

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CIVIL DIVISION**

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4  
5 **Cause No: G 0232/2015**  
6

7 **BETWEEN:**

8 **PEGGY JOSIE BASDEO**

9  
10 **APPELLANT**

11  
12 **AND:**

13 **THE HONOURABLE MINISTER OF FINANCE &**  
14 **ECONOMIC DEVELOPMENT, AS EX OFFICIO**  
15 **COMMISSIONER FOR THE COLLECTION OF**  
16 **STAMP DUTY**

17  
18 **RESPONDENT**



21 **Appearances:**

22 **Mrs. Basdeo, the Appellant, IP**  
23 **(Mr. Brett Basdeo, the Appellant's husband,**  
24 **attended and addressed the Court)**

25 **Ms. Rachael Hoare with Ms. Tonicia Williams**  
26 **of the Attorney General's Chambers for the**  
27 **Respondent**

28  
29 **Before:**

**Mr. Justice Alastair Malcolm (Actg.)**

30 **Heard:**

**23<sup>rd</sup> February 2016**

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32 **JUDGMENT**

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36 1. This is an appeal brought by Peggy Basdeo ("Mrs. Basdeo") against an adjudication  
37 dated the 27<sup>th</sup> November 2015 that the stamp duty payable by her on the purchase of  
38 South Sound, Block 15E Parcel 122H7 ("the Land") was 2% on a value of CI\$120,000  
39 in accordance with item 10(b)(ii) under the heading "Conveyance or Transfer" in the  
40 Schedule to the Stamp Duty Law (2013 Revision).

1           2.       Mrs. Basdeo had had Caymanian status under s.20(1)(d) of the Immigration Law (2003  
2                   Revision) until reaching the age of 18 and by a letter dated 15<sup>th</sup> December 2005 the  
3                   Chief Immigration Officer confirmed she continued to possess the right to be  
4                   Caymanian beyond the age of 18.

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6           3.       As a result of her status, and the fact that this was her first purchase of land, Mrs.  
7                   Basdeo was entitled to the reduction in Stamp Duty provided by paragraph 10(b)(ii)  
8                   under the heading "Conveyance or Transfer" in the Schedule to the Stamp Duty Law  
9                   (2013 Revision).

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11          4.       Paragraph 10 of the Conveyance or Transfer section of the Schedule provides:

12                   “(10) Notwithstanding paragraph (2), where land (other than land included in  
13                   the Table to paragraph (1)) is transferred to a Caymanian for the purpose  
14                   of his first owner-occupied home -  
15                   (a)       there is no charge to duty on the instrument effecting such  
16                   transfer if-  
17                   (i)       in the case of land with a building, the  
18                   consideration is \$300,000 or less; or  
19                   (ii)      in the case of land without a building, the  
20                   consideration is \$100,000 or less; and  
21  
22                   (b)      duty at the rate of 2% of the consideration is chargeable  
23                   on the instrument if -  
24                   (i)       in the case of land with a building, the  
25                   consideration exceeds \$300,000 but does not  
26                   exceed \$400,000; or  
27                   (ii)      in the case of land without a building, the  
28                   consideration exceeds \$100,000 but does not  
29                   exceed \$150,000; ...”



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1 5. The Land had been marketed under the CIREBA Multiple Listing Service/System  
2 (MLS) and the agreed purchase price was CI\$115,000. It follows that the consideration  
3 that was recited in the instrument effecting the conveyance was CI\$115,000. Mrs.  
4 Basdeo, who with my leave, and the agreement of the Respondent, has been assisted  
5 by her husband, who is an attorney-at-law but did not appear in that capacity, asserts  
6 that the 2% should be levied on that figure and not on CI\$120,000. The difference  
7 between the parties is therefore only CI\$100 but there is an issue of principle that may  
8 well affect many other conveyances.

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10 6. How does the figure of CI\$120,000 arise for the market value of the Land? To obtain  
11 the concessionary rate, first-time Caymanian property buyers have to provide, *inter*  
12 *alia*, an affidavit and a valuation by an approved valuer. In the *pro forma* affidavit at  
13 paragraph 3 is “The current market value is CI\$ \_\_\_\_\_” and Mrs. Basdeo has inserted  
14 the figure of CI\$120,000 into the blank which was the figure in the valuation report  
15 (which accompanied her application) provided by Ian Barnard, a Chartered Quantity  
16 Surveyor, on the 4<sup>th</sup> November 2015.

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18 7. Under the heading “Conveyance or Transfer” in the Schedule to the Stamp Duty Law  
19 (2013 Revision) paragraph 3 states:



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21 “For the purpose of this head of duty, the consideration shall be deemed to be the  
22 consideration recited in the instrument effecting the conveyance or transfer or the  
23 market value of the property conveyed or transferred, whichever is the higher...”  
24

25  
26 8. The provisions in paragraph 3 are necessary to cover the conveyances of property  
27 between parties for less than the true market value, for example where there is some  
28 non-monetary consideration or transfer of property between family members at a  
29 reduced price.

1 9. Under the heading "Conveyance or Transfer of any immovable property" in the  
2 Schedule to the Stamp Duty Law (2013 Revision) paragraph 4 states:

3 "(4) For the purposes of paragraph (3), the market value of any property is the  
4 estimated amount for which a property should exchange on the date of  
5 valuation between a willing buyer and a willing seller in an arm's-length  
6 transaction after proper marketing wherein the parties had each acted  
7 knowledgeably, prudently and without compulsion."  
8

9 10. A definition of market value provided by International Valuation Standards Council is:

10 "the amount for which a property should exchange on the date of valuation  
11 between a willing buyer and a willing seller in an arm's-length transaction after  
12 proper marketing wherein the parties had each acted knowledgeably, prudently,  
13 and without compulsion"

14

15 This is a definition with which I agree.

16 11. A valuation report can only be an estimate of what the author of the report considers  
17 the market value to be. In this case Mr. Barnard says:

18 "In our opinion the market value of the subject parcel... is CI\$120,000" (*my*  
19 *italics*).



