TC02827

Appeal number: TC/2011/05305

CAPITAL GAINS TAX – disposal of a residential property after 8 months of occupation – whether the property had been the appellant's residence – whether his occupation of the property had the necessary degree of permanence, continuity or expectation of continuity – held on the evidence that it did not – sections 222 and 223 Taxation of Chargeable Gains Act 1992 not applicable – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

PIERS MOORE **Appellant**

and

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

TRIBUNAL: JUDGE JOHN WALTERS QC

Sitting in public at Cambridge on 26 June 2012 and 4 December 2012

The Appellant in person
J
ohn Daley, Presenting Officer, HM Revenue & Customs, for the Respondents

DECISION NOTICE

Introductory

1. The appellant, Mr Piers Moore, appeals against an amendment, dated 7 March 2011, to his self-assessment tax return for the year ended 5 April 2008. The amount in dispute is £14,448.80, being capital gains tax ("CGT") which the Respondents ("HMRC") consider is due in respect of a chargeable gain arising on the disposal by Mr Moore of a property, 110 Headlands, Fenstanton, Huntingdon ("110 Headlands") on 31 August 2007 for a consideration, before incidental costs of disposal, of £178,500. The chargeable gain, which HMRC contend arises, is £36,122, and the CGT thereon at 40% is the figure of £14,448.80 referred to. There is no dispute, as I understand it, about the figures. The dispute between the parties is whether or not the chargeable gain is relieved pursuant to sections 222 and 223 Taxation of Chargeable Gains Act 1992 ("TCGA") and in particular whether 110 Headlands was Mr Moore's 'only or main residence' within the meaning of those sections in the period from 12 or 13 November 2006 to 23 July 2007.

2. The amendment to Mr Moore's tax return for the year 2007/08 also included an amount charged to income tax, on which I understand he has paid the tax demanded and which therefore gives rise to no issue for determination by me.

3. The appeal was called on for hearing on 26 June 2012 and Mr Moore gave oral evidence on that occasion. At the end of that hearing I adjourned the matter to give Mr Moore the opportunity to provide further evidence. The adjourned hearing took place on 4 December 2012, when Mr Moore again gave oral evidence. I also had before me a bundle of documents and other documents that Mr Moore had provided during the adjournment.

4. The member scheduled to hear the appeal with me on 26 June 2012, Mr Leslie Howard, was unable to be present on that occasion. Although he was present at the adjourned hearing on 4 December 2012 and heard the appeal on that occasion with me, he took no part reaching the decision recorded in this Decision Notice because he had not been present on 26 June 2012 when Mr Moore had given evidence and submissions had been made.

5. From the evidence I find the following facts.

The facts

6. Mr Moore purchased 110 Headlands, in his words a 'decent-sized' two-bedroom semi-detached house with a garage, on 5 November 2002. He said he bought the property for one of his children and it was let out initially. In fact, it was let from November 2002 until November 2006. The last tenant was a Mr Sharpstone, who was in the property for about a year. He was not a good tenant and Mr Moore was thinking of giving him notice to quit 110 Headlands. However, before he could do so, Mr Sharpstone left 110 Headlands, owing rent and taking the keys with him.

7. This was, according to Mr Moore, a fortunate coincidence, because at that time (November 2006) he needed somewhere to live – although I note that his then advisors, Shipleys, informed HMRC (presumably on Mr Moore's instructions) in a letter dated 13 October 2009 that Mr Moore let Mr Sharpstone off the final rent payment and returned his deposit to him because he needed to move into 110 Headlands. He had been married to his first wife, Mrs Diane Kim Moore, since April 1979, but by 2006 his marriage was in difficulties, his two children were at University or in work, and on 12 or 13 November 2006 Mr Moore moved out of the matrimonial home, 9 Church Street, Fenstanton, Huntingdon ("9 Church Street") and into 110 Headlands. Mrs Diane Moore remained at 9 Church Street, a 4-bedroomed detached house which had been bought in 1976.

