{2015}UKFTT 0478 (TC)

# TC04644

**Appeal number: TC/2014/05226**

***CAPITAL GAINS TAX* – private residence relief – sections 222 and 223 Taxation of Chargeable Gains Act 1992 – whether property was the Appellant's only or main residence – held yes – appeal allowed**

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**RICHARD JAMES DUTTON-FORSHAW** **Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ROBIN VOS**
**CHRISTOPHER JENKINS**

**Sitting in public at Barrack Block, 83-85 London Road, Southampton on Wednesday 19 August 2015**

**Mr Charles Baker of Underwood Barron, Accountants for the Appellant**
**Ms Gill Carwardine, Tribunals Caseworker of HM Revenue and Customs, for the Respondents**

DECISION

## Introduction

1. As long ago as 1928, Viscount Cave, LC made the comment (in *Levene v IRC* [1928] AC 217 at 222) that

> "The word "reside" is a familiar English word"

Whilst that may be true, the question as to when occupation becomes residence for the purposes of capital gains tax private residence relief has produced a steady stream of cases. This is one such case.

2. On 1 April 2014, the Respondents ("HMRC") sent Mr Dutton-Forshaw a notice of assessment for the year ended 5 April 2010 assessing capital gains tax of £38,970.36 in respect of the disposal by Mr Dutton-Forshaw of his flat at 32 Cornwall Gardens, London, SW7.

3. Mr Dutton-Forshaw appeals against that assessment on the basis that the gain is not chargeable as it qualifies for private residence relief under s 222 and s 223 Taxation of Chargeable Gains Act 1992 ("TCGA 1992") and lettings relief under s 223 TCGA 1992.

4. It is common ground that, if private residence relief applies, lettings relief will also apply so that the gain is fully relieved and that if private residence relief does not apply, lettings relief is also not available.

5. The assessment is a discovery assessment made under the provisions of s 29 Taxes Management Act 1970. There is no suggestion that the assessment was defective in any way.

## Issue

6. The only issue in this case is whether 32 Cornwall Gardens was Mr Dutton-Forshaw's residence for the purposes of s 222(1) TCGA 1992.

7. HMRC did not seek to argue that, even if the Tribunal were to find that 32 Cornwall Gardens was Mr Dutton-Forshaw's residence, it was not his only or main residence, as required by s 222(1) TCGA 1992.

## Evidence

8. We were provided with two bundles of correspondence and documents. We also heard oral evidence from Mr Dutton-Forshaw and his former wife, Ms Claire Forshaw.

*Mr Dutton-Forshaw's properties*

9. Mr Dutton-Forshaw owned a number of properties in London and Lymington which were referred to in the proceedings. It is convenient to list them here:

| **Property** | **Bought** | **Sold** | **Occupied** | **Let** |
|---|---|---|---|---|
| Wilna Road, London | 1994 | 1997 | 1994-1997 | |
| Nansen Road, London | 1997 | 1999 | 1997-1999 | |
| Church Lane, Lymington | 1995 | 1996 | 1995-1996 | |
| Three Gables, Lymingon | 1996 | 1999 | 1996-1999 | |
| Chequers Green, Lymington | 1999 | 2002 | 1999-2002 | |
| Chequers Cottage, Lymington | 2002 | March 2006 | 2002 – March 2006 | |
| Petersham Place, London | 22 June 2005 | Still owned | June 2005-August 2006 | August 2006 onwards |
| Upper Pennington House (originally known as Yondy Cottage) | Completion - 24 March 2006 | 2012 | 27 September 2006 – 2012 | |
| 32 Cornwall Gardens | Completion - 21 June 2006 | 30 November 2009 | 5 August 2006 – 26 September 2006 | December 2006 – November 2009 |

10. In addition to the properties mentioned above which Mr Dutton-Forshaw owned, he also had the use of a number of properties in London owned by his company, Puzzle Pub Company Limited after the sale of Nansen Road and before the purchase of Petersham Place.

11. During the period of approximately March 2006 – June 2006, Mr Dutton-Forshaw rented the top floor of a house in All Saints Road, Lymington owned by a friend of his.

