners* [1928] AC 217 Viscount Cave LC said at paragraph 7:

"My Lords, the word "reside" is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place."

19. In *Goodwin v Curtis* [1998] STC 475 Lord Justice Schlemann said:

"I accept, as did the commissioners, the Revenue's contention that in order to qualify for the relief a taxpayer must provide some evidence that his residence in the property showed some degree of permanence, some degree of continuity or some expectation of continuity."

THE PROPERTIES IN QUESTION

20. During the period 2013 to 2015 Mrs Hashmi bought and sold at least five properties, three of which are the subject of this appeal. The other two properties were jointly owned. Mrs Joanne McGuigan and Mr Akram both provided witness statements and gave oral evidence to the Tribunal. Rather than deal with each witness statement separately I propose dealing with them in connection with each property.

21. Mrs McGuigan explained that she has worked for HMRC for 31 years and for the last nine years has been a caseworker on the Taskforce and Specialist Compliance Team within Individual and Small Business Compliance. She first wrote to Mrs Hashmi on 23 October 2017 stating:

"From information I hold I understand you have purchased and disposed of properties within the 2013/14, 2014/15 and 2015/16 tax years. I note you have not declared any rental income or the gains/trading profits arising on the property disposals.

Additionally I hold information that suggests you own further properties, for which you do not appear to have returned rental income.

I am carrying out a check under Schedule 36 Part 1 Paragraph 1 FA 2008 and as such I now require information and documents so that I can confirm the correct amount of tax due."

22. Mrs McGuigan enclosed a schedule of the documents and information needed which listed four properties including the three properties the subject of this appeal. The fourth property was 44 Crown Leys, Aylesbury. Not having received any response she issued a formal Notice on 21 November 2017.

23. By letter dated 24 November 2017 Haigh Hudson replied on behalf of Mrs Hashmi stating that three of the properties were lived in by Mrs Hashmi as her principal private residence but they were not sure of the circumstances concerning 44 Crown Leys though any tax due had been paid by a third party.

24. Correspondence then ensued between Mrs Hashmi and Mrs McGuigan during which Mrs McGuigan requested various items in support of Mrs Hashmi's claim that she had lived in all three properties as her principal private residence. As Mrs McGuigan was not satisfied with the documentation which had been produced she issued a further Notice on 20 June 2018 to provide information requesting documents or information in respect of all four properties.

25. After fully reviewing all the information which had been provided Mrs McGuigan wrote to Mrs Hashmi on 11 September 2018 advising that unless she received further details within 30 days she intended to issue tax assessments for the years 2014 to 2016 in respect of capital gains made on all four properties. In her view capital gains tax was due as follows:

<u>44 Crown Leys, Aylesbury</u>
Half share purchase cost £60,000
Half share sale price £69,000
Capital Gain £9,000
annual exemption £11,000
<u>8 Crown Leys, Aylesbury</u>
Total purchase cost £127,371
Net proceeds sale £160,000
Assessable gain £32,629 less annual exemption £10,900 so £21,729 taxable
<u>40 Mirador Crescent, Slough</u>
Total purchase cost £163,781
Net proceeds sale £244,999
Assessable gain £81,218 less annual exemption £11,000 so £70,218 taxable
<u>42 Farm Crescent, Slough</u>
Total purchase cost £212,341
Net proceeds sale £310,000
Assessable gain £97,659 less annual exemption £11,000 so £86,559 taxable

26. Further correspondence ensued by email and ultimately Mrs McGuigan wrote to Mrs Hashmi on 16 November 2018 to advise that she was treating the enquiries for the tax years 2013/14, 2014/15 and 2015/16 opened under the Discovery provisions as closed under s29 TMA 1970 and that the figures advised in her letter dated 11 September 2018 were now final.

27. Haigh Hudson replied by letter dated 14 January 2019 disputing the treatment of the purchase and disposal of the three properties in question. I will refer to this letter in more detail when considering each individual property later in this decision.

28. Mrs McGuigan replied by letter dated 11 March 2019 saying that she was unable to accept the claims for Private Residence Relief in respect of each property. She offered an independent review or an appeal to this Tribunal.