8. Mr Moore's evidence (which I accept) was that he lived at 110 Headlands on his own. He took some furniture with him from 9 Church Street and bought some furniture for his use. He took all his clothes from 9 Church Street to 110 Headlands as he knew he would not return to 9 Church Street to live there. His evidence was that he had stayed at 9 Church Street longer than he should have done, for his children's sake.

9. Mr Moore stated that, although initially there was no third party involved in the break-up of his marriage, he did have a lady-friend, subsequently his second wife on their marriage in January 2011, who lived at 64 Orthwaite, Huntingdon ("64 Orthwaite"), not far from Fenstanton. During the period between November 2006 and July 2007 statements on a building society account in Mr Moore's name were sent to 64 Orthwaite. Shipleys, in a letter dated 16 November 2009 to HMRC stated that this was because Mr Moore did not want bank statements sent to 110 Headlands, as he was not sure how long he would be staying there. Mr Moore said in evidence that it was around March or April 2007 that his relationship with this lady developed to the point that they decided that they would live together.

10. Other correspondence was also sent to Mr Moore at 9 Church Street after he had moved into 110 Headlands. An example was an insurance invoice sent by Saffron Insurance Services Ltd on 19 April 2007. Mr Moore said that this was a mistake. Other examples were client rental income statements in relation to an investment property (86, Newhall Lane, Great Cambourne, Cambridge) sent by Kirby Property Management Ltd. on 18 January 2007, 21 February 2007, 20 March 2007, 18 April 2007, 21 May 2007, 21 June 2007 and 18 July 2007. Mr Moore said these were mistakes too. He could go and pick up mail at 9 Church Street and had not (out of laziness) informed Kirby Property Management Ltd. of his move to 110 Headlands.

11. Mr Moore's evidence was that during the period in which he lived at 110 Headlands (12 or 13 November 2006 to 22 July 2007) he spent 'pretty much' every night there, except for occasional nights when he was away from home (Scotland and the Isle of Wight were mentioned) on business. His work is that of a financial adviser. At the adjourned hearing Mr Moore said that he stayed at 64 Orthwaite for 4 days. I infer that those days were the 4 days between his leaving 110 Headlands on 22 July 2007 and the completion of the purchase of 10 Church Close, Great Stukeley ("10 Church Close") on 27 July 2007 – see: below.

12. After he had left 9 Church Street, Mr Moore's financial circumstances were unsettled because of the impending divorce proceedings with Mrs Diane Moore. I was shown a copy of the divorce petition which was issued by Mrs Diane Moore against Mr Moore on 14 January 2009. Mr Moore's evidence was that he lived at 110 Headlands until his financial circumstances became clearer.

13. However, fairly soon after moving into 110 Headlands, Mr Moore began to look for another property. He stated in evidence that he did not, at all times when he was at 110 Headlands, know that he would be moving on. He wrote to HMRC on 11 October 2010 stating that he:

> 'did not choose to make 110 Headlands my permanent address because it only had two bedrooms. I put the house on the market in February 2007 with estate agents Thomas Morris. I started to look for another property in January 2007 and made the offer to purchase 10 Church Close … in February 2007. My offer was accepted in February 2007 and I moved on the 24 July 2007, when I vacated 110 Headlands'.

14. However, a letter from Thomas Morris was produced, dated 13 July 2012, which Mr Moore had obtained during the adjournment of the hearing of the appeal. In this letter Thomas Morris state that they commenced marketing 110 Headlands for Mr Moore on 22 April 2007 (rather than February 2007). Contracts were exchanged on 21 August 2007 and completion took place on 23 August 2007. It was thus some 3 to 5 months after moving into 110 Headlands that Mr Moore put the property on the market. Mr Moore had telephoned HMRC on 15 March 2011 to tell them that the dates he had originally given for when he put 110 Headlands on the market and put in an offer on 10 Church Close were wrong and that these events had actually taken place later. He said, in a letter to HMRC dated 30 March 2011, that he began to look for another property in March 2007 'as this was now affordable'.