12. As well as all of these properties, Mr Dutton-Forshaw sometimes stayed on his boat, moored in Lymington.

13. In addition to these properties which Mr Dutton-Forshaw at some time occupied, he also owned three properties in London acquired between 2005 – 2007 which he never occupied and which were rented to third parties. Two of them were commercial properties.

*Additional facts*

14. Having met his former wife, Ms Claire Forshaw, in the course of his business with the company he founded, the Puzzle Pub Company Limited, Mr Dutton-Forshaw and his former wife started living together at Wilna Road in 1995. They stayed there until 1997 when Wilna Road was sold and Nansen Road was purchased. Mr Dutton-Forshaw and Ms Forshaw were married in 1997 after the move to Nansen Road.

15. During the early years of the Puzzle Pub Company, work had been all consuming for Mr Dutton-Forshaw. He took no days off. Ms Forshaw therefore suggested that they should buy a second property somewhere outside London where he could have some time off. This was the reason for the purchase of Church Lane in Lymington in 1995 and the subsequent purchase of Three Gables in place of Church Lane in 1996.

16. Mr Dutton-Forshaw and Ms Forshaw had a daughter, Emily who was born in London on 20 October 1999. At the time, London was still their main home. Three Gables in Lymington was where they went to relax.

17. Ms Forshaw however felt very strongly that she did not want Emily to be brought up in London and, as a result of this, both Nansen Road and Three Gables were sold and the proceeds were used to purchase Chequers Green in Lymington which then became the family home.

18. Mr Dutton-Forshaw continued to spend significant amounts of time in London due to the demands of his business. He stayed in various flats owned by the company. He would be away most of the week and, as a result of the late licences held by the company, he would often only get back to Lymington at 5am on a Saturday or Sunday. He would spend most of Sunday reviewing the takings of the various pubs owned by the company.

19. Mr Dutton-Forshaw and Ms Forshaw were divorced in 2002. We were provided with an extract from the divorce petition which states that:

> "Since the birth of the child of the family the respondent [i.e. Mr Dutton-Forshaw] has spent more and more time away from the petitioner overnight, staying in his company flat in London, to the petitioner's upset."

20. Following the divorce, Chequers Green was sold and Mr Dutton-Forshaw purchased and moved into Chequers Cottage in Lymington. Ms Forshaw acquired

and moved into another property in Lymington (Woodside Avenue) which was about five minutes away from Chequers Cottage.

21. Very shortly after the divorce, Mr Dutton-Forshaw struck up a relationship with a lady called Miranda, based in Lymington who had three children of her own.

22. Mr Dutton-Forshaw continued to spend significant amounts of time in London staying at the flats owned by his company until he bought his own flat at Petersham Place in June 2005. In June 2007, Mr Dutton-Forshaw elected retrospectively for Petersham Place to be treated as his main residence for capital gains tax purposes from the date of purchase in June 2005.

23. Mr Dutton-Forshaw and Ms Forshaw continued to get on well. They were flexible about the arrangements for looking after Emily and both of them were happy not to stick to the letter of the court order dealing with this which was made in connection with the divorce.

24. Sometime during 2005, Miranda started putting pressure on Mr Dutton-Forshaw to buy a house together. Mr Dutton-Forshaw eventually agreed and in December 2005 exchanged contracts to buy what became known as Upper Pennington House. Completion was to take place in March 2006. However, before completion took place, Mr Dutton-Forshaw's relationship with Miranda came to an end.

25. Following the break-up of the relationship, Mr Dutton-Forshaw decided to base himself in London. In his evidence, he described Lymington as "nappy valley". He was single and wanted to have some fun. He joined a dating agency, Drawing Down the Moon, in High Street Kensington as he was keen to meet somebody local.

26. Mr Dutton-Forshaw decided to rent out Petersham Place as it would command a significant rent and so he started looking for a new flat in London. In March 2006 he found the flat at Cornwall Gardens. Although this was a one bedroom flat, there was potential to create a second bedroom where Emily could stay when she spent the weekend with him.

