

Docket: 2009-3698(IT)I

BETWEEN:

CHERYL A. BAIRD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 17 and 18, 2010, at Ottawa, Canada.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the appellant: The appellant herself

Counsel for the Respondent: Sara Chaudhary

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* with respect to the appellant's 2005 taxation year is allowed in part, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the Reasons for Judgment attached hereto.

Signed at Ottawa, Canada, this 23rd day of June 2010.

"Patrick Boyle"

Boyle J.

CITATION: 2010 TCC 316

2009-3698(IT)I

BETWEEN:

CHERYL A. BAIRD,

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and

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**EDITED VERSION OF TRANSCRIPT
OF REASONS FOR JUDGMENT**

Let the attached edited transcript of the Reasons for Judgment delivered orally from the Bench at Ottawa, Canada, on May 18, 2010, be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive change.

Signed at Ottawa, Canada, this 23rd day of June 2010.

"Patrick Boyle"

Boyle J.

Citation: 2010 TCC 316
Date: 20100623
Docket: 2009-3698(IT)I

BETWEEN:

CHERYL A. BAIRD,

Appellant,

and

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EDITED VERSION OF TRANSCRIPT
OF REASONS FOR JUDGMENT

[delivered orally from the Bench at Ottawa, Canada, on May 18, 2010]

Boyle J.

[1] These are my oral reasons delivered in the appeal of Cheryl Baird heard this morning in Ottawa.

[2] At the opening of trial, the Crown conceded that the repairs and renovations were made in the context of Ms. Baird's rental activities during the winding-up phase and that they were completed prior to her re-occupying the house as her personal home.

[3] After hearing the evidence of Ms. Baird, the Crown indicated it accepted that the work and replacement items were made necessary because the tenant had left the property unusable. After hearing the evidence, the Crown was also prepared to concede that, for the most part, Ms. Baird had tried to account for the personal benefit aspect of the inherent upgrades in her choice of replacement appliances, equipment, finishes, and fittings.

[4] The only issue remaining in dispute is whether the personal benefit of the enhanced home value relating to the kitchen renovations have been properly reflected

in the claim, since Ms. Baird has claimed 100 percent of her kitchen cabinets, countertops, and flooring.

[5] I agree with the Crown and Ms. Baird that it is clear from the evidence that they were left by the vacating tenant in need of replacement. Ms. Baird's old kitchen floor was ceramic tile, as is her new kitchen flooring. That seems reasonable and will be allowed. The old kitchen countertops were laminate, as are her new ones; that too seems reasonable and will be allowed.

[6] A photograph of the old kitchen cabinets was put in evidence. While they are wood cabinets, they are clearly quite dated and would not be to many purchasers' taste or perhaps even mid-term tolerance, even though they were functional. I am told that the new cabinets are also solid wood of a type of hardwood, perhaps maple. No picture of the new kitchen was put in evidence. In these circumstances, I am of the opinion that only 80 percent of the kitchen cabinet costs should properly be allowed and will be issuing such an order.

[7] I am allowing Ms. Baird's appeal except as regards 20 percent of the cost of the kitchen cabinets. In the circumstances, no costs order is being made.

[8] Thank you, Ms. Baird. Thank you, Ms. Chaudhary.

Signed at Ottawa, Canada, this 23rd day of June 2010.

"Patrick Boyle"

Boyle J.

CITATION: 2010 TCC 316

COURT FILE NO.: 2009-3698(IT)I

STYLE OF CAUSE: CHERYL A. BAIRD v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Ottawa, Canada

DATES OF HEARING: May 17 and 18, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: June 23, 2010

APPEARANCES:

For the appellant: The appellant herself

Counsel for the respondent: Sara Chaudhary

ALSO PRESENT:

Court Registrar: Danielle Marcil

Court Reporter: Kathy Toy

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada