

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

RICHARD A. FORDE,)	
)	
Petitioner,)	
)	
v.)	Docket No. 1280-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pursuant to Rule 152(b) of the Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the proceedings in the above case before the undersigned judge at Washington, D.C., containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered under Rule 155.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
November 15, 2017

1 Bench Opinion by Judge David Gustafson
2 October 20, 2017
3 Forde v. Commissioner
4 Docket No. 1280-16

5 THE COURT: The Court has decided to render the
6 following as its oral Findings of Fact and Opinion in this
7 case. This opinion shall not be relied on as precedent in
8 any other case.

9 This Bench Opinion is made pursuant to the
10 authority granted by Section 7459(b) of the Internal
11 Revenue Code and Rule 152 of the Tax Court Rules of
12 Practice and Procedure.

13 By notice of deficiency dated October 28, 2015,
14 (Ex. 9-R), the Internal Revenue Service ("IRS") determined
15 a deficiency in the Federal income tax of petitioner
16 Richard A. Forde for the year 2002, plus an addition to
17 tax for late filing and an accuracy-related penalty.
18 Trial of this case was conducted on October 17-18, 2017,
19 in Washington, D.C. Mr. Forde represented himself, and
20 respondent was represented by William J. Gregg.

21 After Mr. Forde's concession that his filing
22 status should be married filing separately, the principal
23 issue for decision is whether and to what extent Mr. Forde
24 understated his capital gain on the sale of a house.

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FINDINGS

1

2 Leigh Mill House

3 In 1998, Mr. Forde and his wife acquired a house
4 on Leigh Mill Road in Great Falls, Virginia (Stip. 3; Ex.
5 1-P), for a purchase price of \$835,000 (Stip. 23, Ex. 41-
6 P.) Mr. Forde then undertook to demolish the main house,
7 live in the guesthouse, build on the property a 16,000-
8 square-foot house with two swimming pools, and then
9 renovate the guesthouse.

10 The demolition of the main house took place, and
11 construction on the new house began. Mr. Forde and his
12 wife moved into the guesthouse. Substantial progress was
13 made on the new house, but we are unable to tell when or
14 even whether it was fully completed.

15 Invoking the burden-of-proof principles
16 discussed below, we find that Mr. Forde paid, toward the
17 demolition and construction costs, a total of \$300,575 to
18 various contractors in 2001 (Exs. 32-P, 33-P, 40-P, 42-C),
19 and through a closing described below, \$383,273 to Oxford
20 Construction in 2002 (Ex. 34-P), which amounts increase
21 his basis in the Leigh Mill property.

22 Bankruptcy and Fraud

23 In 2001, Mr. Forde was facing substantial
24 financial problems. He tried unsuccessfully to refinance
25 his mortgage on the Leigh Mill house and filed a Chapter

1 11 bankruptcy petition on May 25, 2011.

2 In the fall of 2001, he was on the verge of
3 losing the Leigh Mill house. He then entered into a
4 conspiracy to commit bankruptcy fraud and bank fraud. He
5 engineered a sale transaction in which an unwitting lender
6 was induced to lend \$3,896,750 to a buyer who was a friend
7 of Mr. Forde. The lender was told (among other erroneous
8 facts) that the sale price would be almost \$6 million,
9 that there would be a large down payment (which would not
10 in fact be made), that the buyer would execute in favor of
11 Mr. Forde a note for the balance of the purchase price
12 (which neither Mr. Forde nor the buyer actually intended
13 to be paid), and that at settlement, some of the purchase
14 price would pay off a mortgage that did not actually
15 exist.