27. Whilst all of this was going on, Ms Forshaw developed a relationship with a man she met in Cape Town called Simon Schofield. The relationship quickly became serious. Mr Schofield is a yacht designer. Shortly after Ms Forshaw met him, he moved to Spain as a result of his involvement in the Americas Cup, although the expectation was that this would be temporary and that he would in due course come and live in the UK. Ms Forshaw and Mr Schofield became engaged soon after they met and were married in June 2006. Ms Forshaw and Mr Schofield had a son in September 2006.

28. At some time during this period, Ms Forshaw started to discuss with Mr Dutton-Forshaw the possibility of her moving to Spain and taking Emily with her. Emily loved Spain and there was a British school in Valencia which her best friend attended.

29. Mr Dutton-Forshaw was very much against the idea of Emily living with Ms Forshaw and Mr Schofield in Spain, partly because he did not want to be separated

from her and partly because he was concerned that Ms Forshaw had been unwell and that this might make it difficult for her to look after Emily properly. He was therefore faced with the possibility either that Emily would move to Spain with her mother or that he would have to move back to Lymington to look after her.

30. There was some inconsistency in the evidence as to exactly when Ms Forshaw and Mr Dutton-Forshaw started discussing the possibility of Ms Forshaw and Emily moving to Spain. It had been suggested in correspondence with HMRC prior to the hearing that this was only in September 2006. Ms Forshaw's evidence at the hearing was that this might have been in March 2006. We accept Ms Forshaw's evidence on this. By that time, Ms Forshaw and Mr Schofield were engaged, Ms Forshaw was pregnant with Mr Schofield's child and Mr Schofield was living in Spain where he would have to stay for some time as a result of his obligations in relation to the Americas Cup. Ms Forshaw gave evidence that she and Mr Dutton-Forshaw spoke frequently and it is in our view inconceivable that they would not have discussed this important topic prior to September 2006.

31. As a result of the break-up of his relationship with Miranda, Mr Dutton-Forshaw did not know what to do with Upper Pennington House. As he had decided to base himself in London, he had it in mind that he would sell the property. Following completion of the purchase in March 2006, the property was renovated. Most of the works were completed by 18 June 2006 although some more minor work, particularly on the garden, continued after this time. The property was however never put on the market for sale.

32. The sale of Mr Dutton-Forshaw's previous property in Lymington, Chequers Cottage was completed at the same time as the purchase of Upper Pennington House. At this time, Mr Dutton-Forshaw arranged for his bank statements and other formal correspondence to be sent to Upper Pennington House although it was only in 2007 that Mr Dutton-Forshaw notified HMRC that his address had changed from Chequers Cottage to Upper Pennington House.

33. With effect from 1 March 2006, Mr Dutton-Forshaw arranged for the electoral roll at the New Forest District Council to be amended to show his address as Yondy Cottage in Lymington. This was amended again with effect from 2 May 2006 to reflect the change of the name of Yondy Cottage to Upper Pennington House.

34. We had no documentary evidence as to whether Mr Dutton-Forshaw was registered on the electoral roll in Kensington & Chelsea where Cornwall Gardens was located. Mr Dutton-Forshaw did not have any clear recollection as to whether he had done this. On the balance of probabilities, we find that he did not.

35. After the sale of Chequers Cottage, Mr Dutton-Forshaw needed somewhere to stay in Lymington when he was looking after Emily. He therefore rented the top floor of a friend's house in All Saints Road. In June 2006, the friend wanted the top floor of his house back. After that, Mr Dutton-Forshaw lived on his boat when he visited Lymington.

36. Mr Dutton-Forshaw's evidence is that he did not spend a night at Upper Pennington House until 27 September 2006. Some doubt was cast on this by an email dated 25 July 2006 in which Mr Dutton-Forshaw asks the company which had previously held the keys for Petersham Place to send those keys by registered post to Upper Pennington House. Mr Dutton-Forshaw's explanation or this was that there would always be somebody at Upper Pennington House as the work to that house continued whereas, there would often not be anybody at Petersham Place/Cornwall Gardens as Mr Dutton-Forshaw would be out working. We accept this explanation and we accept Mr Dutton-Forshaw's evidence that he did not spend a night at Upper Pennington House until 27 September 2006.

