

STATE OF VERMONT  
ORANGE COUNTY, SS.

FILED  
OCT 28 1994  
ORANGE SUPERIOR COURT

CAROLYN LUMBRA and )  
JAMES LUMBRA, )  
Appellants )  
 )  
v. )  
 )  
VERMONT DEPARTMENT OF TAXES, )  
Appellee )  
 )  
PATRICIA T. MEYER, )  
PETER M. NOWLAN, and )  
LAW OFFICE OF PETER M. NOWLAN )  
Third Party Defendants )

Superior Court

Docket No. ATC-93-61  
S 225-93 Oe C

OPINION

This matter came before the court on June 15, 1994 for argument on an appeal from the November 22, 1993, determination of the Commissioner of Taxes (Commissioner) that Appellants are liable for payment of a land gains tax and underpaid property transfer tax arising from their purchase of land in 1991. Appellants submitted a brief by and through their attorney, Steven H. Atherton, Esq. Appellee submitted a brief by and through its attorney, Timothy Collins, Esq. Appellants have also asserted a negligence claim against their attorneys, which has been deferred until resolution of the appeal of the Commissioner's determination.

The facts of the case are not in dispute. On May 3, 1991, Appellants (mother and son) purchased a parcel of undeveloped land from the seller, Malcolm Calder. At the time of closing, Appellants intended that the son, James, would clear the land and install a mobile home for use as his principal residence. Upon closing, the seller incurred \$4,918.88 in land

gains tax liability under 32 V.S.A. § 10001 et seq.<sup>1</sup> Appellants incurred \$250.00 in property transfer tax liability under 32 V.S.A. § 9601 et seq.

Appellants, however, claimed the property as a principal residence and filed tax returns showing an exemption from both the land gains tax and the property transfer tax. See 32 V.S.A. §§ 10002(b) ("principal residence" exemption to land gains tax) and 9602(1) ("principal residence" exemption to property transfer tax). The exemption reduced Appellants' property transfer tax liability from \$250.00 to \$100.00, which they paid soon after closing. The election for the exemption also relieved the seller of all liability for the payment of the land gains tax at closing, although it did not eliminate the possibility that the tax would become due and payable and constitute a lien on the property.

Under the statutory scheme, Appellants could and did claim the "principal residence" exemption. This meant that the relief from obligation for the tax was subject to the condition that a residence "be completed and occupied within two years of the date of transfer[.]" 32 V.S.A. § 10002(b). If, having made the election to use the exemption, Appellants failed to meet this condition, then the land gains tax would become due and payable, from

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<sup>1</sup> The Vermont land gains tax imposes tax liability on sellers of land who have held the land for less than six years and who sell the land at a profit. 32 V.S.A. § 10003. The regulating purpose of the tax is to deter short-term land speculation that could result in rapid development and the loss of Vermont's rural and agricultural characteristics. Mary Miles Teachout, Note, 49 Wash. L. R. 1159 (1974). Revenues from the tax provide funding for the property tax rebate program, established at the same time as the land gains tax, to relieve residential property owners from financial pressure to sell due to rising property taxes. Public Acts 1973, No. 81. 32 VSA § 5976. In the case at bar, the seller had held the land for twenty months and had sold it to Appellants at a 90% profit.

them.<sup>2</sup> Id. Once the exemption is claimed, liability for the land gains tax shifts from the seller to the purchaser, with the land itself serving as security for the eventual payment of the tax if the conditions of the exemption are not met. 32 V.S.A. § 10006. Buyers have the opportunity to protect themselves by requiring either that the tax be paid or that a portion of the purchase funds be held in escrow for two years to satisfy the tax liability in the event that they are not able to fulfill the conditions of the exemption.

Appellants commenced site preparation in 1991 for the planned installation of the mobile home. By the following summer, however, Appellant James Lumbra had become engaged to be married and had abandoned his plan to install a mobile home in favor of a plan to build a permanent residential structure on the site. Appellants adjusted their site preparation activities accordingly, and by May 3, 1993, two years after the date of transfer, appellants had cleared the land for the house site, installed a driveway and culvert, completed the foundation walls, excavated for and installed the main electrical connection for the property, and drilled a well. Appellants had not, however, completed and occupied a residence on the property as of May 3, 1993.

