



**TC06829**

**Appeal number: TC/2016/00282**

***CAPITAL GAINS TAX – principal private residence relief -whether the appellant resided at the house – held no***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Hezi Yechiel**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE SARAH ALLATT  
MS ELIZABETH BRIDGE**

**Sitting in public at Taylor House on 3 September 2018**

**Francis Ng, Counsel for the Appellant**

**Mrs Gill Carwardine, Presenting Officer for HM Revenue and Customs, for the Respondents**

## DECISION

### 5 **The Appeal**

1. The Appeal as originally listed before us was to consider firstly, whether a property occupied by the Appellant in 2011 qualified for Principal Private Residence (PPR) relief, secondly to consider whether certain amounts were allowable expenditure on the property for the purposes of capital gains tax, thirdly to consider  
10 whether certain amounts were allowable expenditure on a second property, and lastly to consider the percentage of tax which should be due as a penalty.

2. The last three of these disputed positions had been resolved between the parties before the matter came to court, therefore the only matter for us to decide remains the PPR point.

### 15 **Background**

3. The following facts are undisputed.

4. Mr Yechiel purchased 6 Beaufort Drive in September 2007. He purchased it with the intention that it would be a family home for him and his fiancée.

5. The house was 15 minutes walk away from Mr Yechiel's parents' house.

20 6. Mr Yechiel had previously bought a house in Connaught Drive, the adjoining road to Beaufort Drive, in 2006, but his girlfriend (later fiancée) did not like the house or the area and the property was sold after a short period of time, and the proceeds used to buy 6 Beaufort Drive.

25 7. Mr Yechiel and his fiancée had lived for some time in a 1 bedroom flat in St John's Wood.

8. When Mr Yechiel bought the property it needed a significant amount of work. He also applied for planning permission to extend the property. Whilst the application was in progress, he let out the house, firstly to the original seller, and then to a married couple.

30 9. The planning permission was granted in March 2008. Mr Yechiel and his fiancée married in August 2008.

10. Mr Yechiel's marriage was strained. In January 2011 his wife instructed divorce lawyers. In April 2011 Mr Yechiel moved into 6 Beaufort Drive.

11. 6 Beaufort Drive was advertised for rent and for sale in October 2011.

35 12. In December 2011 Mr Yechiel moved to live with his parents.

13. In August 2012 6 Beaufort Drive was sold.

### **Evidence**

14. We had witness statements from a number of parties, and heard oral evidence from Mr Yechiel.

5 15. Witness statements from Mr Yechiel's parents confirmed that they were a very close family and that they wanted Mr Yechiel to move back with them when his marriage broke down, but Mr Yechiel chose to move to 6 Beaufort Drive and then only after persuasion moved in with them later.

10 16. A witness statement from Steve Cohen, who at the relevant time lived at 8 Beaufort Drive, confirmed that Mr Yechiel lived at 6 Beaufort Drive for the 4 months from April 2011 to July 2011.

15 17. A witness statement from Jacek Ignatiuk, a builder engaged by Mr Yechiel to work on the property, confirmed that he had 'kitted up' a bedroom and kitchen for Mr Yechiel in March 2011, and that Mr Yechiel was present at the property every morning April 2011 to July 2011.

18. Utility readings for the property show 2,089Kwh of electricity used at the property between June 2009 and January 2011, and 1736 Kwh of electricity used between January 2011 and July 2011, and 506 Kwh of electricity used between July 2011 and January 2012. Gas usage at the property was minimal.

20 19. Barnet council told HMRC that the property was, between 1 April 2011 and 2 August 2012 'vacant and undergoing works'. However, council tax bills for the period April 2011 to March 2012 show full council tax being paid at the property, in contrast to the previous year when a discount had been given for 'long term empty'. Mr Yechiel says he phoned up the council to inform them he was living at the property.

25 20. Mr Yechiel appeared on the electoral role for the entire period 2009 to 2013 at the flat in St John's Wood.

30 21. The completion statement for the property showed a significant mortgage on the property at the time it was sold. The property was sold for just over £1.2m, having been purchased for £605,000. The mortgage at the time of sale was £914,853. Mr Yechiel explained it was an interest only mortgage and he was able to make the monthly payments.

35 22. In his witness statement Mr Yechiel explained that at the time he moved out, 6 Beaufort Drive was the only home that was available to him. He did not want to move back to his parents' house. He comes from a conservative Jewish heritage where divorce is seen as a big event, and was too embarrassed to go to his parents.

23. He also explained that 6 Beaufort was in an area that he knew and liked. It was near his parents and he played five-a-side football around the corner. It also suited him, as he had chosen the features of the house, wanting it to be the family home.

24. Mr Yechiel explained that he had two intentions when he moved into 6 Beaufort.  
5 The first was to use it as an escape route; it would allow him to get away from the stress of his divorce. The second was to use the house as a long term home.