16 Using this scheme, loan proceeds would be
17 surreptitiously paid over to Mr. Forde, who would use the
18 borrowed funds to pay the mortgage of the lender from whom
19 they had been borrowed. The bankruptcy court's approval
20 of the sale was obtained by telling the court (falsely)
21 that the (nonexistent) down payment and the buyer's
22 payments on the note (which payments would never be made)
23 would be available to Mr. Forde's creditors (Ex. 27-R at
24 2-4.)
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\\

1 Sale in June 2002

2 The transaction that Mr. Forde had arranged took
3 place in June 2002 (Stip. 5.) The lender paid \$3,896,750
4 into the closing. The parties have agreed that this
5 amount constituted Mr. Forde's proceeds for his sale of
6 the Leigh Mill house (Stip. 22), and we accept their
7 stipulation. Respondent also concedes that there were
8 paid out of the closing (a) a sales commission of \$359,700
9 and (b) legal fees of \$24,000, and that these amounts
10 constituted additional basis in the property for Mr. Forde
11 (i.e., a reduction of his gain), and we accept those
12 concessions.

13 Mr. Forde's lawyer (and co-conspirator) prepared
14 a HUD-1 statement for the settlement of the sale (Ex.
15 16-P), and it reflected (among other things) the
16 fictitious down payment and the payoff of a false mortgage
17 (Ex. 27-R at 4-5.) It also reflected a supposed \$400,000
18 as a payoff to Oxford Construction, but as is noted above,
19 we find instead that \$383,273 was paid to Oxford
20 Construction (Ex. 34-P.)

21 The Unraveling

22 Mr. Forde remained in the house after the sale.
23 The buyer never took possession. The buyer did not make
24 payments on his note to Mr. Forde, and Mr. Forde did not
25 pay rent for his retained possession after the sale.

1 Payments toward the new lender's mortgage loan were made
2 for some time (from the borrowed funds), but eventually
3 the mortgage went into default, the bankruptcy proceedings
4 were converted to Chapter 7, and civil and criminal
5 actions were brought against Mr. Forde. He and his co-
6 conspirators were convicted. Mr. Forde was sentenced to
7 42 months imprisonment (Ex. 27-R at 5-7.)

8 Tax Return, SNOD, and Petition

9 Mr. Forde filed his 2002 tax return nine years
10 late in April 2012 (Stip. 24.) On that return (Ex. 7-P),
11 he did not report any gain from the sale of the Leigh Mill
12 house. (He defends this reporting position by contending
13 that his basis in the property exceeded his amount
14 realized from the sale transaction. See Ex. 41-P.)

15 The IRS examined Mr. Forde's 2002 return and
16 determined that he realized capital gain on the sale in
17 the amount of \$2,422,055, taking into account the
18 stipulated sale price (\$3,896,750) minus (a) Mr. Forde's
19 1998 acquisition cost of \$835,000, (b) closing costs of
20 \$389,695 (apparently consisting of the commission, the
21 attorney fees, and an unspecified additional amount), and
22 (c) the Section 121 exclusion of \$250,000 (Stip. 23.) On
23 October 28, 2015, the IRS issued to Mr. Forde the SNOD
24 determining the resulting tax deficiency (Ex. 9-R).

25 On January 19, 2016, Mr. Forde timely filed his

1 petition in this Court. At that time he resided in
2 Virginia (Stip. 1.)

3 OPINION

4 I. Burden of Proof

5 The IRS's determination is presumed correct, and
6 the taxpayer generally bears the burden to prove his
7 entitlement to any deduction he claims; Rule 142(a).
8 Deductions are a matter of legislative grace, and
9 taxpayers must satisfy the specific requirements for any
10 deduction claimed. See INDOPCO, Inc. v. Commissioner, 503
11 U.S. 79, 84 (1992.) Furthermore, taxpayers are required
12 to maintain records sufficient to substantiate their
13 claimed deductions. See Section 6001; 26 C.F.R. Sec.
14 1.6001-1(a).

15 II. Gain on the Sale of the Leigh Mill House

16 A. Computing Gain

17 Under Section 1001(a), gain consists of the
18 excess of the "amount realized" (here, the stipulated
19 purchase price) over the seller's basis in the property
20 sold. Under Section 1012, the seller's adjusted basis
21 consists of "the cost of such property", which the parties
22 agree would consist of (a) the \$835,000 that Mr. Forde
23 paid to acquire the house in 1998 and (b) any subsequent
24 amounts he paid for construction costs (i.e., to demolish
25 the old house and build the new house.)