15. Mrs Diane Moore had registered a restriction against 110 Headlands, and a letter from her Solicitors in the divorce proceedings, Lamb & Holmes, dated 28 June 2007 states that their client and Mr Moore had discussed the sale of 110 Headlands and that Mrs Diane Moore was willing to remove the restriction on the understanding that the entire net sale proceeds would be used to reduce the mortgage on the former matrimonial home, 9 Church Street. A later (10 July 2007) letter from Lamb & Holmes indicates that this arrangement was modified – Mr Moore agreed that out of £175,000 expected net proceeds of the sale of 110 Headlands, £100,000 would be used to reduce the mortgage on 9 Church Street and the balance would be held to the order of both parties pending a financial settlement being reached (which happened). It is clear, therefore, that a financial settlement had not been reached by 10 July 2007

16. The property of the lady who became Mr Moore's second wife (Mrs J Moore), 64 Orthwaite, was put on the market by her on 15 May 2007. It was sold, with completion taking place on 2 August 2007 – this is evidenced by a letter from the estate agents acting in the sale, Harvey Robinson, obtained during the adjournment of the hearing of the appeal.

17. Mr Moore made an offer to purchase the property in which he now lives with Mrs J Moore, 10 Church Close, on 3 May 2007 and the purchase (which was made jointly

by Mr Moore and Mrs J Moore) was completed on 27 July 2007. This purchase was also handled by Harvey Robinson as appears from another letter from them obtained during the adjournment o the hearing of the appeal. The purchase price of 10 Church Close was £320,000. It is a 4-bedroomed house, having the space needed to accommodate Mr Moore, Mrs J Moore and Mrs J Moore's two sons then aged 8 and 13.

18. I have client rental income statements in relation to the investment property at 84 Newhall Lane, Great Cambourne from Kirby Property Management Ltd, dated 14 November 2007 (addressed to Mr Moore at 9 Church Street) and 3 December 2007 (addressed to Mr Moore at 10 Church Close).

19. Mr Moore wrote to HMRC on 30 March 2010 saying:

> ' … regarding 110 Headlands, as you are aware I was only living there temporarily between 12 November 2006 until I purchased 10 Church Close … on 24 July 2007. As I only lived there for a short period, I am finding it difficult to find the evidence, due to the time period that has elapsed since then. However, my next door neighbour living there and the person living opposite can confirm my residence, if this will help. I can also get a letter from the tenant, Mr Sharpstone confirming the deposit was repaid to him in November, if required.'

20. Mr Moore closed an account with the Chelsea Building Society on 28 February 2007. On that date he transferred £20,700.09 from the Chelsea Building Society to a premier current account with Alliance & Leicester plc in his name. The following day, 1 March 2007, a sum of £20,000 was transferred out of that premier current account to the credit of a PlusSaver account, also in Mr Moore's name, with Alliance & Leicester plc. That credit increased his balance on that PlusSaver account to £30,035. This information was evidenced by Alliance & Leicester plc statements produced by Mr Moore during the adjournment of the hearing of the appeal.

21. In a letter dated 27 April 2010, Mr Moore told HMRC that 'most of the deposit with the Chelsea was used to purchase 10 Church Close'. In evidence at the adjourned hearing, Mr Moore said that he closed the Chelsea Building Society account because the interest rate applicable to it had fallen and the rate of interest paid on the PlusSaver account with Alliance & Leicester plc was better. I accept this evidence, but I consider that it does not contradict the statement made in the letter of 27 April 2010 to HMRC that most of the deposit with the Chelsea Building Society was used to purchase 10 Church Close. Although I accept that, on 28 February and 1 March 2007, 10 Church Close had not been identified as the address that Mr Moore would move to I consider that it is more likely than not that the withdrawal of funds from the Chelsea Building Society on 28 February was preparatory to a move which Mr Moore knew at that time he would be making, specifically arranging to have funds in place to make a deposit on a new home.

