



**TC07128**

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**Appeal number: TC/2017/06639**

*Capital Gains Tax – Principal or main place of residence relief.*

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**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**IAN ROGER DAVIDSON**

**Appellant**

**- and -**

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

**Respondents**

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**TRIBUNAL: JUDGE GERAINT JONES Q. C.  
MR DUNCAN MCBRIDE.**

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**Sitting in public at Taylor House, Rosebery Avenue, London on 29 November  
2018.**

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**Mr. Mason, counsel, for the Appellant.**

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**Mr. Ross, instructed by the General Counsel and Solicitor to HM Revenue and  
Customs, for the Respondents**

## DECISION

1. The appellant, Mr Davidson, purchased flat 1, 103 Philbeach Gardens, London (“the subject property”) on 10 June 2008. Including purchase costs and stamp duty land tax he paid around £555,000. On 18 February 2013 he sold that property for £750,000. This appeal concerns what, if any, capital gains tax is due and payable in respect thereof.  
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2. The dispute between the parties arises in this way. The respondents contend that the appellant never resided at the flat as his principal or main place of residence. On the other hand, the appellant says that there are three periods which require consideration although his counsel pointed out that it is artificial to look at them as three distinct periods and they should be considered as a whole.  
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3. The first period begins on 10 June 2008 when the appellant says, and establishes by reference to credible supporting documents, that substantial refurbishment works were being undertaken at the flat. They cost in excess of £60,000. He was then resident elsewhere, probably at his flat in Whitehall. Once those renovation works were completed he let the flat until 7 March 2011.  
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4. The appellant says 7 March 2011 – 24 May 2011, a period of 10 weeks he and his male partner resided at the subject property. He accepts that from 24 May 2011 the flat was let until 29 December 2012.
5. From 29 December 2012 to 18 February 2013, the flat was empty; the latter date being the date upon which the appellant completed on the sale of the flat.  
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6. The appellant’s principal argument is that the flat was his principal or main place of residence throughout his ownership. The evidence undoubtedly demonstrates that that contention is untenable given that the appellant lived, for substantial periods of time, at his flat in Whitehall.  
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7. The appellant gave evidence by adopting the content of his two witness statements, respectively dated 29 October 2015 and 26 February 2018 as his evidence in chief. The thrust of his evidence is that in 2007 he was then resident at his flat in Whitehall, which had been an unmodernised flat when he purchased it but that he subsequently refurbished it to serve as his home.  
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8. The appellant practised as a Chartered Surveyor and says that his business was substantially adversely affected by the financial crisis which hit in late 2007 which, in turn, led to a substantial decrease in the demand for his professional services. He says that in order to rebalance his finances he wanted then to let his flat in Whitehall which, it was thought, would let for a reasonably substantial sum. That meant that he would need to re-house himself and so he looked for another flat and eventually alighted upon the subject property.  
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9. At the relevant time the appellant also had a country residence near Derby which he says he used from time to time, but mainly at weekends to visit family and perhaps play golf. It is his evidence that he regarded his main base and his main home as being in London.  
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10. Notwithstanding that the appellant said that he wanted the subject property as a residence once he let his flat in Whitehall, he said that by the time the refurbishment work had been completed his finances were strained to an even greater extent and so he decided to let that flat whilst he lived, for a short while “out of a suitcase” and sometimes in a small studio flat that he owned at Maxwell Court, Clapham.

11. The appellant gave evidence that by early 2011 his business fortunes were recovering and so he could afford to forego the rent from the subject property and use it as his own home. He and his male partner moved in to live at that property on 7 March 2011. His evidence is that he intended to live there long term but that soon after moving into the property incidents of domestic violence took place between him and his partner (evidenced in documents comprising reports to the police) which subsequently gave rise to each of them vacating the subject property. He said that he did so because the events that had occurred between him and his partner left him with a sense of insecurity when it came to living at that property and bad memories that he associated with that residence.

12. In cross-examination the appellant accepted that he is registered on the electoral roll in Derbyshire and was not registered with a doctor in London. He accepted that he had never notified DVLA that his home address was anywhere other than his flat in Whitehall, notwithstanding that that flat had been let.

13. The appellant called his mother to give evidence; her evidence added very little, being confined to evidence that saying that she had seen the appellant living at the subject property..

14. The appellant called an accountant, Mr Ternan, to give evidence. He was an unimpressive witness. His evidence was only marginally relevant as he gave evidence about the level of the appellant’s annual turnover and profit from his business as a surveyor. He said that he had never advised the appellant to make any Principal Place of Residence election.

15. We should add that it had been put to the appellant that at a meeting with representatives from the respondent he was asked about the subject property and when asked why he had decided to buy it, had answered that the primary reason was for property investment. There is no dispute that that answer was given. The point made on behalf of the appellant is that intentions can change.

16. Disputes of this nature are inevitably fact specific. Equally, whether a particular dwelling is or is not a person’s only or main residence is, to a significant extent, a matter of subjective intention. Whether any alleged subjective intention is or is not accepted, or is treated as an unfounded allegation designed to procure a tax advantage, calls for an assessment of a particular person’s credibility.

17. We acknowledge that it is for the appellant to demonstrate, on the balance of probabilities, that the subject property was, at least for some period of time, his main residence. We acknowledge that it is thus relevant for us to consider whether the available indices of expected continuity of residence do or do not exist. However, they

are only evidential straws in the wind and part of the forensic tools for an assessment of wherein lies the truth.

18. In our judgement the outcome of this case turns largely upon our assessment of credibility. Before turning to our findings we should point out that we were deluged with paper in this appeal, with no reference whatsoever being made to the vast majority of it during the appeal hearing. That was singularly unhelpful. It is not our function to trawl through hundreds of pages of documents to which neither party has made specific reference.

19. On the basis of the preponderance of the witness evidence and the documentary evidence to which some reference was made at the hearing, we make the following findings of fact:

(1) The subject property was not the appellant's principal or main place of residence at any time prior to 7 March 2011.

(2) Notwithstanding that the appellant and his partner resided at the subject property for only 10 weeks, 7 March 2011 – 24 May 2011, they moved into the property with the intention of it being their home on a long-term basis. In our judgement the fact that that did not come about does not, *ex post facto*, detract from the fact that we accept the appellant's evidence that when he and his partner moved into the subject property, it was then their intention to make it their long-term home. We accept that when the appellant and his partner moved into the subject property they expected to continue to live in the property, as their home, for the foreseeable future or, at least, until their then present intention changed.

(3) The subject property ceased to be the appellant's main residence as from 24 May 2011 and did not become his main residence again.

20. Accordingly this appeal succeeds to the limited extent that the capital gains tax assessment will have to be re-worked to take account of our findings of fact. It is not for us to re-work the figures. If, when they are re-worked, there is any dispute between the parties concerning quantum, either party is at liberty to restore the appeal for further hearing, limited to the issue of quantum.

21. 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.

**GERAINT JONES Q. C.  
TRIBUNAL JUDGE**

**RELEASE DATE: 20 DECEMBER 2018**