1 However, on the factual issue of what
2 construction costs have been substantiated, the parties
3 disagree. Mr. Forde contends that they total \$2,355,700
4 (see Ex. 41-P), but the Commissioner contends that they
5 are zero, i.e., that none have been substantiated. That
6 disagreement is the crux of this case.

7 B. Construction costs

8 1. The Fact of Demolition and Construction

9 Mr. Forde put on a convincing case that the old
10 house on the Leigh Mill property was demolished, that a
11 new and very large house was constructed (see, e.g., Ex.
12 28-P), and that very substantial cost would have to be
13 incurred to make that happen. However, assuming that to
14 be true, what Mr. Forde needed to prove was that he paid
15 that very substantial cost. He did not produce any
16 cancelled checks, bank records showing transfers, nor any
17 other equivalent proof of payment. He did not even
18 provide receipts from contractors showing amounts paid.
19 Instead, he relied on certificates of satisfaction of
20 lien, certificates of release of mechanics liens filed in
21 the county land records, and amounts stated in the HUD-1.

22 2. Certificates of Release of Mechanics Liens

23 The certificates of release of mechanics liens
24 state an amount claimed by the contractor, assert that the
25 lien is released, are signed by the contractor, and are

1 notarized. Ordinarily, this should mean that the
2 contractor releases his lien because he has been paid the
3 amount he claims, and we think such certificates do have
4 some probative value of payment. On the other hand
5 however, the certificate does not literally confirm
6 payment of the stated amount. A certificate of release of
7 a lien might be signed simply as an accommodation to the
8 debtor in order to facilitate a sale of property where,
9 for example, the contractor has not yet been paid but
10 hopes to be paid from the sale proceeds (and is willing to
11 risk nonpayment.) Or it might be signed by a contractor
12 willing to take immediate payment of a substantially
13 discounted amount. Or it might be signed by a colluding
14 party with a bogus lien who participated in a fraudulent
15 closing.

16 However, we do find that Mr. Forde probably did
17 pay to nine contractors the amounts listed on Exhibit 42-C
18 (whose certificates appear in Exhibits 32-P, 33-P, and 40-
19 P.) Their certificates were for relatively small amounts,
20 were signed in 2001 (most of them before his bankruptcy
21 petition), were signed for construction companies, and
22 show no signs of collusion with Mr. Forde. These amounts,
23 totaling \$300,575, should increase Mr. Forde's basis.

24 3. Certificates of Satisfaction

25 On the "Certificates of Satisfaction", a lender



1 "certif[ies] that the [stated amount of a loan] has been
2 paid in full". This should constitute actual evidence of
3 payment. Such certificates for \$100,000 and \$1,300,000
4 were signed for "Instant Money, Inc." on July 3, 2002
5 (Exs. 35-P, 39-P), and they correspond to a payoff of
6 \$1,553,114 indicated as a "first mortgage loan" by Instant
7 Money on the HUD-1, presumably reporting the payoff of a
8 mortgage loan secured by the Leigh Mill property. However,
9 Mr. Forde offered no evidence that he had used the loan
10 proceeds he obtained from Instant Money to pay for
11 construction costs, rather than for living expenses or
12 anything else. Similarly, such certificates signed by
13 Alfonzo Smith for \$151,500 and \$72,500 on July 7, 2002
14 (Exs. 37-P, 38-P), may correspond to payoffs of larger
15 amounts (\$252,000 and \$75,000) on the HUD-1 (Ex. 16-P);
16 and if we assume that they do reflect the actual payoff of
17 bona fide loan debt, nonetheless, Mr. Forde did not show
18 that he spent the loan proceeds he obtained from Alfonzo
19 Smith on construction costs. Proving loans and payoffs --
20 without more -- does not increase Mr. Forde's basis in the
21 Leigh Mill property.