22. Mr Moore put in evidence a Council Tax bill from Huntingdonshire District Council showing that he was charged Council Tax on 110 Headlands for the period from 13 November 2006 to 22 July 2007 with the discount appropriate to single occupancy and for the period from 23 July 2007 to 22 August 2007 with the (greater) discount attributable to a residential property which is unoccupied and unfurnished.

Furthermore, Mr Moore produced a letter dated 6 October 2010 from Huntingdonshire District Council confirming in terms that the Council's records show that he (Mr Moore) resided at 110 Headlands from 13 November 2006 to 23 July 2007. I find this as a fact, and it was accepted by HMRC in a letter dated 29 June 2011, and at the hearing, that Mr Moore lived at 110 Headlands in this period. HMRC's case, however, is that his occupation of 110 Headlands in this period did not have the degree of permanence, continuity or expectation of continuity necessary for 110 Headlands to qualify as his only or main residence for the purposes of sections 222 and 223 TCGA.

The law

23. The relevant legislation is in sections 222 and 223 TCGA as follows:

'**222 Relief on disposal of private residence**

(1) This section 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, or …

223 Amount of relief

(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling house or part of a dwelling house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 36 months of that period.

(2) Where subsection (1) above does not apply, a fraction of the gain shall not be a chargeable gain, and that fraction shall be-

(a) the length of the part or parts of the period of ownership during which the dwelling house or the part of the dwelling house was the individual's only or main residence, but inclusive of the last 36 months of the period of ownership in any event, divided by

(b) the length of the period of ownership.

…

(4) Where a gain to which section 222 applies accrues to any individual and the dwelling house in question or any part of it has at any time in his period of ownership been wholly or partly let by him as residential accommodation, the part of the gain, if any, which (apart from this subsection) would be a chargeable gain by reason of the letting, shall be such a gain only to the extent, if any to which it exceeds whichever in the lesser of-

(a) the part of the gain which is not a chargeable gain by virtue of the provisions of subsections (1) to (3) above, and

(b) £40,000.'

24. It can be seen from these provisions that the legal issue arising in this appeal is whether 110 Headlands was, between 12 or 13 November 2006 and 23July 2007 Mr Moore's 'residence' for the purposes of section 222 and 223 TCGA. If it was, there is no doubt that it was his 'only or main' residence, because there is no other dwelling house which could have been his residence for these purposes, if 110 Headlands was not. Further, since the period of ownership, which is relevant, is the period between 5 November 2002 and 31 August 2007, and, since 110 Headlands was let from

November 2002 to, effectively, 12 or 13 November 2006, there is no basis on which *all* the gain accruing to Mr Moore and attributable to the disposal of 110 Headlands can be exempt from being a chargeable gain by the operation of section 223 TCGA. On any view of the residence issue arising for decision in the appeal, a fraction of the gain, approximately 22/58 of the gain must be chargeable, taking the period of ownership to be 58 months. The computation of the gain referred to at paragraph 1 above, takes this into account.

25. HMRC rely on *Goodwin v Curtis* 70 TC 478 for the proposition that occupation of a dwelling house which lacks the necessary degree of permanence, continuity or expectation of continuity does not amount to 'residence' for the purposes of section 222 and 223 TCGA.

26. In *Goodwin v Curtis*, stress was placed by Vinelott J on the scheme of the exemption which applied to a gain realised on a person's 'home'. A person's 'home' was to be distinguished from a property which the person temporarily occupied.

27. The relevant facts of *Goodwin v Curtis* were as follows:

> On 21 September 1983 the taxpayer entered into an unconditional contract to purchase the property in question ("the Farmhouse"), which was a substantial property with 9 bedrooms. His purpose in entering into that contract was to make the Farmhouse a home for himself and his family.
>
> Completion of the purchase of the Farmhouse by the taxpayer took place some considerable time later, on 1 April 1985.
>
> Before the purchase was competed, in March 1985, the taxpayer gave instructions to two firms of estate agents for the sale of the Farmhouse and advertisements were placed for sale.
>
> On 1 April 1985, the same day that he completed the purchase, the taxpayer separated from his wife and family and moved into occupation of the Farmhouse.
>
> Two days later, on 3 April 1985, the taxpayer completed the purchase of another property ("Ayton"), which he had contracted to purchase some time earlier.
>
> From 1 April 1985 to 3 May 1985 the taxpayer lived and slept at the Farmhouse (which was furnished) 7 days a week. A telephone was connected and used.
>
> A purchaser was found for the Farmhouse and a simultaneous exchange and completion of the sale by the taxpayer took place on 3 May 1985. On that day (3 May 1985) the taxpayer moved into Ayton as he had nowhere else to live. He recorded Ayton as his private residence in his tax returns for 1985-86.

