Docket: 2013-146(IT)I

BETWEEN:

MARION SOTSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard and reasons delivered orally from the Bench
on September 10, 2013, at Edmonton, Alberta.

Before: The Honourable Justice F.J. Pizzitelli

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Valerie Meier

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2010 taxation year is allowed and the reassessment dated November 7, 2011, is vacated.

Signed at Ottawa, Canada, this 13th day of September 2013.

"F.J. Pizzitelli"

Pizzitelli J.

Citation: 2013 TCC 286
Date: 20130913
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BETWEEN:

MARION SOTSKI,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench on September 10, 2013, at Edmonton, Alberta)

Pizzitelli J.

[1] The only issue to be decided in this case is whether the Appellant can deduct the sum of $3,675 expended in 2010 to install engineered hardwood flooring in her home pursuant to paragraph 118.2(2)(*l.2*) of the *Income Tax Act* (the "*Act*").

[2] The facts are not generally in dispute. The Appellant's husband suffers from the progressively debilitating Parkinson's disease that, without dispute by either party, constitutes a severe and prolonged physical disability, which makes walking on surfaces that offer friction like carpets both difficult and unsafe due to risks from falling. Due to both the difficulty in raising his feet above a friction offering surface like carpeting and the forward leaning posture of her husband due to the disease, as well as the added problem of his psoriatic arthritis which causes his toes to turn in, the husband was at serious risk of having the carpet arrest his feet and forcing him into a fall; essentially risking injuring himself, the Appellant as his in-home caregiver and any outside caregivers who try to assist him. As a result, the Appellant, a person with experience in caregiving, attended at a flooring centre, and after obtaining the

advice of the dealer having regard to her husband's needs, replaced the fairly new carpet in their five-year old home with very modestly-priced engineered smooth laminate flooring to eliminate the resistance and hence reduced the physical effort and resulting fatigue as well as the risk of fall to all as mentioned.

[3] The Respondent agrees that the Appellant has a medical reason and justification for installing the flooring and agrees with the Appellant that the new laminate flooring would enable the Appellant's husband to be more mobile and function within the dwelling as contemplated by the above paragraph 118.2(2)(*l.2*) of the *Act*. The only dispute between the parties is the Respondent's position that the other two conditions of the above paragraph are not met, namely, those found in the portion of the above paragraph that reads:

> (*l.2*) … 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;

[4] In order for the Appellant to succeed in this appeal, both the above conditions must be met.

[5] The Respondent takes the position that the installation of laminate flooring is a type of renovation that would typically be expected to increase the value of the dwelling unit and that the installation of laminate floors is a type of expense normally incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment, although led no evidence in this regard. The onus to rebut the Minister of National Revenue's (the "Minister") assumption of course rests on the Appellant and the Appellant argued that while the installation of solid hardwood floors could typically be expected to increase the value of a dwelling unit the installation of modestly-price engineered floors would not, as the existing carpet was relatively new. The Appellant also testified that she replaced only the 800 square foot area utilized by her husband and not the remainder of the carpets in the house. The Appellant also testified that her personal preference is a quality carpet as she had before over the laminate but that the laminate was the only affordable option she had to address her husband's medical condition. The Appellant's testimony was sincere and consistent and I found her to be highly credible.

[6] Frankly, the Appellant has demonstrated to my satisfaction that the installation of modestly-priced laminate flooring instead of solid hardwood flooring cannot be said to typically increase the value of the dwelling. The issue of flooring is, as she suggested and which I accept as being most reasonable, a personal consumption decision at best, and although I would find it reasonable to conclude that the replacement of an old and stained carpet would likely increase the value of a dwelling unit, I cannot agree that the replacement of a fairly new quality carpet with low-end laminate flooring would achieve the same result. I must say, from my personal experiences, that the cost of quality carpeting can be substantially higher than some types of laminate flooring and that engineered flooring with a wood veneer is substantially less expensive than full-quality hardwood flooring. In my view, the Appellant has demonstrated she has met the first condition of paragraph 118.2(2)(*l.2*) of the *Act* and the Respondent led no evidence to the contrary.

[7] The second condition the Appellant must meet in the above paragraph is more problematic in my view. The Appellant must demonstrate that this type of expenditure is 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" to paraphrase the clause. The Respondent had argued that Parliament's intention was clear that the installation of hardwood flooring was one of those types of expenses that would normally be incurred by those without the requisite impairment. The Respondent led into evidence the Annex to the Budget Plan of 2005 where the Minister of Finance acknowledged on page 19 that recent decisions of this Court interpreted the former section more broadly so as to include in some cases the cost of hardwood floors or installing a hot tub, which went beyond the policy intent of the Medical Expense Tax Credit because:

> … it subsidizes renovation expenses that increase the value of the home, and extends tax recognition to expenses with a substantial element of personal consumption and personal choice. …

[8] To stop this recognition, Parliament added the two conditions in question above, which the Respondent pointed out was to have overruled previous Tax Court of Canada decisions which allowed hardwood flooring expenses and hot tub expenses. While Budget Papers and Technical Notes are not law, they should be given good weight when Parliament was aware at the time the legislation was passed that the Department of Finance was aware of the issue and intended to deal with it.