29. I shall now deal with each property the subject matter of this appeal.

8 CROWN LEYS, AYLESBURY

30. Mrs McGuigan in her witness statement stated that this property was purchased by Mrs Hashmi on 28 March 2013 with a purchase price of £125,000, that it was listed for sale on Zoopla on 10 May 2013 for £175,000 and that it was sold on 18 September 2013 for £165,000. It is according to the sales brochure a three bedroomed semi-detached house. In an email dated 9 February 2018 Mrs Hashmi had claimed that she and her children had lived in the property for almost a year.

31. Haigh Hudson in their letter dated 14 January 2019 stated that Mrs Hashmi and Mr Akram wanted to set up home together in an affordable family-sized home. Mr Akram in his witness statement said Aylesbury was a cheap area and several of his extended family members lived in Aylesbury. House prices in Slough where he worked were out of their reach. However he found the daily commute from Aylesbury to Slough meant that he did not see his children either in the morning as he left the house at 7.00 AM or in the evening as he returned at 9.00 PM. In addition Mrs Hashmi was now pregnant with their second child and needed immediate family support so they decided to sell 8 Crown Leys and move back to Slough.

32. Mrs Hashmi supplied HMRC with copies of delivery notes in respect of deliveries to Mr Akram at 8 Crown Leys 2013 including an order for nappies and baby wipes. She also supplied confirmation from Aylesbury Vale District Council that Mr Akram and Mrs Hashmi had been paying council tax at this property from 15 April 2013 to 17 September 2017.

33. Mr Blakely argued that there was insufficient evidence to show that Mrs Hashmi actually lived in 8 Crown Leys. During the period of ownership Mrs Hashmi had applied for finance indicating her address as 132 Shaggy Calf Lane and she remained on the voters's list at this address during 2012 to 2015. Mrs Hashmi had not supplied any bank statements or insurance documents showing her address as 8 Crown Leys nor had she supplied any utility bills.

34. As Mrs Hashmi had only produced a statement showing the cost of purchase as £2,371, Mrs McGuigan had estimated the sale costs amounted to £5,000. Mr Akram stated that he had fitted a new gas cooker, an extractor fan and new work top in the kitchen but did not produce any receipts in respect of this work or in respect of the sale costs.

44 CROWN LEYS

35. Although this property was not part of the appeal it was referred to by Mrs McGuigan in her witness statement. Mrs McGuigan in her evidence to the Tribunal admitted that she had made an error in granting Mrs Hashmi the annual exemption of £11,000 as she had already applied this exemption to the sale of 8 Crown Leys which had been sold earlier in 2013. However she had decided not to rectify her error with the result that the gain made by Mrs Hashmi on the sale of 44 Crown Leys escaped liability to capital gains tax.

40 MIRADOR CRESCENT, SLOUGH

36. Mrs McGuigan stated that Mrs Hashmi bought this property on 11 November 2013 for £161,000, listed it for sale on Zoopla on 14 February 2014 for £275,000 and sold it on 6 June 2014 for £249,999. The listing details when Mrs Hashmi bought this property describe it as a two bed end of terrace house. However the listing details when she sold it describe it as a three bedroom house. The photographs provided by Mrs Hashmi clearly show that a considerable amount of work was carried out to the house – at least externally.

37. Mrs Hashmi provided three utility bills dated 3 January 2014, 3 February 2014 and 12 February 2014 issued by EDF all addressed to "Owner/Occupier from 11/11/13. She also supplied an invoice in respect of the purchase of one bedstead (4 drawers), a 3 door wardrobe, a 2 door wardrobe and a clothes rail ordered on 2 January 2014 and an invoice dated 15 January 2014 in respect of a double bed and some carpet.

38. Haigh Hudson in their letter dated 14 January 2019 informed Mrs McGuigan that 40 Mirador Crescent was identified as being close to Mr Akram's work so he could support Mrs Hashmi during the latter stages of her pregnancy. However due to an incident when Mr Akram saw two youths trying to break in and enter the property while he stood outside, they decided the property was not ideal for bringing up a young family.

39. Mr Akram in his witness statement claimed that the photographs which had been submitted showed that work had been carried out to the house but the cost of these works had not been taken into consideration. He had tried to contact the builder to obtain copies of the invoices but found he had been deported. As no actual burglary had taken place the police had not kept a record. In her skeleton argument Mrs Hashmi indicated that planning permission had been granted by Slough Borough Council on 15 January 2014.