37. In July 2006, Mr Dutton-Forshaw bought a second hand Mercedes car. This was registered in his name at Cornwall Gardens. At the end of July 2006 Mr Dutton-Forshaw applied for and obtained a parking permit from the Royal Borough of Kensington & Chelsea. One of the conditions for obtaining a parking permit is that the individual's main, permanent home must be in the borough. Mr Dutton-Forshaw gave evidence that he surrendered the permit in September 2006 when he moved from Cornwall Gardens to Upper Pennington House. We have no evidence to the contrary and so we accept this.

38. After moving to Upper Pennington House in September 2006, Mr Dutton-Forshaw lived in Lymington full-time. He no longer maintained a flat in London and Cornwall Gardens was rented out.

*What is a "residence"*

39. Section 222 TCGA 1992 is headed "Relief on disposal of private residence". The section applies to the disposal of a dwelling house which is, or has at any time in an individual's period of ownership, been his only or main residence. Unfortunately, TCGA 1992 does not provide any guidance as to the circumstances in which a dwelling house should be treated as a residence.

40. The issue was addressed by the Court of Appeal in *Goodwin v Curtis* [1998] STC 475. The leading judgment was given by Millet LJ. There are a number of general principles which can be drawn from this judgment:

(1) The word "reside" is an ordinary word of the English language.

(2) It is necessary to look at the nature, quality, length and circumstances of a taxpayer's occupation of a property in deciding whether it qualifies as a residence.

(3) Temporary occupation at an address does not make a person resident there.

(4) There must be some degree of continuity or some expectation of continuity to turn mere occupation into residence.

(5) The question of when occupation becomes residence is one of fact and degree for the Tribunal to decide.

41. These are the principles which have been applied by the First Tier Tribunal in the numerous cases which have addressed this question over the last few years. In particular, there has been significant emphasis on the need for some degree of continuity or some expectation of continuity to turn mere occupation into residence.

42. This requirement is derived from the decision in *Fox v Stirk and Bristol Electoral Registration Officer* [1970] 3 All ER 7 which in turn used as its starting point the well-known statement of Viscount Cave LC in *Levene v Inland Revenue Commissioners* [1928] AC 217 at 222 that:

> "the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'".

43. Both of those cases were dealing with a different statutory context to s 222 TCGA 1992. The question in *Levene* was whether an individual was resident in the UK for tax purposes. The House of Lords held that he was even though, when he visited the UK, he stayed in hotels, none of which would be described as a "residence".

44. The question in *Fox v Stirk* was whether students at Bristol and Cambridge Universities became resident in those cities when living in their halls of residence or colleges. It therefore has more similarities to the question in s 222 TCGA 1992 than *Levene* as the decision depended on whether the occupation of the university accommodation amounted to residence. Widgery LJ said (at 13) that:

> "Some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence."

However, in the same breath, he said:

> "Sometimes the difference between a resident and a mere visitor is clear for all to see"

and he went on to say that:

> "I have no doubt that the question 'resident or visitor?' is a question which would admirably be dealt with by a jury if it ever came within their jurisdiction; and it is on that sort of common sense jury basis that the distinction has to be made in the more difficult cases."

45. Put in this way (i.e. distinguishing a resident from a visitor) it seems clear that the question of permanence or continuity should not be overstated. It is simply one of the factors to be taken into account in weighing up whether the property in question is a "residence". This is consistent with the comment of Millet J (as he then was) in *Moore v Thompson* [1986] STC 170 at 176 that:

> "It is clear that the commissioners were alive to the fact that even occasional or short residence in a place can make that a residence; but the question was one of fact and degree for the commissioners."

46. This was recognised by the First Tier Tribunal in *John Regan and Sylvia Regan v HMRC* [2012] UK FTT 569 at 58 where, citing the comment of Millet J in *Moore v Thompson*, the Tribunal said:

> "In our view, the need for permanence or continuity should not be overstated."