25. Mr Yechiel stated that from April 2011 to July 2011, he slept there every night. He brought a bed, and a second-hand side [table]. The rooms had built in cupboards. He used the kitchen for basics, though he didn't cook there because of his state of  
10 mind at that time: cooking for himself alone was not fun. He either ate at his parents or had a takeaway. He did occasionally eat at 6 Beaufort, sometimes standing up, sometimes in the car, and sometimes in bed.

26. He received post at 6 Beaufort. This was usually random junk mail, with the occasional bill. Bills for the utility were low, as he was only really using the master  
15 bedroom and the kitchen. He took clothes to his parents' for washing.

27. Mr Yechiel stated that he tends to live in quite a Spartan way and does not own many possessions when he is on his own. He stated that his current property where he now lives with his girlfriend, contained outdoor garden furniture as the only table and chairs before his girlfriend moved in, and a drum case was used as a bedside table.

28. Mr Yechiel explained he has dyslexia and that was disorganised with paperwork, hence he sometimes got behind, for example in notifying relevant parties of a change  
20 of address.

29. In oral evidence we found Mr Yechiel to be honest and straightforward. He explained that when he moved out of the flat he shared with his wife he did not want  
25 to move in with his parents. In part this was because he did not share details of his break-up with his wider family at first. He had bought the property in 2007 as a family home, taken an interest in how it was re-furbished, and still liked to think of living there. He set out honestly that when he moved in, his life was in a significant state of upheaval, and he was unsure what he was going to do, both where he was  
30 going to live and what he would do with the property.

30. In the period October to December 2011, he came to realise, both financially that he would need to sell the house, and emotionally that his parents' house was 'warm and supportive' and would provide him with the support he needed.

### **The Law**

35 31. The legislation is set out in sections 222 and 223 TCGA 1992.

#### 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,

32. Section 223 provides for the calculation of the gain. There is no dispute on how to calculate the gain in this situation. If Mr Yechiel is entitled to relief because 6 Beaufort Drive was his principal private residence, he is also entitled to an additional 'letting relief' for the period that it was let out, capped at £40,000.

33. Therefore the only point at issue is whether 6 Beaufort Drive was, for the purposes of this legislation, Mr Yechiel's 'only or main residence'.

34. There have been a number of cases on this issue, but as is to be expected they are very fact specific. In addition they are mainly cases at the First Tier Tribunal or equivalent, and so do not set a precedent.

35. The Court of Appeal, in *Goodwin v Curtis* [1988] STC 475, sets out 'it is important not to construe the case stated with too microscopic a degree of precision.... there must be some assumption of permanence, some degree of continuity, some expectation of continuity to turn mere occupation into residence'.

36. *Goodwin v Curtis* also refers to Viscount Cave in *Levene v IRC* [1928] AC 217 '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.'

37. Since then, cases have paid a significant amount of attention to the intentions of the taxpayer when they moved into the property. There have been a number of cases where short periods of residence (shorter than in this case) have, by virtue of the 'quality' of the residence, been held to have qualified the property as an 'only or main residence'.

38. In the case of *Dutton-Forshaw* UKFTT 478 TC, residence at a property for 2 months, whilst the taxpayer owned other properties that could have been his residence, was held to have met the criteria for the relief.

39. *Dutton-Forshaw* contains the following helpful summary of the principles drawn from the judgement in *Goodwin v Curtis*, and how they have been applied by First Tier Tribunal in a number of recent cases:

(1) The word 'reside' is an ordinary word of the English language.

(2) It is necessary to look at the nature, quality, length and circumstances of a taxpayer's occupation of a property in deciding whether it qualifies as a residence.

(3) Temporary occupation at an address does not make a person resident there.

(4) There must be some degree of continuity or some expectation of continuity to turn mere occupation into residence. The question of when occupation becomes residence is one of fact and degree for the Tribunal to decide.

## Discussion

40. There has been no contention that Mr Yechiel did not occupy the property. The unchallenged evidence from him and from other witnesses is that he spent most, if not all, the nights between April 2011 and July 2011 at 6 Beaufort Drive.

5 41. Mr Ng, on behalf of the Appellant, contends that the fact that Mr Yechiel could have moved in with his parents, but did not do so, points strongly to the fact that 6 Beaufort Drive was viewed by Mr Yechiel as his home and that it was his intention to stay there. Mr Ng points out that HMRC have not suggested that anywhere else was his home. The property was in an area that he was familiar with and he had intended  
10 to live for some time, as even before the purchase of this property he had bought another property in the same area with the intention of living there. Mr Yechiel has stated he intended to live there, the implication being for some not insignificant period of time, at the point of moving in.

15 42. HMRC put their case very simply. They do not consider the appellant have evidenced, to a significant degree of permanence, his residence in the house.

43. HMRC question the intention of the Appellant, both at the point of purchase of the property, and at the point of moving in. At the point of purchase, HMRC's view is that if Mr Yechiel's fiancée did not like a similar house on an adjacent road, then it was strange to think she would like this property any better. At the point of moving in,  
20 they question the nature of the intention to use it as a home, particularly given it was marketed for sale and for rent within 6 months. They point to the fact that Mr Yechiel was never on the electoral role at the property, and also to the fact that Barnet Council told them the property was vacant, as pointing to the fact that Mr Yechiel did not intend the property to be his long term home.

