

Docket: 2008-855(IT)I

BETWEEN:

JANET CHOBOTAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 14-15, 2009, at Winnipeg, Manitoba

Before: The Honourable Justice D.W. Beaubier

Appearances:

Agent for the Appellant: Carmen Kardoos
Counsel for the Respondent: Melissa Danish

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed.

Signed at Saskatoon, Saskatchewan, this 19th day of May 2009.

“D.W. Beaubier”

Beaubier D.J.

Citation: 2009TCC260
Date: 20090519
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BETWEEN:

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Appellant,

and

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REASONS FOR JUDGMENT

Beaubier, D.J.

[1] This appeal pursuant to the Informal Procedure was heard at Winnipeg, Manitoba on May 14th and 15th, 2009. The Appellant called her accountant, Patrick Peters, C.M.A., her husband, William Chobotar and a real estate agent, Ernie Hawrysh, who was qualified as an expert to testify as to the fair market value of the Appellant's house in the unincorporated village of Woodridge, Manitoba. Woodridge is about 60 miles southeast of Winnipeg with a population of 100 to 200 people without natural gas, municipal water or a public sewage system.

[2] At issue are medical expenses claimed by the Appellant for her 2005 taxation year in the following amounts: \$35,291.01 for the addition of a room to their house, and sums related to medical premiums and various items relating primarily to travel to Doctors' appointments. No evidence was lead to the last items and the appeal respecting these is dismissed. That leaves the primary claim for the cost of the addition to the home to be decided.

[3] Paragraphs 17 and 18 of the Reply to the Notice of Appeal read:

17. In so assessing the Appellant for the 2005 taxation year, and in varying the assessment, the Minister assumed the following facts:

- (a) the Appellant claimed medical expenses for herself and her spouse of \$38,254 in 2005;
- (b) the Appellant was allowed medical expenses of \$2,065 in 2005;
- (c) the Appellant's spouse has Multiple Sclerosis;
- (d) the Appellant and her spouse reside in Woodridge, Manitoba ("residence");
- (e) included in the medical expenses claimed was an amount of \$35,291.01 in home renovations for an addition of a room to the residence measuring 16 feet by 20 feet which includes a bathroom;
- (f) the Appellant's renovations and addition to her residence was an alteration of a type that would typically be expected to increase the value of the dwelling;
- (g) the Appellant's renovations to her residence are of a type that would normally be incurred by persons who have normal physical development or do not have a severe and prolonged mobility impairment;
- (h) The Appellant claimed medical expenses for travel by personal vehicle of 56 kilometers from her home in Woodridge, Manitoba to the pharmacy in Steinbach, Manitoba to have prescriptions for her spouse filled;
- (i) included in the medical expenses claimed were amounts of \$318.92, for medical premiums; and
- (j) medical premiums in excess of the amounts allowed were not incurred.

B. ISSUES TO BE DECIDED

18. The issue to be decided is:

- (a) whether the Appellant is entitled to claim medical expenses in excess of the amounts allowed by the Minister, in the computation of her non-refundable tax credits for the 2005 taxation year.

[4] Assumptions 17(a) to (f) inclusive, (h) and (i) are correct. Assumption 17(j) was not refuted. Assumption 17(g) is wrong; the doorway to the addition and the new bathroom itself are wide enough for Mr. Chobotar's electric wheelchair and the toilet

and cupboards in the bathroom are designed for his access from the wheelchair. Mr. Chobotar is a big man who at all material times was confined to his wheelchair.

[5] William Chobotar was a qualified journeyman carpenter and journeyman iron worker and then a customs officer before Multiple Sclerosis disabled him. The Chobotars have two water wells on their lot from which they have installed running water. When local wood supplies for their furnace ran out, Mr. Chobotar installed a geothermic furnace which draws heat from the well water and re-circulates the cooled water into the second well – it reverses the process for cooling purposes in the summer. That heating system is common in Woodridge.

[6] Originally the house consisted of a 2-bedroom house, 32' x 24', with a basement and an additional 5' stairwell to it, with a small bathroom, either 5' x 5' or 8' x 4'. The total area was about 800 square feet. The addition in question measures 16' x 20' (about 320 square feet) with closets and a bathroom which was attached to the back of the house and caused the existing bedrooms to be reduced for the hallway to the addition and a new window to be installed in one of the bedrooms (Exhibit A-4). The Rural Municipality of Piney valued the addition at \$10,600 and increased the assessed value by \$4,770 (Exhibit A-2).