40. Mr Blakely again argued that there was insufficient evidence to show that Mrs Hashmi lived at 40 Mirador Crescent while extensive work was being carried out. The photographs show new windows were fitted, the exterior plasterwork was renewed and an extension was built at the back of the house. Again no bank statements or insurance documents were provided and she remained on the voters' list at 132 Shaggy Calf Lane.

41. As Mrs Hashmi had only produced a statement showing the total cost of purchasing this property as £277,781 and had produced no evidence of the cost of any improvements nor of the cost of sale Mrs McGuigan again allowed an estimated figure of £5,000 for the costs of sale

42 FARM CRESCENT, SLOUGH

42. Mrs Mcguigan stated that Mrs Hashmi bought this property on 16 September 2014 for £209,000. It was listed for sale on 3 October 2014 for £329,950 and eventually sold on 10 July 2015 for £315,000. It is a three bedroom terrace house and again was close to Mr Akram's place of work.

43. Haigh Hudson in their letter dated 14 January 2019 stated that this property had previously been used by criminals as a cannabis farm and had been repossessed with the previous owner living next door. The previous owner subjected Mrs Hashmi and her family to harassment in order to sell the property back to him. The property needed extensive work which was carried out despite the ongoing harassment by the previous owner.

44. Mr Akram in his witness statement claims the previous owner and next door neighbour left "the music on hold throughout the night, knock on our doors in the middle of the night etc".

45. Mrs Hashmi in her skeleton argument claims the neighbour started building work and had a registered charge against him but registered to 42 Farm Crescent. The property shared an alleyway next to his property which was dug up with the result that her children were unable to go out.

46. Mr Blakely referred to a letter dated 26 March 2018 from British Gas which confirmed gas had been supplied to the property from 16 September 2014 until 9 July 2015. Mrs Hashmi had also produced a copy of an application to vote by post addressed to Mrs Hashmi at 42 Farm Crescent. Mr Blakely claimed that neither document was sufficient to show that Mrs Hashmi had actually lived in the property. Again Mrs Hashmi had failed to produce any bank statements or insurance documentation.

47. As Mrs Hashmi had only produced a statement showing the total cost of purchasing this property as £3,341 and had produced no evidence of the cost of any improvements nor of the cost of sale Mrs McGuigan again allowed an estimated figure of £5,000 for the costs of sale

GENERAL OBSERVATIONS

48. Mrs McGuigan in her letter to Mrs Hashmi dated 16 November 2018 referred to eight separate cases all which referred to the "degree of permanence" which is the phrase used by Lord Justice Schiemann in *Goodwin v Curtis* quoted in paragraph 19 above. None of the other seven cases were referred to by either party during the hearing. In their letter dated 14 January 2018 Haigh Hudson stated:

> "All these cases appear to be based on the conclusion that the taxpayers did only reside at the properties and in some cases it is obvious that the taxpayer was attempting to gain an advantage."

49. In *Jason Terence Moore v The Commissioners for Her Majesty's Revenue & Customs* [2010] UKFTT 445 (TC) Judge John Walters QC held that Mr Moore had failed to convince the Tribunal that the property in question was not only his residence but also his main residence.

50. Judge Guy Brannan in *Springthorpe v Revenue & Customs* [2010] UKFTT 582 (TC) at paragraph 79 said:

> "It is clear from the authorities, in particular the decision of the Court of Appeal in *Goodwin v Curtis (HM Inspector of Taxes)*, that the occupation of the property must have some degree of permanence, some degree of continuity or expectation of continuity in order for that occupation to qualify as residence …It is clear that the test is a qualitative test rather than one which looks predominantly at the period during which the property was actually occupied….even short or occasional residence in a property can make that place the taxpayer's residence. However, Millet LJ in *Goodwin v Curtis (Inspector of Taxes)* himself contrasts short or occasional residence with temporary occupation, which latter, he says, does not make a person resident at a particular address. The factor which the learned judge clearly had in mind was the quality of occupation – the degree of permanence, the degree of continuity or the expectation of continuity- which is a question of fact and degree to be determined by this Tribunal."