20 Any valuation being opinion based, it is common for valuers to produce different  
21 figures however great their experience or expertise may be.

22 12. The best evidence of the market value of a property is the actual price agreed "*between*  
23 *a willing buyer and a willing seller in an arm's-length transaction after proper*  
24 *marketing wherein the parties had each acted knowledgeably, prudently, and without*  
25 *compulsion*".  
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1 13. The Cayman Islands have the benefit of the MLS for marketing property. The effect is  
2 that the property is available for all potential vendors to see and is not dependent on a  
3 particular Realtor's marketing ability. Further, it has the benefit of being approved by  
4 the Courts as a method of reaching a true market value.

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6 14. In *Scotia Bank (Cayman Islands) Ltd v Rankine*<sup>1</sup> Henderson J said:

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8 *"The best evidence of the true value of real estate is the reaction of potential*  
9 *purchasers and offers made by them, assuming that the property has been listed on*  
10 *the Multiple Listing Service with accurate particulars and advertised in a*  
11 *reasonable and competent fashion. Estimates in appraisals that are more*  
12 *optimistic than the highest offers received after extended exposure of the property*  
13 *to the marketplace, must be viewed as erroneous."*

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15 15. Henderson J returned to the MLS in *Scotia Bank & Trust (Cayman) Ltd v Ebanks &*  
16 *Gordon*<sup>2</sup> in which he said:

17 *"The listing of real estate on the Multiple Listing Service has all the essential*  
18 *attributes of a reverse auction. The list price is set at a high level initially, then*  
19 *lowered progressively until a sale is made. The property is advertised widely and*  
20 *is available to any member of the public with an interest in purchasing. In*  
21 *substance, the sale of property through the Multiple Listing Service is a public*  
22 *auction."*

23  
24 16. In *Cayman National Building Society v Cranston*<sup>3</sup> Quin J, having quoted Henderson J  
25 in *Scotia Bank (Cayman Islands) Ltd v Rankine*<sup>4</sup> said:

26 *"Accordingly, banks in the position of chargees understand that the most*  
27 *appropriate manner for them to demonstrate that they have fulfilled their duty to*  
28 *the chargor to obtain the best price reasonably obtainable for the property is by*  
29 *listing it in the Multiple Listing System and advertising it for a reasonable period*  
30 *of time."*  
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<sup>1</sup> [2004-2005 CILR Note 26]

<sup>2</sup> 2012 1 CILR 401

<sup>3</sup> 2011 1 CILR 67

<sup>4</sup> [2004-2005 CILR Note 26]



1 17. There is no evidence in this case that the purchase by Mrs. Basdeo was anything other  
2 than an arm's-length transaction after the property had been advertised on the MLS.  
3 That being the position I prefer the evidence of the purchase price to that of the opinion  
4 of Mr. Barnard, so in my judgment the true market value in this case is the agreed sale  
5 price of CI\$115,000.

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7 18. I accept that the reason Mrs. Basdeo was charged the incorrect figure because she  
8 inserted the figure of CI\$120,000 in the form and provided a valuation in that sum.  
9 With whom the blame lies for that, with her or with the system of application, is not  
10 for me to decide.

11  
12 19. Where an appeal is brought under s.10 to the Stamp Duty Law (2013 Revision) to the  
13 Grand Court, the Court by s.12 may:

- 14 “(a) uphold the adjudication;  
15 (b) order that duty be charged at a lower rate;  
16 (c) order that the instrument is not subject to duty; or  
17 (d) order that duty be charged at a higher rate,

18 and in the event of the order of the Grand Court falling under paragraph (b), (c)  
19 or (d) the Grand Court shall cause the instrument to be endorsed with the  
20 substance and date of the order and the seal of the Grand Court and the  
21 Commissioner shall cause the instrument to be re-stamped or otherwise dealt with  
22 in accordance with the order, against appropriate adjustment made in the charge  
23 of duty to the appellant.”  
24

25 20. The Stamp Duty Law (2013 Revision) does not therefore permit me just to declare that  
26 the duty should be charged on a figure of CI\$115,000.

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28 21. However having reached the decision that the consideration and the true market value  
29 are the same, namely CI\$115,000 and Mrs. Basdeo was charged CI\$2400, the effective  
30 rate at which she was charged is 2.09%.

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1 22. I therefore order under s.12(b) that the duty be paid at a lower rate of 2% on  
2 CI\$115,000 as against the previously charged 2.09%.

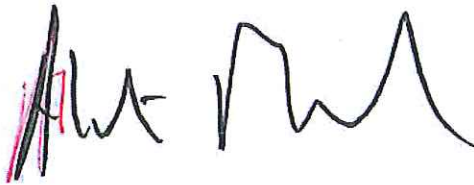
3  
4 23. As both sides had waived their rights to costs, which, under the Stamp Duty (Appeals)  
5 Rules, are limited to 2% of the disputed sum, CI\$100, I make no order for costs under  
6 s.13 of the Stamp Duty Law (2013 Revision).

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8 24. Finally in accordance with s.12 of the Stamp Duty Law (2013 Revision) I direct that  
9 the conveyance instrument be endorsed with the substance an date of this order and the  
10 seal of the Grand Court.

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13 **Dated this the 8<sup>th</sup> day of March 2016**

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16 **Mr. Justice Alastair Malcolm (Actg.)**  
17 **Acting Judge of the Grand Court**