On May 18, 1993, the Department of Taxes (Department) notified Appellants by mail to remind them of their conditional tax exemptions and to inquire whether the statutory conditions had been met. Appellants responded that they "[e]xpect[ed] home to be finished by July '93 and to move in by

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<sup>2</sup> 32 V.S.A. §§ 10002(b) by its terms applies only to Appellants' exemption from the land gains tax. However, the property transfer tax act incorporates the definition of "principal residence" as used in the land gains tax act and thus imposes the same condition for property transfer tax purposes. See 32 V.S.A. §§ 9601(11) and 10002a(c).

August '93 if not before." Based on this response, the Department, on June 14, 1993, sent Appellants a bill for \$5,127.10 in taxes due.<sup>3</sup>

Appellants appealed the assessment and the Department held a formal hearing on October 12, 1993. On November 22, 1993, the Commissioner issued a determination affirming the Department's assessment.

Appellants claim the Commissioner's determination is in error on three grounds. First, they claim that the Commissioner erred in strictly construing the "principal residence" exemption to the land gains tax, since such construction, as applied to Appellants, conflicts with the intent of the legislature in enacting the statute. Second, they claim that the "principal residence" exemption to the property transfer tax, although found within a revenue act otherwise requiring strict construction, should be construed in identical fashion to the land gains tax exemption, because the definition of "principal residence" is identical in both statutes. Third, they claim that even if Appellants were in technical violation of the statutes, the Commissioner should permit Appellants the benefit of the exemptions under the doctrine of "substantial compliance."

Appellee argues that the Commissioner properly construed the two tax statutes strictly, and that since Appellants failed to satisfy the statutory conditions within the specified time period, the Commissioner's determination must be affirmed. Appellee further argues that the doctrine of "substantial compliance" is inapplicable here because a specific time requirement was simply not met.

33 V.S.A. § 10002(b) sets forth the condition under which Appellants

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<sup>3</sup> This amount represents \$250.00 in property transfer taxes plus \$31.17 in interest (and a credit for \$100.00 paid) and \$4,918.88 in land gains taxes plus \$27.05 in interest. 32 V.S.A. §§ 9612 and 10007(e).

claimed their tax exemptions:

If, at the time of transfer, there is not on the land a dwelling completed and fit for occupancy as the purchaser's principal residence, such residence shall be completed and occupied within two years of the date of transfer, or the tax imposed by this statute shall then become due and payable.

33 V.S.A. § 10002(b).

When construing a statute, the court's primary objective is to effectuate the intent of the legislature. Lincoln Street, Inc. v. Town of Springfield, 159 Vt. 181, 184 (1992). The court begins with the presumption that the legislature intended the statutory language to carry its plain, ordinary meaning. Burlington Elec. Dept. v. Vt. Dept. of Taxes, 154 Vt. 332, 335 (1990). A tax exemption statute must be strictly construed against the party claiming the exemption, but also reasonably construed so as not to defeat its purpose. Lincoln Street, Inc., 159 Vt. at 185.

Appellants do not contend that 32 V.S.A. § 10002(b) is ambiguous or that a strict reading of the language would not create tax liability under the undisputed facts of this case. Rather, they argue that a strict construction of this provision, as applied to purchasers in Appellants' situation, leads to a result contrary to the intent of the legislature in enacting the land gains tax act. Appellants assert that they are "the very class of persons that the land gains tax is designed to help." Brief for Appellants at 7-8. They argue that strict construction should give way to a "more reasonable construction" that permits a waiver or extension of the deadline when necessary to accomplish the statute's legislative end. They urge this court to carve out a judicial exception to the deadline for taxpayers similarly situated to Appellants.

While Appellants present a highly sympathetic situation, the court notes that the magnitude of the tax liability incurred here resulted from the fact that seller had held the property in question for 20 months and sold the

property to Appellants at a 90% profit. This is precisely the type of practice the land gains tax was enacted to deter. By claiming the "principal residence" exception, Appellants wholly relieved the seller of this tax liability and would have avoided the liability themselves if they had satisfied the statutory deadline.

