

Docket: 2007-12(IT)I

BETWEEN:

KAMRAN ESKANDARI,

Appellant

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on June 28, 2007 at Halifax, Nova Scotia

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Lindsay D. Holland

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**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* ("Act") for the 2004 taxation year is allowed in part and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the adjusted cost base of the Toronto condominium property sold by the Appellant in 2004 should be increased by \$9,972.71. In all other respects the appeal is dismissed.

Signed at Halifax, Nova Scotia this 18<sup>th</sup> day of July, 2007.

"Wyman W. Webb"

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Webb, J.

Citation: 2007TCC419

Date: 20070718

Docket: 2007-12(IT)I

BETWEEN:

KAMRAN ESKANDARI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Webb, J.

[1] The Appellant acquired from Saeid Sarrafian the rights that Mr. Sarrafian had to purchase a condominium that was to be built in Toronto. Mr. Sarrafian had entered into an agreement directly with the developer to purchase this condominium and had sold his rights under this agreement to the Appellant. The Appellant had originally intended to move to Toronto and live in the condominium but after having spent a week in the condominium in Toronto in 2003 he changed his mind and decided to sell the condominium. The condominium was sold in 2004.

[2] There are two items that were in dispute in relation to this matter. Both items relate to the calculation of the adjusted cost base of the property to the Appellant. The Appellant claims that he is entitled to have two additional amounts added to his adjusted cost base:

- (a) an amount of \$9,972.71 that the Appellant has described as “finder’s fee”; and

- (b) the amount of \$19,444.15 which is comprised of 11 monthly payments of the following amounts:
  - (i) estimated total common expenses: \$468.02 / month;
  - (ii) estimated realty taxes: \$235.00/ month; and
  - (iii) estimated interest on vendor take back mortgage at 6%: \$1,064.63 / month.

#### Finder's Fee

[3] The Appellant described the amount of \$9,972.71 that was paid at the direction of Saeid Sarrafian as a finder's fee. However, this amount was paid to the person from whom the Appellant acquired the rights to purchase this condominium. Therefore, it would not be a finder's fee that was paid to a third party acting as an intermediary or agent in relation to the deal, but actually paid to the person from whom the Appellant acquired the rights to purchase the condominium. Although this amount was wired to an account in the name of Mano J. Fooladi, the Appellant testified, and I accept his testimony, that this was the account information given to him by Mr. Sarrafian and therefore this amount was paid to this account for the benefit of Mr. Sarrafian.

[4] As a result, this amount should have been added to the adjusted cost base of the property as it represented a part of the cost of acquiring the rights of Mr. Sarrafian under the Agreement of Purchase and Sale with the condominium developer and hence part of the Appellant's cost of acquiring the condominium.

#### Common Expenses / Realty Taxes / Interest

[5] The developer notified the Appellant that the closing of the purchase and sale of the condominium was to be completed on August 5, 2003. However, the Appellant, at that time, was not satisfied with the conditions of the property. He testified that he stayed at the condominium for a few nights but the hallways were not completed and therefore there was a lot of dust in the hallways and there was a constant testing of the fire alarms. As a result, the Appellant returned the keys to the developer and did not return to the condominium. However, as far as the developer was concerned, the closing date was August 5, 2003, and therefore, the developer charged the Appellant the following monthly payments for the eleven

month period from August 5, 2003 to the date that the Appellant completed the closing in July of 2004:

- (a) estimated common expenses: \$468.02 / month;
- (b) estimated realty taxes: \$235.00 / month; and
- (c) estimated interest on vendor take back mortgage at 6%: \$1,064.63 / month.

[6] The Appellant stated that he was required to pay additional interest because he did not complete the closing until July, 2004.

[7] The Federal Court of Appeal in *Her Majesty the Queen v. Stirling* [1985] 1 C.T.C. 275, 85 DTC 5199, stated as follows:

As we understand it, the word 'cost' in those sections means the price that the taxpayer gave up in order to get the asset; it does not include any expense that he may have incurred in order to put himself in a position to pay that price or to keep the property afterwards.

[8] The sections that are referred to above are the sections related to the calculation of a capital gain.

[9] In this particular case, the 11 payments of \$1,767.65 each for the common expenses, realty taxes and interest on the vendor take back mortgage are all amounts that are payable for the period following the date on which the closing was scheduled to take place, i.e., all following August 5, 2003.

[10] Although the Appellant testified that, in his opinion, the condominium was not ready to be occupied at that time, he was unsuccessful in dealing with the developer and convincing the developer that the condominium was not ready to be occupied and the closing date should be postponed. As a result, the payment for these items was not payment for the purchase of the property but rather was payment for the amounts that he was required to pay in July of 2004 for common area expenses, property taxes and interest for the period that was subsequent to the scheduled closing date of August 5, 2003 and were amounts that he had to pay to put himself in a position to pay the purchase price.

[11] As a result, the amount of \$19,444.15 should not be added to the adjusted cost base of this property and hence the appeal in relation to this matter is dismissed.

Signed at Halifax, Nova Scotia this 18<sup>th</sup> day of July, 2007.

"Wyman W. Webb"

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Webb, J.

CITATION: 2007TCC419  
COURT FILE NO.: 2007-12(IT)I  
STYLE OF CAUSE: Kamran Eskandari v. The Queen  
PLACE OF HEARING: Halifax, Nova Scotia  
DATE OF HEARING: June 28, 2007  
REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb  
DATE OF JUDGMENT: July 18, 2007

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Lindsay D. Holland

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada