

1964
May 19, 20
May 20

BETWEEN:

WARNFORD COURT (CANADA) }
LIMITED

APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE

RESPONDENT.

*Revenue—Income tax—Purchase and subsequent sale of real estate—
Income or capital gain—Time when intention of purchaser material.*

The appellant purchased a parcel of real estate in Toronto that was developed and in an income producing state. Almost immediately it sold the property at a substantial profit.

It was established on the evidence that the appellant purchased the property for income-producing purposes and that the quick resale was the result of completely unexpected offers to purchase the property becoming too great for the appellant to resist. It was also found on the evidence that the re-sale of the property was not a possibility contemplated by the appellant at the time it entered into the agreement to purchase the property.

Held: That for the purpose of determining whether a transaction is a transaction in the course of a business or is a venture in the nature of trade, the time as of which the intention of the purchaser is significant is ordinarily the time when the purchase agreement becomes legally binding rather than the time when legal title is acquired, and since there is no evidence from which to draw any inference that the appellant had in mind at that time even a possibility of re-sale, the profit from the sale of the property by the appellant was improperly assessed as income.

2. Appeal allowed.

APPEAL from a decision of the Tax Appeal Board.

The appeal was heard by the Honourable Mr. Justice Jaccett, President of the Court, at Toronto.

E. A. Goodman, Q.C. for appellant.

T. Z. Boles and E. E. Campbell for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

JACKETT P. now (May 20, 1964) delivered the following judgment:

I do not think that this appeal calls for a review of the cases or for a review of the evidence. The facts are set out in the decision of the Tax Appeal Board.

On the one hand, there was a purchase of a parcel of real estate in downtown Toronto that was developed and in an income-producing state. Upon the evidence, it was purchased for income-producing purposes.

On the other hand, there is the fact that the sale had hardly been completed when there was a quick resale resulting in a substantial profit. Unexplained, that quick re-sale and profit might give rise to an inference that the acquisition and re-sale was a venture in the nature of trade within the meaning of those words as used in the definition of "business" in the *Income Tax Act*. The resale, however, has been explained by the evidence of Mr. Sebba, which I accept, that the increasing amounts of the offers made to the appellant by the person who purchased from the appellant, which offers were completely unexpected, became too great for him to resist.

I further accept his evidence that possibility of re-sale was not one of the possibilities contemplated by the appellant at the time that the appellant entered into the agreement for acquisition of the property.

For the purpose of determining whether a transaction is a transaction in the course of a business or is a venture in the nature of trade, the time as of which the intention of the purchaser is significant is ordinarily, in my opinion, the time when the purchase agreement becomes legally binding rather than the time when legal title is acquired.

As I understand *Regal Heights Limited v. Minister of National Revenue*¹, there were at the time of acquisition by the appellant of the property there involved, two alternative intentions, one being the proposed development of a shopping centre and the other being re-sale in the event that it became impossible to carry out that development.

In this case I can find no evidence upon which there can be based any inference that, at the time of acquisition of the property, the appellant had in mind even a possibility of re-sale.

The only other case to which I think I should refer is *Irrigation Industries Limited v. Minister of National Revenue*². I refer to that case only to say that, having

¹ [1960] S.C.R. 902.

² [1962] Ex. C.R. 346.

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regard to the conclusion that I have reached, I do not find it necessary to deal with Mr. Goodman's alternative argument.

The appeal is allowed with costs.

Judgment accordingly.

Jackett P.