Appellants' argument is based on the erroneous premise that there is only one legislative purpose behind the land gains tax legislation, and that is to help residential homebuyers. As with many statutes, and particularly those involving taxes with a regulatory goal, there are multiple purposes. The overriding policy purpose that led to enactment in 1973 was to deter short-term speculation that could result in rapid development and the sudden loss of Vermont's rural landscape. See Teachout, 49 Wash. L. R. at 1161-62. The strategy for doing this is a tax mechanism that is designed to generate revenue for the property tax rebate program, which itself has a related purpose of relieving residential property owners from financial pressure to sell due to development-based property tax liability beyond their income level. Property tax relief for rural, low-income homeowners is therefore a related policy purpose. The exemptions demonstrate that a further purpose is to permit short-term profitable land speculation to the extent that it creates immediate residential housing opportunities for Vermont residents. Another purpose that can be discerned from the provisions of the tax is to promote simplicity and efficiency in the administration of the tax by establishing clear time requirements and standards applicable to the payment and collection of the tax and the applicability of exemptions. There are no doubt further policies and expressions of legislative intent embedded in the land gains tax statutes.

This review of the various different and overlapping policies signifying "Legislative intent" illustrates the difficulty of adopting an interpretation

of the statute that would require the Commissioner to examine each exemption case in which the statutory standards were not met to determine whether or not strict construction conflicts with "the intent of the legislature."

Far from furthering the intent of the legislature in enacting the land gains tax, such a judicial requirement would create an administrative nightmare for the Department of Taxes in administering the revenue-gathering functions of the tax law. Delays in building construction occur for a multitude of reasons, and land purchasers in Appellants' position would have no disincentive to seek extension or exemption from the Department to accommodate their individual circumstances in home building. The legislature has already decided that two years is enough time to build and occupy a home and has created a bright-line test. This statutory deadline serves a cautionary purpose to purchasers of land in Vermont to be certain of their plans and resources before voluntarily assuming the risk of taking on the tax liability of sellers who reap windfall profits. It would be inappropriate to add a judicial requirement that the Department review each set of facts on a case-by-case basis to determine whether the intent of the legislation had been met.

Appellants further contend that the "principal residence" exemption to the property transfer tax should be construed identically to the "principal residence" exemption to the land gains tax. Appellants point out that the property transfer tax exemption, 32 V.S.A. § 9601(11), wholly incorporates the definition of "principal residence" used in the land gains tax, including the two-year deadline for undeveloped property. See 32 V.S.A. §§ 10002a(c), 10002(b). Appellants urge that both exemptions be construed liberally to allow an exception from the deadline for taxpayers in Appellants' position.

The court's prior determination of the construction to be given to 32 V.S.A. § 10002(b) resolves Appellants' claim for relief from the property

transfer tax. Even Appellants do not dispute that the property transfer tax act is a revenue act, exemptions from which must be strictly construed. Lincoln Street, Inc., 159 Vt. at 185. Appellants are liable for the property transfer tax and interest.

Finally, Appellants contend that they have "substantially complied" with the statutory deadline and so should be granted the claimed exemptions under the Vermont Supreme Court's holding in Chamberlin v. Dept. of Taxes, 4 Vt.L.W. at 295. In Chamberlin, the Court permitted taxpayers to avoid liability for the land gains tax even though they had missed a statutory deadline. Id. Chamberlin, however, involved another exemption from the land gains tax, the so-called "builder's exemption," 32 V.S.A. § 10002(f). Under that exception, a purchaser of land is relieved from the seller's land gains tax liability if the seller had completed construction of a dwelling on the property within two years of the seller's prior purchase and had sold it to the now-purchaser within three years of that prior purchase. Id. The Court in Chamberlin found "substantial compliance" on the part of the purchaser because, although seller had not completed construction of a dwelling at the time of the transfer to purchaser, seller had completed all site preparations prerequisite to the purchaser's installation of a modular home on the property, the contract for the erection of the modular home was in place in the purchaser's name and the erection was completed within a few days of the closing, and the modular home was erected within the time frame in which the seller was required to construct a home. 4 Vt. L.W. at 295. The seller and purchaser acting together met the responsibilities of both of them within the required time frame, and all purposes of the land gains law were fulfilled.

This is not the situation presented in the instant case. Here, Appellants failed to complete and occupy a residence within two years of the

property transfer. They failed to fulfill the conditions requisite to full exemption from the tax for which they had voluntarily assumed responsibility. While their plight as individuals is lamentable under the circumstances, the court's responsibility is to review the Commissioner's decision in light of all legislative purposes and in a manner that will best promote the legislative purpose as the law is administered and enforced over time. The judicial creation of a "substantial compliance" test would be inconsistent with such a result.

Based on the foregoing, it is ORDERED;

The Determination of the State of Vermont Tax Commissioner is AFFIRMED.

DATED October 25, 1994, at Chelsea, Vermont.

Mary Miles Teachout  
Mary Miles Teachout  
Presiding Judge