51. *David Lowrie v HMRC* [2011] UKFTT 309 TC concerned the sale of a property in Brighton which Mr Lowrie had bought in May 2003 with the intention of renovating it and then moving in. His sister to whom he had been close died five days after the purchase had been completed and as a result he had lost heart in the project and advertised the property for sale in December 2013 with the sale completing in January 2014. Judge Radford held at paragraph 28:

> "We find that after the death of his sister the Appellant's stay at the Property lacked the degree of permanence for it to qualify as his principal private residence as by his own admission he spent most of his time at [his late sister's property]. As a result of this we find that the Property was not his only or main residence as was necessary for its subsequent sale to fall within Section 222 (1) TCGA and to attract principal private residence relief.

52. In *Martin Benford and The Commissioners for Her Majesty's Revenue and Customs* [2011] UKFTT 457 (TC) the Tribunal dealt with an appeal by Mr Benford who while separating from his wife bought a property which was uninhabitable but which he intended to do up before moving in. During the six months that he owned the property he continued to use the matrimonial home as his postage address, had meals and showered there. Judge John Brooks held that as Mr Benford moved back to the matrimonial home in an attempt at

reconciliation the property which he bought and sold could not be treated as his principal residence and so the relief did not apply.

53. In *Michael J Harte and Brenda A Harte v The Commissioners for Her Majesty's Revenue & Customs* [2012] UKFTT 258 (TC) Judge Christopher Staker held at paragraph 35:

> "To adopt the language of *Springthorpe* quoted above, putting the case at its highest from the Appellants' viewpoint the evidence indicates that in the period between the first Appellant's stepmother's death until the decision was taken to sell the Alder Grove, the Appellants had not made up their mind whether to sell it or whether to live in it. They may have spent short periods there, perhaps to see what it would be like if they were to make it their residence. However, the quality of the occupation and the intentions in respect of the occupation of the property were on the evidence not such as to satisfy the test of "residence" in section 222 TCGA."

54. In *Susan Bradley v The Commissioners for Her Majesty's Revenue & Customs* [2013] UKFTT 131 (TC) Judge Nicholas Aleksander dismissed Mrs Bradley's appeal as:

> "At the time she moved into [the property] she had already placed it on the market, and she never withdrew her instructions to the estate agents."

55. Finally Mrs McGuigan had referred to *Wade Llewellyn v The Commissioners for Her Majesty's Revenue & Customs* [2013] UKFTT 323 (TC where Judge John Clark held at paragraph 50:

> "In Mr Llewellyn's case, there is no evidence of him having established his base at 10 Henderson Road, as he chose to keep all "official" records concerning his contact details as being at 10 Netley Terrace. Apart from the statements made by him and his accountants in support of the contention that 10 Henderson Road was his only or main residence, which amounted to unsupported assertions rather than evidence, there was no independent evidence to show that his occupation of the property amounted to residence there with some degree of permanence, some degree of continuity or some expectation of continuity."

56. I also note that in another case to which I was not referred Judge John Walters QC in *Piers Moore v The Commissioners for Her Majesty's Revenue and Customs* [2013] UKFTT 433 (TC) said at paragraph 43 that the most important factor, which determined Mr Moore's expectation at any time of what the continuity, or permanence, of his occupation of 110 Headlands would be was the state of his relationship with the lady who subsequently became his wife. There was no corroborative evidence about the relationship and therefore Mr Moore's appeal against the refusal by HMRC to allow principal residence relief was dismissed.

57. Mrs Hashmi in her skeleton argument informed the Tribunal that the property at 132 Shaggy Calf Lane, Slough was a three bedroomed semi-detached house that had two double bedrooms and a small box room. In 2013 it was occupied by her two sisters-in-law as well as herself, Mr Akram and their two year old child. By the time she moved back to this property her sisters-in-law were both married and her in-laws had bought the next door property.

58. Mrs Hashmi relied heavily on HMRC's guidance which stated that she would be entitled to full relief where all four conditions were met. The first condition was "the 'dwelling house' has been your '**only**' or '**main residence**' throughout your 'period of ownership'. (Mrs Hashmi's emphasis.) The other four conditions are not in dispute.