[9] The Respondent, relying on the above, states that the type of expense intended to be disallowed then was that of the installation of hardwood floors and hence the

Appellant should be denied here. In addition, the Respondent points out that recent cases decided after the change in legislation, which was effective as of February 23, 2005, the Budget date, support its position. In *Hendricks v Canada*, 2008 TCC 497, 2008 DTC 4852, Paris J. denied as a medical expense deduction of the cost of hardwood flooring citing the clear intent of Parliament found in the Budget Papers and in *Barnes v Canada*, 2009 TCC 429, 2009 DTC 1282, Boyle J., also citing the clear intent of Parliament evidenced by the Department of Finance's Explanatory Notes and Budget Papers accompanying the 2005 amendments to the legislation, denied the deduction of a swimming pool installation expenses.

[10] The Appellant, however, has argued that in keeping with the intention of Parliament, her expense is not an expense reflecting an element of personal consumption or personal choice as the caution in the Budget Papers above alluded to. She testified she simply had no choice if she wished to address her husband's medical impairments due to Parkinson's.

[11] Frankly, I am in agreement with the position of Appellant in this matter. The Budget Papers and explanatory notes make it clear the two conditions were inserted to ensure the taxpayer was not subsidizing personal consumption and personal choices. I agree with the Appellant that if her only choice was to install low-cost laminate floors to deal with her husband's condition, then there is no element of personal consumption or choice here that the taxpayer is being asked to fund. I note as well that in the *Hendricks* case above, in paragraphs 8 and 9, Paris J. found that the Appellant had not disproven the Minister's assumption that the installation of hardwood flooring was an alteration that would typically be expected to increase the value of the dwelling and that, as stated in paragraph 9:

> 9 … I would also add that, as a matter of common sense, it would seem that the installation of new hardwood floors in the place of 23 year old carpets in this case, could typically be expected to increase the value of a dwelling.

[12] Paris J. decided that case on the basis the first condition had not been met.

[13] In the case at hand, we have a situation where the Appellant replaced fairly new carpets, only five years old, in only part of the home which her impaired husband utilizes, with low-end engineered laminate flooring, not solid flooring and I have found the first condition had been met.

[14] Moreover, in dealing with the second condition, Boyle J. in the *Barnes* case above, stated at paragraph 13 thereof:

> 13 This is not to say that, in an appropriate case, a swimming pool especially designed or altered for a person for therapeutic physiotherapy purposes will be unable to qualify.

[15] Accordingly, Boyle J. recognized that the legislation is not solely geared to prohibiting "types" of expenditures as the Respondent contends, but types of expenditures that fail to meet the condition of Parliament having regard to its stated policy. In my view, if as Boyle J. stated, a specially-designed pool for the disabled Appellant in that case may have qualified, I fail to see why flooring that needs no special design, but which meets the requirements, purchased and installed without bells and whistles so to speak, should not. It would indeed seem an absurd result that if the Appellant here hired an engineer to design a super smooth concrete floor or "medical floor" to use the Respondent's term, with no resistance to specifically suit the needs of the Appellant at great expense, that that would qualify while using the most modest means to achieve the same result would not.

[16] In interpreting the provisions of the paragraph, one cannot lose sight of the policies of Parliament, both in enacting the Medical Expense Tax Credit and in the amendments. The Medical Expense Tax Credits were designed to grant relief to taxpayers who suffer from serious and prolonged mental and physical impairments, to assist them with dealing with the extra costs incurred by them as a result of their condition. The amendments to the provisions in 2005 were to avoid abuses of those provisions. The Respondent in this case does not disagree with the existence of the Appellant husband's impairments and even agrees that the installation of the engineered laminate flooring assists in alleviating his symptoms and addressing his condition. The Respondent does not take issue with the Appellant's purpose and intent in having the flooring installed to assist her husband with mobility and reduce fatigue and risk of injury by providing a surface of lesser resistance in her dwelling, those requirements spelled out in subsection 118.2(2). The Respondent only relies on his technical interpretation of the two conditions in such paragraph (*l.2*) pointing to the Budget Papers and Technical Notes to suggest the intention of Parliament was to categorize the types of expenditures in general, including all hardwood flooring. I simply do not agree.

[17] Parliament, having regard to its policy of avoiding abuse in medical expenditures, set out two conditions designed to avoid abuse. It did not specifically categorize expenditures such as hardwood floorings, or hot tubs or swimming pools are being prohibited in its language and while the language of the Budget Papers and Explanatory Notes made mention of these types of abuses, these were the types being

set out as examples because they were the types that were the subject matter of the cases the Department of Finance took issue with as being abusive in those circumstances. In the circumstances at hand, I do not find that replacing a quality carpet flooring of only five years old with modestly-priced engineered laminate flooring instead of higher-priced solid hardwood to be abusive. The Appellant did not attempt to buy a luxury floor or upgrade the quality of her dwelling by installing the floor she did. She instead only put in what was necessary, without the intent or expectation of having the taxpayer fund her personal consumption choices. Had she installed, say high-end solid mahogany instead of lower-end engineered flooring, one could question her motives and arrive at a reasonable conclusion that this would not only increase the value of his dwelling but also be of the type of higher-end material most taxpayers would no doubt be happy to have his fellow taxpayers fund. This was not the case here. There is no abuse and the conditions of paragraph 118.2(2)(*l.2*), interpreted with the policies of Parliament in mind, have been met so the appeal is allowed in full.

Signed at Ottawa, Canada, this 13th day of September 2013.

"F.J. Pizzitelli"

Pizzitelli J.

CITATION:	2013 TCC 286
COURT FILE NO.:	2013-146(IT)I
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REASONS FOR JUDGMENT BY:	The Honourable Justice F.J. Pizzitelli
DATE OF JUDGMENT:	September 13, 2013

APPEARANCES:

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Counsel for the Respondent:	Valerie Meier

COUNSEL OF RECORD:

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