28. The question for decision for the General Commissioners was whether the Farmhouse was the taxpayer's only or main residence during the period of just over a month between 1 April 1985 to 3 May 1985, when he lived there. They found that the

taxpayer's occupation of the Farmhouse did not amount to 'residence', because the taxpayer had failed to provide evidence of some degree of permanence, some degree of continuity or some expectation of continuity, with regard to residence at the Farmhouse.

29. The Court of Appeal in approving the General Commissioners' finding observed that it was based on the objective evidence that the taxpayer had separated from his wife and moved into the Farmhouse only after it had already been put up for sale (see: per Millett LJ, *ibid.* at 509). Having 9 bedrooms, 'it was hardly a suitable home for a single man'. The taxpayer's occupation was manifestly a stop gap measure pending the completion of his purchase of somewhere else to live (Ayton) (*ibid.* at 510).

30. The Court of Appeal distinguished temporary occupation of a residential property from 'residence' in it for relevant purposes. Millett LJ referred to Viscount Cave LC's explanation in an income tax context of the meaning of the word "reside" (a familiar English word) as "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place" – see *Levene v Commissioners of Inland Revenue* 13 TC 486 at 505.

The submissions

31. Mr Moore contended that when he left 9 Church Street and moved into 110 Headlands on 12 or 13 November 2006 he was not in a relationship with Mrs J Moore. He was not then clear as to what his financial circumstances were, and was concerned to take care, financially, of Mrs Diane Moore, not knowing at that time what that would involve. For those reasons he said that he was, in November 2006, quite prepared to stay at 110 Headlands for a considerable period of time until he had sorted his financial position out and could make a decision as to where to move on to. He reminded me that at that time Mrs Diane Moore had placed a restriction on the title of 110 Headlands which would have prevented its sale. He also reminded me that he had paid council tax in respect of his occupation of 110 Headlands and that Huntingdonshire District Council had confirmed that, according to their records, he resided at 110 Headlands from 13 November 2006 to 23 July 2007.

32. He accepted that he had not notified his change of address as widely as he might have done and that post was sent to him at other nearby addresses, which he collected. None of this, in his submission, affected the position that when he moved into 110 Headlands he intended to live there for an indeterminate period, sufficient to give the necessary expectation of continuity to make his occupation of 110 Headlands count as "residence" for relevant purposes.

33. Mr Daley made the point that Mr Moore had given inconsistent factual information in the course of the enquiry, referring particularly to the letters of 30 March 2010, where Mr Moore told HMRC that he was only living at 110 Headlands 'temporarily', and of 11 October 2010, where he told HMRC that he put 110 Headlands on the market in February 2007 and started to look for another property in January 2007. This evidence was changed (as indicated by the letter from Thomas Morris dated 13 July 2012) to a statement that marketing of 110 Headlands was commenced on 22 April 2007 and to a statement (in Mr Moore's letter to HMRC

dated 30 March 2011) that he began to look for another property in March 2007 'as this was now affordable'.

34. Mr Daley, for HMRC, accepts that a short period of occupation is not itself a bar to a finding of residence for relevant purposes, and, as stated above, that Mr Moore actually lived at 110 Headlands from 12 or 13 November 2006 to 23 July 2007. He submits, however, that Mr Moore has not shown (the burden of proof being on him) that Mr Moore's period of occupation of 110 Headlands had the degree of permanence, continuity or expectation of continuity necessary for 110 Headlands to qualify as his 'residence' for relevant purposes.