25 44. The question before us therefore whether the occupation of 6 Beaufort Drive had the necessary quality, in the round, to constitute residence.

45. We do not consider the fact that Mr Yechiel's name was not on the electoral role at the property to be of any particular significance. Mr Yechiel is dyslexic, he has told us he is not very organised with paperwork, and in addition he was in the middle  
30 of a divorce. There were no national or local elections during the period, so the electoral role did not presumably take on any particular significance during that period of time.

46. Likewise, we do not consider the council tax position to be significant either way. The fact that Barnet told HMRC that their records showed the property as vacant  
35 during the period was clearly a mistake, as the council tax paid by Mr Yechiel had no vacancy discount, and he has said he told the council he was living there. As mere occupation would be relevant for council tax, this was clearly the right thing to do but is not by itself determinative of intention to remain their long term.

40 47. Mr Yechiel's intentions at April 2011 are clearly important here. However, to his great credit, he has been clear that at that point he had no very clear intention. He clearly did not want to continue to live with his wife. He did not want to live with his

parents. He needed a home, and he thought that maybe he would like to live at 6 Beaufort Drive. He therefore moved in with the intention of living there for a period of time.

5 48. We temper this with a slight degree of financial realism. As later became obvious, it was not possible financially for Mr Yechiel to manage the financial demands of his divorce and maintain a large family home (with a significant mortgage) to live in by himself. A similar case, *Morgan v HMRC* [2013] UKFTT 181 TC, had a situation where a couple were buying a house together and then split up. The man moved into the house, hoping that his girlfriend would change her mind, but then found the property too expensive to live in on his own. In that case the fact that it was extremely reasonable, on the facts of the case, to suppose that the girlfriend may change her mind, was held to mean that the taxpayer moved into the property with the intention of living there for some time.

15 49. From Mr Yechiel's evidence the possibility of reconciliation with his wife had not been completely ruled out at April 2011, but was at that point rather unlikely. It would appear to be extremely unlikely that Mr Yechiel's wife would have both reconciled with him and agreed to live in an area she had disliked before.

20 50. However, the facts in this case are quite particular in an important area, and a similar fact pattern would seem not to have been considered before in the cases that were shown to us. Whatever the intention of Mr Yechiel when he moved into the house, it is also striking what he did in the house, and more importantly what he did not do.

51. The house had a working kitchen, a bedroom that Mr Yechiel used, and, one presumes, a bathroom.

25 52. Mr Yechiel certainly slept there. However, we know that he did not cook there, nor do his washing there. When he ate there (mainly takeaway food) he did so 'standing up, in the car [therefore not in the house] or in bed'. We therefore presume that the house did not contain a chair or a table.

30 53. Mr Yechiel appears to have had minimal post re-directed there, as he says the post was either 'random junk mail, or the occasional bill'.

54. Mr Yechiel had a son who he saw on a regular basis throughout the period. He did not bring his son to the property. This is understandable, as the property was still undergoing work and was presumably not child proof.

55. Mr Yechiel bought only a bed and a side table for the property.

35 56. Mr Yechiel has explained that this is how he generally lives when he is on his own. He has stated that his current property where he now lives with his girlfriend, contained outdoor garden furniture as the only table and chairs before his girlfriend moved in.

57. It is doubtless true that many people, living in a property that is going through building work, live very basic lives with minimal furniture in the property for a period of time. It is also true that some people are satisfied with very little in the way of 'creature comforts' in their houses.

5 58. However, in this case it is important to realise that Mr Yechiel was clearly spending significant periods of time during the day at his parents' house. His laundry was done there by his mother, and he ate a significant number of his meals there. The utility bills for 6 Beaufort Drive would indicate minimal use of the property.

10 59. We consider that as well as occupation (which clearly happened) and intention to occupy for a time with a reasonable degree of permanence (about which the point seems to be finely balanced), 'quality' is determined by what the Appellant actually did in the house.

15 60. We consider that to have a quality of residence, the occupation of the house should constitute not only sleeping, but also periods of 'living', being cooking, eating a meal sitting down, and generally spending some periods of leisure there.

20 61. In the round we consider that the facts of short period of occupation, minimal use of the house other than for sleeping, coupled with use of another house [that of Mr Yechiel's parents] for eating, laundry and social connection, together with the lack of evidence of a firm commitment to living in the house long term, and the financial reality that this did not appear possible, means that the residence did not have sufficient 'quality' for the property to qualify as an 'only or main residence'.

### **Decision**

62. For the reasons given above, this appeal is dismissed. The property does not qualify for Principal Private Residence Relief, and hence not for 'Lettings Relief'.

25 63. We understand the parties have agreed the remainder of the points at issue. If this proves not to be the case they are at liberty to return to the Tribunal for further directions.

30 64. 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

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65. “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**TRIBUNAL JUDGE ALLATT**

**RELEASE DATE: 19 November 2018**

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