47. In our view, that is the correct approach and is consistent with the decision in *Goodwin v Curtis*. In that case, it was submitted on behalf of the taxpayer that the requirement for permanence or continuity was the wrong test. Millet LJ's response (at 480e) was to refer back to Viscount Cave LC's speech in *Levene* and to conclude that:

> "The word 'reside' is an ordinary word of the English language and is eminently suitable for lay Tribunals such as the General Commissioners to apply."

He did not refer specifically in this context to the requirement for permanence, continuity or expectation of continuity. What in our view he was trying to explain was that the question as to whether a property is a person's residence is a balancing exercise for the First Tier Tribunal to decide on the basis of all of the evidence and that the degree of permanence or continuity required will vary depending on the other circumstances.

*Was Cornwall Gardens Mr Dutton-Forshaw's only or main residence?*

48. Mr Baker on behalf of Mr Dutton-Forshaw based his submissions principally on the comments of Lord Denning MR and Widgery LJ in *Fox v Stirk* (see above). In particular, he accepted that there must be "some assumption of permanence, some degree of continuity, some expectation of continuity" to turn occupation into residence. This, in the words of Widgery LJ (at 13) involved "to some extent casting one's mind into the future to see what it is likely to hold". He made the point that a university student would only have been in occupation for a few days at the qualifying date for electoral registration (10 October) and that those who dropped out of their course prematurely would not be retrospectively removed from the register. It was not therefore possible he said to use hindsight coupled with an actual short period of occupation in deciding whether somebody was resident in a particular place.

49. On that basis, Mr Baker submitted that we should therefore focus on Mr Dutton-Forshaw's intention when he moved into Cornwall Gardens at the beginning of August 2006 and not on the length of his actual period of occupation.

50. Mr Baker also invited us to ask ourselves where Mr Dutton-Forshaw had his home. This was based on Widgery LJ's comment (at 13) in *Fox v Stirk* that:

> "I think it nevertheless follows that a man cannot be said to reside in a particular place unless in the ordinary sense of the word one can say that for the time being he is making his home in that place."

51. Mr Baker suggested that it was clear that in the summer of 2006, Mr Dutton-Forshaw's home, in the wider sense, was undoubtedly in London for the following reasons:

(1) He had lived in London for the last 20 years (albeit that he had also lived in Lymington for the last ten years).

(2) It was where he had his business.

(3) It was where he was building his property portfolio.

(4) It was where he went to church (letters were provided from St Barnabas' Church in Clapham Junction that he had attended that church from 1996 and continued to do so in 2006).

(5) It was where he was trying to find a new wife.

(6) It was where he was thinking of becoming re-involved in politics. We were told that Mr Dutton-Forshaw had studied politics and had in the past been involved with the Conservative party. He had contacted the Conservative party in Kensington & Chelsea and had attended a fund-raising drinks event with the local MP, Malcolm Rifkind whilst resident at Cornwall Gardens.

52. Mr Baker then went on to suggest that, in the narrower sense, Mr Dutton-Forshaw's home was at Cornwall Gardens in the summer of 2006. He referred to the following in support of that submission:

(1) It was bought to replace his previous main residence at Petersham Place which was too large and expensive and because he wanted to live in a property more suited to his new, single circumstances.

(2) He declared his intention to the local authority in connection with his car-parking permit.

(3) He declared his occupation to the local authority for council tax purposes.

(4) He declared his intention to his former wife, Ms Forshaw.

(5) There was nowhere else that was his home. In particular, he did not reside in Upper Pennington House until 27 September 2006.

(6) Although Mr Dutton-Forshaw's period of occupation of Cornwall Gardens was relatively short, the only reason for this, argued Mr Baker, was Ms Forshaw's decision to move to Spain to be with her new husband and Mr Dutton-Forshaw's unwillingness for Emily to go and live in Spain with her – i.e. it was brought about by unexpected circumstances beyond Mr Dutton-Forshaw's control.