22 We view differently the certificate of
23 satisfaction signed for Oxford Construction on July 2,
24 2002, which reflects the satisfaction of a note dated in
25 June 2000 with an amount of \$383,273 (Ex. 34-P.) A



1 principal of Oxford Construction testified at trial,
2 credibly and in detail, about work done on the Leigh Mill
3 property and about Oxford's cost-plus-20-percent
4 arrangement with Mr. Forde. The witness was candid about
5 his nonrecall of the dollar amounts, but he confirmed the
6 reasonableness of the ballpark amount of \$400,000. (The
7 HUD-1 does include a payoff amount of \$400,000 to Oxford,
8 but we adopt the slightly smaller amount on the
9 certificate of satisfaction, since we cannot eliminate the
10 possibility that -- in the otherwise fraudulent closing --
11 Mr. Forde and his attorney might have retained the
12 difference rather than actually paying it over to Oxford.)
13 We conclude that Oxford probably did receive \$383,273 for
14 work done on the Leigh Mill property, and this should
15 increase Mr. Forde's basis.

16 4. Other Expenses

17 Mr. Forde has also asserted that his gain should
18 be reduced by selling expenses of \$332,995 and mortgage
19 points of \$172,534 (see Ex. 41-P.) However, he put on no
20 supporting evidence, testimonial or documentary, for the
21 selling expenses, and for the mortgage points, his only
22 documentary evidence is the HUD-1 statement (Ex. 16-P),
23 which is unreliable for the reasons we have already
24 stated. We therefore do not reduce his gain by these
25 amounts.

1 III. Addition to Tax

2 The Commissioner has the burden of production,
3 see Section 7491(c), to show that Mr. Forde is liable for
4 the addition to tax determined against him in the SNOD for
5 failure to timely file his return, under Section
6 6651(a)(1). The Commissioner fulfilled that burden by the
7 stipulated fact that Mr. Forde filed his return nine years
8 late, and Mr. Forde made no argument as to reasonable
9 cause for the untimeliness. The addition to tax is,
10 therefore, sustained.

11 IV. Accuracy-Related Penalty

12 The Commissioner determined that Mr. Forde is
13 liable for a 20 percent accuracy-related penalty under
14 Section 6662(a) because the deficiency he determined
15 (i.e., \$429,169; see Ex. 9-R) is great enough that the
16 resulting underpayment is "substantial" for purposes of
17 Section 6662(b)(2) and (d)(1)(A), i.e., it exceeds \$5,000
18 and it exceeds by more than 10 percent the tax liability
19 that Mr. Forde reported (i.e., zero; see Ex. 7-P.) The
20 Commissioner showed compliance with Section 6751(b); (see
21 Ex. 10-R.) Although we do not sustain in full the
22 Commissioner's determination on the principal issue in
23 this case, we sustain it in large part, and it is clear
24 that the actual deficiency, yet to be recomputed under
25 Rule 155, will be "substantial". The Commissioner has

1 carried his burden. Mr. Forde made no showing of
2 reasonable cause for his underpayment, and he will
3 therefore be liable for the accuracy-related penalty on
4 the recomputed amount.

5 The IRS's notice of deficiency is upheld in
6 part, to the extent shown above. So that the liability can
7 be recalculated, decision will be entered pursuant to Rule
8 155.

9 This concludes the Court's oral Findings of Fact
10 and Opinion in this case.

11 (Whereupon, at 2:46 p.m., the above-entitled
12 matter was concluded.)

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Exhibit 42-C

<u>Exhibit(s)</u>	<u>Lienholder</u>	<u>Amount</u>
32-P, 40-P	Owen Companies, LLC	\$8,930.00
33-P	Bell Pump & Well, Inc.	1,509.77
40-P	A&N Mechanical Contractors	26,850.00
40-P	A&S Construction	95,010.00
40-P	D.J. Bittner Construction	8,180.00
40-P	Carpet Gallery	33,657.00
40-P	Dolphin Plumbing	23,600.00
40-P	Escobar Inc.	65,038.44
40-P	Hammer Corporation	<u>37,800.00</u>
Total		300,575.21