[7] The new bathroom was needed because the existing bathroom was too small for the wheelchair and for exiting the wheelchair. Its door couldn't be closed. The Chobotars' choice was a general renovation to the house and its entire plumbing system, or move Mr. Chobotar to a nursing home in Steinbach or Winnipeg, or build the addition. They felt the least disturbance would be the addition and the costs were comparable to the renovation. Thus, the Court accepts the fact that the addition was a reasonable expense incurred for medical purposes.

[8] Paragraphs 22 and 23 of the Reply set out the particulars of the Respondent's dispute respecting the addition. They read:

22. He submits that the renovation expenses incurred are of the type that would typically be expected to increase the value of the dwelling, and as such, are not deductible as a medical expense pursuant to paragraph 118.2(2)(1.2).

23. He further submits that the renovation expenses incurred would be the type of expenses incurred by persons who do not have a severe and prolonged impairment, and as such are not deductible as medical expenses pursuant to paragraph 118.2(2)(1.2).

[9] Paragraph 118.2(2)(1.2) reads:

(l.2) for reasonable expenses relating to renovations or alterations to a dwelling of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, to enable the patient to gain access to, or to be mobile or functional within, the dwelling, provided that such expenses

(i) are not of a type that would typically be expected to increase the value of the dwelling, and

(ii) are of a type that would not normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment;

[10] Mr. Hawrysh described the old bathroom as 5' x 5'. Having seen the size of Mr. Chobotar and heard his evidence from his wheelchair that the old bathroom was 5' x 8', the Court accepts the Appellant's claims that the new bathroom and bedroom were necessary and that the addition was reasonable. Moreover, referring to subparagraph 118.2(2)(l.2)(ii), Mr. Chobotar's large size is not at all abnormal for people who are confined to a wheelchair for years as he has been. Nor would the special door sizes, cupboards and bathroom fixtures be incurred by persons who do not have a severe and prolonged mobility impairment.

[11] Thus, the question remains as to whether the expenses incurred are "of a type that would typically be expected to increase the value of the dwelling" paragraph 118.2(2)(l.2)(i). That is to say, not a dwelling; but the Chobotar dwelling in Woodridge, Manitoba – "the dwelling".

[12] Woodridge is not incorporated. It is governed and taxed by the rural municipality in which it is situated (Exhibit A-2). It has no public running water, sewage or natural gas services. Each of these services must be provided by the homeowner him/herself. It has between 100 and 200 people who obtain their necessities and services from Steinbach, a town about 28 kilometres away. It is outside of the Winnipeg metropolitan area. Thus the market to sell a house in Woodridge is limited.

[13] Ernie Hawrysh spent 27 years employed by the Manitoba provincial government as an Accredited Assessor of Manitoba, assessing the entire district in a rectangle east of Winnipeg and the Red River to the U.S. and Ontario borders. He has spent 14 years since then as a Century 21 realtor in Steinbach, Manitoba, serving that area. All of these areas include the village of Woodridge. He has done about 45 appraisals per year in these areas for the last 14 years for banks, credit unions and

matrimonial court disputes. The Court qualified him as an expert qualified to give evidence as to the value of the house in question in Woodridge.

[14] On July 18, 2006 Mr. Hawrysh appraised Chobotars' house for the Credit Union in Steinbach (Exhibit A-5).

[15] In his testimony in this Court, Mr. Hawrysh estimated that the additional value to Chobotars' house created by the addition would be about 60% of the amount spent. This amounts to:

$$60\% \times \$35,000 \text{ (approx)} = \$21,000$$

Moreover, he confirmed that this increase in value would be typical for a house such as Chobotars' in Woodridge. This testimony was not contradicted.

[16] The Appellant's agent argued that this result caused the Appellant to suffer a loss on her investment of \$35,291.01 as claimed. In other words, the cost of the addition was lost, when the value of the addition was only 60% of its cost.

[17] But the *Income Tax Act* only allows the claim if the expenses are not of a type that would typically be expected to increase the value of the dwelling in Woodridge, Manitoba. The evidence is that the money spent on the addition would typically be expected to increase the value of Chobotars' house by about \$21,000.

[18] For this reason the Appellant's addition failed to meet the requirements of subparagraph 118.2(2)(l.2(i)).

[19] Therefore the appeal is dismissed in its entirety.

Signed at Saskatoon, Saskatchewan, this 19th day of May 2009.

"D.W. Beaubier"

Beaubier D.J.

CITATION: 2009TCC260

COURT FILE NO.: 2008-855(IT)I

STYLE OF CAUSE: JANET CHOBOTAR AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: May 14-15, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice D.W. Beaubier

DATE OF JUDGMENT: May 19, 2009

APPEARANCES:

Agent for the Appellant: Carmen Kardoes
Counsel for the Respondent: Melissa Danish

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