53. Mr Baker sought to distinguish a number of cases mentioned by HMRC.

(1) In *Goodwin v Curtis*, there was ample evidence that the taxpayer only ever intended to use the house in question as temporary accommodation. Indeed, the house had been put up for sale before the taxpayer had moved in.

(2) It was clear that the Tribunal in *Mr Paul Favell v HMRC* [2010] UK FTT 360 did not believe that the taxpayer had ever occupied the property.

(3) In *Wade Llewellyn v HMRC* [2013] UK FTT 323 there was another property which was the taxpayer's home. The taxpayer had lived for ten years in that other property with his partner. The relationship broke down and the taxpayer "camped out" in a second property. He returned to the original property most days to pick up his post and still considered it to be his home. The relationship recovered and he moved back in with his partner at the original house. The Tribunal held that, in these circumstances, the second property was not a "residence".

54. Mr Baker drew our attention to the case of *Mr David Morgan v HMRC* [2013] UK FTT 181. This case, he said, was much more similar to Mr Dutton-Forshaw's situation. In that case, Mr Morgan had purchased a property intending to live there with his fiancée. However, between exchange and completion, the relationship came to an end. Mr Morgan nevertheless moved into the property hoping for a reconciliation. When it became clear that this was not going to happen, he moved out as the property was too expensive for him to live in on his own. Mr Morgan only lived in the property for just over a month. However, as he had intended to live there on a more permanent basis in the hope that the relationship would recover, the property was found to be Mr Morgan's "residence".

55. Mr Baker submitted that, like Mr Morgan, Mr Dutton-Forshaw intended Cornwall Gardens to be his residence. He was forced to move out by circumstances beyond his control after only a short period of occupation.

56. Ms Carwardine on behalf of HMRC reminded us that the burden of proof was on Mr Dutton-Forshaw to persuade us, on the balance of probabilities, that Cornwall Gardens was Mr Dutton-Forshaw's only or main residence.

57. Ms Carwardine agreed with Mr Baker that it was necessary to look at whether Mr Dutton-Forshaw intended to live at Cornwall Gardens on a permanent or continuous basis when he moved there in August 2006. She referred to paragraph 40 in the *Paul Favell* case and paragraph 49 in the *Wade Llewellyn* case which suggest that there is an expectation that a taxpayer will have taken some steps to notify third parties that he has changed his address in order to demonstrate his ties with the property which he is claiming has become his only or main residence. The Tribunal in *Wade Llewellyn* does however go on to say in the same paragraph that:

> "Any individual factor such as notifying change of address, registering to vote from the new address or basic applications for credit cards at that address is not necessarily a pre-requisite for this purpose, but the overall picture must be consistent with the proposition that the taxpayer has moved his base from where he

> has previously been living and established it at that new address."

58. Ms Carwardine relied on the following in support of her argument that Mr Dutton-Forshaw had not demonstrated an intention to live at Cornwall Gardens on a permanent or continuous basis:

(1) He was clearly building up a rental portfolio in south west London having bought a number of properties in the period from 2005 – 2007.

(2) The evidence of Ms Forshaw, including her letter to Mr Baker dated 5 March 2014 which was included in the bundle of documents with which the Tribunal was provided, did not support any real intention at all on the part of Mr Dutton-Forshaw regarding his place of residence. Ms Forshaw, for example, said in her letter:

> "I know that Jamie [Mr Dutton-Forshaw] did the house [Upper Pennington House] up whilst he tried to make up his mind and I remember a period of great indecision!"

Although Ms Forshaw went on to say:

> "As far as I can recall his plan was to sell Upper Pennington House once it was done up, keep his boat as a place in Lymington and to permanently live in his new flat in Cornwall Gardens."

Ms Carwardine suggested that Ms Forshaw perhaps did not recall accurately Mr Dutton-Forshaw's intentions.

(3) Ms Carwardine also referred to the fact that Mr Dutton-Forshaw had, in 2007, elected for Petersham Place to be his main residence from the time he acquired it in June 2005. This, she said, demonstrated that he was clearly aware of the importance of making clear whether a property is a person's main residence. From this, she inferred that he perhaps did not consider Cornwall Gardens to be his main residence in the summer of 2006. If he had, she suggested, he would have elected for it to be treated as his main residence in order to avoid any argument on this issue.