59. Mrs McGuigan in her witness statement claimed that Mrs Hashmi obtained Volkswagen Finance on 29 April 2013 and had opened a Barclays Bank account on 4 July 2013 giving her address for both applications as 132 Shaggy Calf Lane when she claimed to be living at 8

Crown Leys. HMRC's child benefit systems confirmed that her children were all resident at 132 Shaggy Calf Lane. Electoral Rolling Data confirmed that Mrs Hashmi had been resident at 132 Shaggy Calf Lane for 11 to 15 years and Mr Akram had also been on the electoral roll at 132 Shaggy Calf Lane from 2011 to 2017. Mr Akram while giving evidence to the Tribunal explained that changing your address too often resulted in a lower credit rating and they simply had not got round to registering to vote at all three properties.

60. Mr Akram in his evidence to the Tribunal when asked why three beds and mattress sets had been bought from Aylesbury Carpet & Furniture Centre on 18 April 2013, a 150 cm bedstead from Bensons for Beds on 2 January 2014 and a further double bed bought from Carpet Right on 15 January 2014 claimed that the three beds bought on 18 April 2013 were very cheap and only lasted a few months before the springs broke.

DECISION

61. As there are three properties concerned with this appeal I shall deal with each property separately. However there are some observations which apply to all three properties.

62. Mrs Hashmi owned at least five properties during the three tax years in question. The Tribunal was given little information about the fifth property – 60 St Andrew Way, Slough – which Mrs Hashmi bought as a joint owner in December 2014 and sold in July 2015. No other information about this property was before the Tribunal. 44 Crown Leys, Aylesbury was bought in April 2013 and sold in January 2014 but HMRC incorrectly assessed the gain as being within the annual capital gains tax exemption. Mrs Hashmi was pregnant with her second child when she bought 8 Crown Leys in March 2013. According to her Skeleton Argument Mrs Hashmi had another child while owning 40 Mirador Crescent.

63. The time line for the various places where Mrs Hashmi lived is as follows:

- 132 Shaggy Calf Lane until March or April 2013
- 8 Crown Leys from March or April 2013 until 28 September 2013
- 132 Shaggy Calf Lane from 28 September 2013 until November 2013
- 40 Mirador Crescent from November 2013 until 3 June 2014
- 132 Shaggy Calf Lane from 3 June 2014 until September 2014
- 42 Farm Crescent from September 2014 until 10 July 2015
- 132 Shaggy Calf Lane from 10 July 2015 onwards.

64. I have deliberately not given all the exact dates as Mr Akram disputed the accuracy of some of the dates given by HMRC. However, it will be seen that Mrs Hashmi could have occupied 8 Crown Leys for about six months, returned to 132 Shaggy Calf Lane for about three months, occupied 40 Mirador Crescent for about seven months, returned to 132 Shaggy Calf Lane for about four months and occupied 42 Farm Crescent for about nine months before returning to 132 Shaggy Calf Lane where she still resides. During the entire period from March 2013 to July 2015 she continued to use 132 Shaggy Calf Lane as her address for various financial matters and remained on the electoral register at this address.

65. As well as undertaking the six conveyancing transactions that were required for the three properties she undertook four other property transactions. She also bought at least five beds when her family consisted of herself and one or two very young children. I find Mr Akram's explanation that the first three beds were very cheap and only lasted a few months unconvincing and consider it is probable the beds were bought with a view to furnishing one of the properties prior to letting. In any event it is clear to me that Mrs Hashmi was trading in property. The short periods between the acquisition and disposal of each property at a gain after undertaking improvements is an indication of trading.

66. While giving evidence Mr Akram claimed that he could have provided statements from neighbours which would have confirmed that he and Mrs Hashmi were living in the various properties but he did not do so. He also claimed that there was no requirement to keep financial records for more than one year. However HMRC's website says that you should keep your records for at least 22 months after the end of the tax year the tax return is for. Mrs Hashmi failed to produce any evidence in support of the costs of improvements to the various properties. In the absence of records she could have given estimates possibly supported by bank statements. The photographs before the Tribunal clearly show that there were improvements to all three properties. Mrs Hashmi failed to produce statements in respect of the sales: such statements could have been provided by the solicitor or conveyancer concerned.