Discussion and Decision

35. There is no authority to which I have been referred which defines the degree of permanence, continuity or expectation of continuity that is necessary for these purposes. I have concluded that *Goodwin v Curtis* was a plainer case than the present appeal. In *Goodwin v Curtis*, the taxpayer's occupation of the Farmhouse started *after* he had given instructions for its sale. Two days after moving into the Farmhouse, the taxpayer completed the purchase of the property, Ayton, to which he moved as his residence at the end of his 33 days' occupation of the Farmhouse. These facts do indeed, as Millett LJ observed, plainly show that the taxpayer's occupation of the Farmhouse was a stop gap measure – allied with the objective unsuitability of a property as large as the Farmhouse to be the taxpayer's residence, he being (or having become) a single man.

36. The facts of this appeal are that Mr Moore moved into 110 Headlands not less than 3 months, and perhaps as much as 5 months before it began to be marketed. The purchase of 10 Church Close was initiated by Mr Moore's offer made on 3 May 2007 (almost 6 months after he had moved into 110 Headlands) and completed on 27 July 2007.

37. An important difference between the facts of *Goodwin v Curtis* and the facts of this appeal is that although both cases concerned taxpayers whose marriages had come to an end, it is part of the story in this case – as it was not in *Goodwin v Curtis* – that the taxpayer formed a new relationship and moved from the property in question to another home (10 Church Close) which he shared from the start with his new partner, subsequently his wife, Mrs J Moore.

38. It is plain that from, at the latest, 22 April 2007, Mr Moore's occupation of 110 Headlands did not have any degree of permanence or expectation of continuity. The important question is whether there was a sufficient degree of permanence or expectation of continuity at any time between 12 or 13 November 2006 and 22 April 2007, some 5 months later.

39. To answer this question, I look at the evidence on the nature of 110 Headlands as a suitable permanent residence for Mr Moore, the degree of certainty of Mr Moore's financial affairs, and the state of his relationship with the lady who became Mrs J Moore (it being accepted that there was never any realistic chance of his reconciliation with Mrs Diane Moore after 12 or 13 November 2006).

40. Although Mr Moore said it his letter to HMRC dated 11 October 2010 that he did not choose to make 110 Headlands his permanent address because it only had two bedrooms, he later retracted that evidence and I accept that 110 Headlands would have been objectively suitable as a permanent residence for him *as a single man*. It was clearly not suitable as a permanent residence for him, if he was to live together with Mrs J Moore and her two sons. The objective nature of 110 Headlands does not, therefore, indicate to me that Mr Moore could never have had an expectation of permanent residence there or an expectation of continuity of occupation there.

41. The degree of certainty of his financial affairs, I accept, was limited at 12 or 13 November 2006 when he went to live at 110 Headlands. As I have recorded above, Mr Moore placed this uncertainty at the forefront of his argument as to why there was an acceptable degree of expectation that his occupation of 110 Headlands would continue to the extent necessary to qualify his occupation as residence there. His evidence was that he simply did not know how he was placed financially and he was expecting to live at 110 Headlands until his financial affairs were sorted out, which could have taken a long time. He was concerned to take care, financially, of Mrs Diane Moore, not knowing in November 2006 and the succeeding months what that would involve. I do not forget that at that time Mrs Diane Moore had placed a restriction on the title of 110 Headlands which would have prevented its sale.

42. However, as I have noted, the evidence, particularly the correspondence between solicitors in July 2007 shows that a financial settlement between Mr Moore and Mrs Diane Moore had not been reached by 10 July 2007, and that did not impede Mr Moore's decision to market 110 Headlands at the latest in April 2007 (when the restriction was still on the title of 110 Headlands), nor his decision to sell 110 Headlands, having made an arrangement with Mrs Diane Moore as to the disposition of the sale proceeds. The actual divorce petition was not presented by Mrs Diane Moore until 14 January 2009. I therefore reject Mr Moore's evidence that the state of clarity of his financial affairs was the determining factor of the length of his occupation of 110 Headlands.