(4) Mr Dutton-Forshaw arranged for his bank statements and other formal correspondence to be sent to Upper Pennington House rather than Cornwall Gardens.

(5) Mr Dutton-Forshaw took care to make sure that the electoral roll at the New Forest District Council was amended but there is no evidence that he took any action in relation to the electoral roll at Kensington & Chelsea.

59. Ms Carwardine submitted that, on the basis of the evidence, it was more likely than not that Mr Dutton-Forshaw had not formed any specific intention in relation to his occupation of Cornwall Gardens when he moved in and, had no particular intention or expectation that his occupation of that property would be permanent or continuous. Instead, his occupation of that property was part of an itinerant lifestyle

involving occupation of Petersham Place, Upper Pennington House, Cornwall Gardens, All Saints Road and his boat during the period of "great indecision" mentioned by Ms Forshaw in her letter to Mr Baker.

60. We have no doubt that Mr Dutton-Forshaw lived at Cornwall Gardens from 5 August 2006 to 26 September 2006. Ms Carwardine did not seek to argue otherwise. The challenge for us is to determine whether, in the words of Millet LJ in *Goodwin v Curtis* "the nature, quality, length and circumstances" of Mr Dutton-Forshaw's occupation of Cornwall Gardens made that occupation qualify as "residence".

61. Whilst we accept that there must be "some assumption of permanence, some degree of continuity, some expectation of continuity" to turn mere occupation into residence", we agree with the Tribunal in *John Regan and Sylvia Regan v HMRC* that "the need for permanence or continuity should not be overstated". It is one of the factors to be taken into account in weighing up all of the evidence.

62. Having said that, we look first at the question of permanence or continuity given that Mr Dutton-Forshaw only lived at Cornwall Gardens for about seven weeks. We have found that, before Mr Dutton-Forshaw moved into Cornwall Gardens, he would have been aware from discussions with Ms Forshaw of the possibility of her moving to Spain to live with Mr Schofield. He would also have been aware that, if she were to decide to do this, the only way of preventing her from taking Emily to Spain (which he did not wish her to do) would be for him to move to Lymington to look after Emily. However, in his evidence, Mr Dutton-Forshaw told us that Ms Forshaw tended to act very spontaneously. She had become pregnant and then engaged within a very short space of time after meeting Mr Schofield and Mr Dutton-Forshaw was not at all sure that she would go through with her plan to move to live full-time in Spain with Mr Schofield. This was particularly the case as Mr Schofield had told Ms Forshaw that he would be coming to live in the UK following the completion of his work in Spain.

63. This evidence is consistent with Ms Forshaw's letter of 5 March 2014 to Mr Baker and we accept it. We therefore find that, when Mr Dutton-Forshaw moved into Cornwall Gardens, he hoped to live there on a continuous basis but was aware that circumstances might arise which would require him to move to live full-time in Lymington. In that sense, he was in a similar position to the taxpayer in *Mr David Morgan v HMRC* [2013] UK FTT 181 (see above) in that, whilst there was "some" expectation of continuity, there was a definite possibility that the occupation of the property would be cut short.

64. Looking at the other circumstances, we accept Mr Dutton-Forshaw's evidence that, following the breakdown of his relationship he wished, as a single man, to be based in London. This intention is supported by Ms Forshaw's evidence and by three emails, two from business colleagues and one from Mr Dutton-Forshaw's sister, commenting on his occupation of Cornwall Gardens.

65. Although Mr Dutton-Forshaw acquired other properties in south west London in the period 2005 – 2007, we do not think that this supports an argument that Cornwall

Gardens was never intended to be Mr Dutton-Forshaw's residence and, instead, was always intended to be a property which was let to third parties. As Mr Baker pointed out, the existence of these other properties in fact supported Mr Dutton-Forshaw's intention to keep London as his base as this was where he was building up a property portfolio. He also made the point that two of the properties were commercial properties rather than residential although we do not think that anything turns on this point.