67. Turning now to the individual properties Mr Akram failed to convince me that Mrs Hashmi lived in 8 Crown Leys with "some degree of permanence, some degree of continuity or some expectation of continuity" as required by Lord Justice Schlemann in *Goodwin v Curtis* in order for the gain on sale to qualify for principal residence relief under s222 TCGA 1992. The property was advertised on Zoopla within weeks of Mrs Hashmi acquiring it. Mrs Hashmi had claimed in her email dated 9 February 2018 to have lived in the property for almost a year yet the dates of purchase and sale showed that the maximum period during which she could have lived in it was six months. Producing two invoices showing deliveries to the property during the period of ownership is insufficient evidence and being registered for council tax only shows that she owned the property not that she occupied it. During her period of ownership of this property she continued to use 132 Shaggy Calf Lane as her address on applications. Mrs Hashmi has not provided any bank statements or utility bills which would support her claim that that she was living in the property.

68. Accordingly as Mrs Hashmi has failed to convince me that she occupied 8 Crown Leys with some degree of continuity or some expectation of continuity I find that HMRC were correct to issue an assessment for capital gains tax in respect of the gain made on the sale of 8 Crown Leys for the tax year ending 5 April 2014 and were within the time limit set by s 36(1A)(b) TMA 1970.

69. Extensive work was carried out to 40 Mirador Crescent but no invoices were submitted to HMRC. The property was listed for sale within three months of purchase. Again no bank statements or insurance documentation were produced showing this address. Only three estimated utility bills were provided by Mrs Hashmi all addressed to "Owner/Occupier from 11/11/13". Again being registered for council tax only shows ownership, not occupation. Mrs Hashmi claims the attempted burglary put them off the property. In his evidence to the Tribunal Mr Akram did not say when this event happened. Mrs Hashmi in her skeleton argument stated that the property was sold "because it backed onto a park and we would get people stealing things from our garden". The fact that the property backed onto a park would have been known to them before they bought the property.

70. In the absence of any satisfactory evidence to show that she resided in 40 Mirador Crescent with "some degree of permanence, some degree of continuity or some expectation of continuity" I find that HMRC were correct to issue a capital gains tax assessment for the tax year ended 5 April 2015 within the time limit under s34 TMA 1970. As Mrs Hashmi failed to provide any evidence in support of her undoubted expenditure or even estimates of the expenditure HMRC were correct to assess the gain as the difference between their estimate of the net proceeds sale and the total purchase costs.

71. Finally, 42 Farm Crescent. I accept HMRC's view that evidence from British Gas that they supplied gas and electricity to this property and that Mrs Hashmi received an application to vote by post from Slough Borough Council are insufficient to support her claim that she was

living there. The photographs provided show that significant works were carried out during the period of ownership which would have made the property unsuitable for habitation by a young family. Again the property was listed for sale within a few days of purchase – HMRC claim 17 days. Haigh Hudson in their letter dated 14 January 2019 stated

> "Admittedly, the property needed substantial work and this was carried out in order to make the property saleable to a third party and not the ex-owner who lived next door who had continued to harass the family over the sale and obstruct the ongoing work being carried out."

72. I accept HMRC's view that this property was purchased with a view to increasing its market value prior to resale as evidenced by Haigh Hudson's comment just quoted.. Again Mrs Hashmi has failed to produce sufficient evidence to show "some degree of permanence, some degree of continuity or some expectation of continuity". HMRC were correct to assess the gain, in the absence of any evidence or estimates of the cost of the improvements, on the difference between their estimate of the net proceeds sale and the total purchase costs.

73. In all three properties Mrs Hashmi has failed to produce sufficient evidence to convince me that she intended to live in them with some degree of permanence.

74. Accordingly I find that HMRC has satisfied the burdens of proof set down by TMA 1970 in respect of all three tax years. As a result the burden of proof passes to Mrs Hasmi to show that any of the three properties were acquired with the necessary "degree of permanence, some degree of continuity or some expectation of continuity" as required by Lord Justice Schlemann in *Goodwin v Curtis.* Mrs Hashmi has failed to satisfy me on the balance of probabilities that any of the three properties met the requirement and therefore do not qualify for private residence relief. The appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

75. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ALASTAIR J RANKIN
TRIBUNAL JUDGE

RELEASE DATE: 20 MAY 2020