



TC02560

Appeal number: TC/2012/06966

*CAPITAL GAINS TAX – principal private residence – separation – had
appellant “resided” at property – no – appeal dismissed – section 222
Taxation of Chargeable Gains Act 1992*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SUSAN BRADLEY

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE NICHOLAS ALEKSANDER
 JULIAN STAFFORD**

Sitting in public at Cambridge on 12 February 2013

J Stirrat of Hardcastle Burton, chartered accountants, for the Appellant

A Hall, an officer of HMRC, for the Respondents

DECISION

1. This appeal relates to the capital gain arising on the disposal by the Appellant,
5 Mrs Susan Bradley of the house at 124 Exning Road on 16 January 2009.

2. At the hearing, Mrs Bradley was represented by Mr Stirrat of Hardcastle
Burton, chartered accountants, and HMRC were represented by Mr Hall. We heard
evidence from Mrs Bradley and in addition a bundle of documents was presented as
documentary evidence. Mr Hall also produced at the hearing a copy of an Equifax
10 credit reference report relating to Mrs Bradley and, as Mr Stirrat did not object to it
being presented as evidence, we admitted it.

Background Facts.

3. Mrs Bradley has at all relevant times been married to Mr Bradley. Until August
2007 they lived together at 118 Ashley Road. The property at Ashley Road was
15 owned by them jointly. In addition Mrs Bradley owned 124 Exning Road, which was
a semi-detached house, and 68 Weston Way which was a small “bedsit” type flat.
Both Exning Road and Weston Way were normally let to tenants.

4. In the year or so leading up to August 2007 matters had been getting worse
between Mr and Mrs Bradley, and in August 2007 she left Ashley Road. As the flat
20 at Weston Way was vacant, she moved there. When the tenancy at Exning Road
ended, she moved from Weston Way to Exning Road.

5. Mrs Bradley told us that when she moved out of Ashley Road, her intentions
were to separate permanently from her husband, with a view to obtaining a divorce
following two years separation. She consulted a solicitor at some point to clarify her
25 rights, but took no further steps to formalise her status. She worked at an estate
agency and at a stud farm, and earned sufficient money to be able to keep herself, and
so did not need to seek any financial support from her husband. She remained on
civil terms with her husband, and visited Ashley Road to collect post addressed to her.
Her youngest daughter (who was aged around 16 at the time) continued to live at
30 Ashley Road, and she brought post over when she came to see Mrs Bradley.
Although she had a joint bank account with her husband, she took no steps to sever
the account. She also had two other bank accounts in her own name (one for the
property rental business and one for her personal money), and she used these accounts
for her day-to-day needs.

6. Mrs Bradley was suffering from depression at the time, and had been prescribed
35 anti-depressants by her doctor. She was not functioning particularly well, and
therefore did not change the address on her bank accounts or utilities. She did
however claim single occupier relief for council tax, first at Weston Way and then at
Exning Road – and copies of the council tax bills for Weston Way were included in
40 the bundle.

7. In April 2008, the tenancy at Exning Road expired, and in the first week of April 2008, Mrs Bradley moved out of Weston Way and into Exning Road. As the property had been tenanted, the decorative state of the property was poor, and Mrs Bradley repainted it, and also undertook some improvements in the kitchen. She bought a new cooker and some carpets, and generally made it more a “home”.

8. Also included in the bundle of documents was a letter from Pocock and Shaw, estate agents, dated 20 March 2008, confirming Mrs Bradley’s instructions to them to place Exning Road on the market for sale. The market was very poor at the time and no offers were forthcoming – but the property was never taken off the market, even though Mrs Bradley told us that she was resigned to living permanently at Exning Road.

9. During the autumn of 2008, Mr and Mrs Bradley became reconciled, and Mrs Bradley moved back to Ashley Road in November 2008.

10. Exning Road was sold in January 2009.

15 **The Law**

11. The relevant legislation is contained in section 222 Taxation of Chargeable Gains Act 1992 (“TCGA”), which provides as follows:

20 “This section [which pursuant to section 223 TCGA provides relief from CGT] applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in- --- (a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, ...”

12. Section 222(6) TCGA provides that in the case of an individual living with his or her spouse, there can only be one residence or main residence for both, so long as they are living together. “Living together” is defined in section 1011, Income Tax Act 2007. The effect of section 1011 is that Mr and Mrs Bradley will not be treated as living together if “they are in fact separated in circumstances in which the separation is likely to be permanent” (the other provisions in section 1011 do not apply in this case).

30 13. We are satisfied that when Mrs Bradley left Ashley Road in August 2007, her intention was to separate permanently from her husband, and that she ultimately intended to divorce him following two years’ separation.

35 14. However, the mere fact that Mr and Mrs Bradley had separated permanently is not sufficient for the Exning Road property to qualify for the tax relief. The property must also have been Mrs Bradley’s only or main residence.

15. The leading case on the meaning of “residence” in this context is the decision of the Court of Appeal in *Goodwin v Curtis* (1998) 70 TC 478. The taxpayer in that case moved into the property in question as a stop-gap measure pending finding somewhere else to live. Millett LJ in his judgment says (at 510):

“Temporary occupation at an address does not make a man resident there. The question whether the occupation is sufficient to make him resident is one of fact and degree for the Commissioners to decide.

5 The substance of the Commissioners’ finding taken as a whole, in my judgment, is that the nature, quality, length and circumstances of the taxpayer’s occupation of the [property] did not make his occupation qualify as residence.”

16. Schiemann LJ said in his judgment (at 510):

10 “... in order to qualify for the Relief a taxpayer must provide some evidence that his continuity in the property showed some degree of permanence, some degree of continuity or some expectation of continuity.”

15 17. We find that Mrs Bradley did not occupy Exning Road as her residence. At the time she moved into Exning Road she had already placed it on the market, and she never withdrew her instructions to the estate agents. We have no doubt that if someone had offered her the asking price for the property, she would have sold it. We find that she never intended to live permanently at Exning Road; it was always only ever going to be a temporary home, and therefore it was never her residence.

20 18. We are supported in this view by the decision of the First Tier-tribunal in *Metcalf v HMRC* [2010] UKFTT 495(TC). In that case the tribunal held that the taxpayer had never occupied a property as his residence in circumstances where he had placed it onto the market for sale within a few weeks of acquiring the property.

19. We therefore find that the sale of Exning Road did not qualify for relief from capital gains tax as a principal private residence. We therefore dismiss the appeal.

25 20. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to
30 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

35 **NICHOLAS ALEKSANDER**
TRIBUNAL JUDGE

RELEASE DATE: 19 February 2013