66. We have found that Mr Dutton-Forshaw did not occupy Upper Pennington House until 27 September 2006. In those circumstances, Mr Dutton-Forshaw could not have elected for Cornwall Gardens to be his main residence for capital gains tax purposes as, at that time, he had no other residence unless his boat in Lymington counted as a residence, which we find unlikely.

67. We also do not think it is surprising that Mr Dutton-Forshaw arranged for bank statements, etc to be sent to Upper Pennington House. We assume (but were not told) that such correspondence would previously have been sent to Chequers Cottage. This was sold simultaneously with the purchase of Upper Pennington House. At that time, Mr Dutton-Forshaw was looking for a new flat in London. He therefore knew that he would be moving out of Petersham Place but did not know where he would be moving to. The purchase of Cornwall Gardens did not complete until 21 June 2006. Upper Pennington House would therefore have been the most logical place for Mr Dutton-Forshaw to nominate for this purpose at the time Chequers Cottage was sold. It might have been expected that Mr Dutton-Forshaw would change this to Cornwall Gardens after he moved in. His explanation for this was that he was not very good at keeping on top of his paperwork and that he simply did not get round to it. Unlike when Chequers Cottage was sold (when he needed to arrange for the post to be delivered elsewhere as he no longer owned Chequers Cottage), it was not essential for any change to be made at this stage as he could continue to pick up his post from Upper Pennington House when he visited Lymington, as he regularly did to see Emily.

68. The fact that Mr Dutton-Forshaw registered his car at Cornwall Gardens and obtained a parking permit from Kensington & Chelsea clearly supports the fact that he was expecting to be there on a regular basis. Mr Dutton-Forshaw gave evidence that he was aware that the parking permit system in Kensington & Chelsea was policed very carefully and that action had been taken against people who had not been entirely truthful in the applications which they had made. We do not believe that Mr Dutton-Forshaw would have made an application for a parking permit in circumstances where he did not consider Cornwall Gardens to be his residence.

69. Mr Baker made the point that, although it is possible for an individual to have no residence at all, this would be a relatively unusual situation. We agree with this. If Cornwall Gardens was not Mr Dutton-Forshaw's residence between 5 August 2006 and 26 September 2006, he would have been in a position where he had no property which was his residence during that period. We think that, in the circumstances of this particular case, that would be a surprising result.

70. Whilst Millett LJ in *Goodwin v Curtis* warned (at 480J) that:

> "I do not regard it as helpful to substitute other words as glosses on statutory language by asking whether the farmhouse was his home …"

we think it is relevant to take into account where Mr Dutton-Forshaw considered to be his home. In our view, for the reasons put forward by Mr Baker (see paragraphs 51-52 above) Mr Dutton-Forshaw would have considered London generally and Cornwall Gardens specifically to be his home during the relevant period.

We are not saying in this context that the word "residence" and the word "home" necessarily have the same meaning although it is difficult to think of a situation where a property which is a person's home is not also that person's residence. It is perhaps easier to think of situations where a property which is a person's residence is not also that person's home but it is not necessary for us to reach any conclusion on this point.

*Conclusion*

71. Based on the evidence before us, we find that the "nature, quality, length and circumstances" of Mr Dutton-Forshaw's occupation of Cornwall Gardens did make that occupation qualify as residence for the purposes of s 222 and s 223 TCGA 1992. As Mr Dutton-Forshaw had no other residence during the relevant period, we therefore find that Cornwall Gardens was Mr Dutton-Forshaw's only residence for the period from 5 August 2006 to 26 September 2006 and that private residence relief and lettings relief are both available in respect of the gain on the sale of that property.

72. We allow Mr Dutton-Forshaw's appeal against the assessment for the year ended 5 April 2010 dated 1 April 2014 in the sum of £38,970.36 and reduce that assessment to nil.

73. 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 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**ROBIN VOS**
**TRIBUNAL JUDGE**

**RELEASE DATE: 18 SEPTEMBER 2015**