43. The most important factor, I conclude, which determined Mr Moore's expectation at any time of what the continuity, or permanence, of his occupation of 110 Headlands would be was the state of his relationship with the lady who subsequently became Mrs J Moore.

44. This point had emerged at the original hearing of the appeal on 26 June 2012 and the Directions issued on 4 July 2012 gave specific liberty to Mr Moore to adduce a witness statement sworn by Mrs J Moore, stating her understanding of the relevant events in relation to Mr Moore's occupation of 110 Headlands, the sale of 110 Headlands, the sale of 64 Orthwaite and the purchase of 10 Church Close.

45. No evidence was provided by Mrs J Moore, no doubt for good reasons. However the consequence is that there is no corroboration of Mr Moore's evidence that he was not in a relationship with Mrs J Moore when he moved out of 9 Church Street on 12 or 13 November 2006. The weight of his evidence on this point is therefore not as telling as it would have been if it had had such corroboration.

46. The other relevant evidence on this point is as follows. Mr Moore's statement in evidence that it was around March or April 2007 that his relationship with Mrs J Moore developed to the point that they decided that they would live together. Mr Moore commenced marketing 110 Headlands at the latest on 22 April 2007. Mr Moore made an offer to purchase 10 Church Close (which was ultimately jointly purchased by him and Mrs J Moore) on 3 May 2007. Mrs J Moore (as she would become) put 64 Orthwaite on the market on 15 May 2007. Mr Moore closed his account with the Chelsea Building Society on 28 February 2007 and on 1 March 2007 the sums withdrawn were credited to Mr Moore's PlusSaver account with Alliance & Leicester, bringing the credit balance on that account to £30,035 – about the amount which would be required to put down a 10% deposit on a property costing £300,000 (the purchase price of 10 Church Close was £320,000).

47. Although Mr Moore may have been quite prepared to stay at 110 Headlands for a considerable period of time, I have difficult in accepting that he had no serious hope or expectation that he would be able to buy a house to live in with Mrs J Moore (she providing part of the necessary finance by the sale of 64 Orthwaite) before March 2007. For one thing, if there was no such serious hope or expectation before March 2007, matters moved on with almost unbelievable speed after that – particularly having regard to Mr Moore's offer to purchase 10 Church Close (which must have been selected by both of them beforehand) on 3 May 2007 and Mrs J Moore's marketing of 64 Orthwaite on 15 May 2007. I accept that in matters of the heart things can move with such rapidity, but I have to consider on the evidence whether on the balance of probabilities Mr Moore had no serious hope or expectation before March 2007 that he would be able to buy a house to live in with Mrs J Moore and I conclude that he had such a serious hope or expectation before March 2007. The movement of funds out of the Chelsea Building Society account supports this as well as the totality of the other relevant evidence.

48. I cannot determine how much before March 2007 Mr Moore had a serious hope or, more relevantly, an expectation that he would be able to set up home with Mrs J Moore, but I have concluded that Mr Moore has failed to discharge the burden of proof which is on him to satisfy me that for any significant period after 12 or 13 November 2006 he did not have an expectation of being able to move from 110 Headlands and set up home (by buying a house jointly) with Mrs J Moore.

49. The evidence that post was delivered during the relevant period to other addresses, 9 Church Street, and particularly relevantly, 64 Orthwaite, supports my conclusion. As does the fact that Mr Moore was unable to show any bills, other than council tax documentation, recognising his address as 110 Headlands in the relevant period. I conclude that Mr Moore never envisaged 110 Headlands as a long term home, and that his occupation there, as HMRC contends, lacked the degree of permanence, continuity or expectation of continuity to render his occupation of 110 Headlands 'residence' for the purposes of section 222 and 223 TCGA.

50. For these reasons, the appeal is dismissed.

Applications for permission to appeal this Decision

51. 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.

JOHN WALTERS QC
TRIBUNAL JUDGE

RELEASE DATE: 14 August 2013