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CASE SUMMARIES

PURE GIFT TRANSFERS OF NONRECOURSE DEBT CONSTITUTE INCOME TO DONOR. *Estate of Levine v. Commissioner*, 634 F.2d 12 (2d Cir. 1980).

The taxpayer gave property to a trust to benefit his grandchildren. Previously, the taxpayer, Levine, had obtained \$780,000 from two nonrecourse, nonpurchase money mortgages secured by the property. The trust assumed the mortgages, accrued interest on the mortgages, and personal debts of the taxpayer. Because personal debts of the taxpayer were discharged, the transaction was part sale and part gift.

Old Colony Trust Co. v. Commissioner, 279 U.S. 716, 729 (1929), had established that discharge of personal debts constitutes income to the donor. The IRS argued that discharge of the nonrecourse mortgages and accrued interest also constituted income to the taxpayer under *Crane v. Commissioner*, 331 U.S. 1 (1947). In *Crane*, the Court held that the excess of nonrecourse mortgages discharged in an outright sale of encumbered property over the taxpayer's adjusted basis in that property constituted taxable gain. The adjusted basis was calculated by including the amount of the nonrecourse mortgages less depreciation deductions taken by the taxpayer. The IRS argued that *Crane* should apply to all transactions in which nonrecourse mortgages are discharged, including the part sale, part gift transaction in *Levine*.

Conversely, Levine argued that the "net gift" theory of *Turner v. Commissioner*, 46 T.C. 356 (1968), *aff'd per curiam*, 410 F.2d 752 (6th Cir. 1969), precluded application of *Crane* to the part sale, part gift transaction. In *Turner*, the taxpayer made gifts that were conditional on the donee paying the resulting gift tax. Because no personal liabilities of the taxpayer were discharged and because the taxpayer successfully argued that he intended only a net gift of the value of the property less the gift taxes incurred, the court concluded that the taxpayer did not realize taxable gain. Levine argued that *Turner*, and not *Crane*, should apply when the donee assumes personal liabilities of the taxpayer-donor in a part sale, part gift transaction.

In *Levine*, the Tax Court agreed with the IRS that *Crane* requires that gain be recognized in *any* transaction when the amount of nonrecourse mortgages discharged exceeds the taxpayer's adjusted basis in the encumbered property. The United States Court of Appeals for the Second Circuit upheld the imposition of tax liability by the Tax Court, but expressly refused to decide if the same result would follow in a pure gift transaction in which the donee assumed nonrecourse mortgages but no personal liabilities of the taxpayer-donor were discharged.

Thus, *Levine* stands for three important propositions. One, application of the net gift theory is limited to the facts of *Turner*. Two, *Crane* requires recognition of gain in part sale, part gift transactions as well as in outright sales. Three, *Crane* may require that gain be recognized in all transactions when the nonrecourse mortgages discharged exceed the adjusted basis in the property, including pure gift transactions when no personal liabilities of the taxpayer-donor are discharged.

CHRIS R. MILTENBERGER

SEXUALLY DISCRIMINATORY WORK ENVIRONMENT VIOLATES TITLE VII. *Bundy v. Jackson*, 641 F.2d 934 (D.C. Cir. 1981).

Sarah Bundy, an employee of the District of Columbia Department of Corrections, repeatedly was subjected to the sexual advances of her male supervisors. She complained about this treatment, pursued her complaint through the chain of command, and eventually met with the agency director. Her complaint, however, was never investigated. In retaliation for her complaints, Bundy's supervisors delayed her promotion. Bundy then sought injunctive relief from the sexual harassment and back pay for the allegedly improper promotion delay.

The United States District Court for the District of Columbia refused to grant Bundy any relief, concluding that sexual harassment does not constitute discrimination with respect to the "terms, conditions, or privileges of employment" clause of Title VII of the Civil Rights Act of 1964. The United States Court of Appeals for the District of Columbia Circuit reversed, ruling for the first time that an employer violates Title VII merely by subjecting female employees to a discriminatory work environment, regardless of whether the complaining employee loses any benefits as a result of the discrimination. The court granted Bundy injunctive relief from the sexual harassment and remanded the claim for back pay.

Based on its prior decision in *Barnes v. Costle*, 561 F.2d 983 (D.C. Cir. 1977), the *Bundy* court readily concluded that Bundy's employer discriminated against her on the basis of sex. In *Barnes*, a female employee's job was abolished following her rejection of her superior's advances. In finding that *Barnes*' employer had violated Title VII, the court rejected the argument that sexual harassment is not sex discrimination, ruling that the statutory prohibition of sex discrimination in employment is not limited to characteristics peculiar to one gender or to situations in which less than all employees of the claimant's gender are affected. The *Barnes* court found that the harassment was a condition of employment because *Barnes* lost her job as a result of refusing her supervisor's advances. The *Bundy* court extended its decision in *Barnes*, concluding that "conditions of employment" include the psychological work environment and that the harassment she endured caused Bundy anxiety and illegally poisoned that environment. The

court warned that if the *Barnes* holding were not extended, an employer could sexually harass an employee with impunity as long as he took no job-related action against her.

Bundy v. Jackson expands Title VII sex discrimination to include any sexual harassment that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. A female employee need not show that she resisted the harassment or that her resistance resulted in the loss of a job-related benefit. Instead, if she proves that her employer subjected her to sexual harassment and to a discriminatory work environment, she is entitled to injunctive relief.

JEFFREY JOSEPH BRINKER