

Federal Court of  
Appeal



Cour d'appel  
fédérale

Date: 20100910

Dockets: A-407-09  
A-406-09

Citation: 2010 FCA 228

**CORAM: NOËL J.A.  
NADON J.A.  
TRUDEL J.A.**

**A-407-09**

**BETWEEN:**

**MAURICE BOIVIN, IN HIS CAPACITY AS LIQUIDATOR  
OF THE SUCCESSION OF THE LATE GABRIELLE GAUTHIER**

**Appellant**

**and**

**HER MAJESTY IN RIGHT OF CANADA**

**Respondent**

**A-406-09**

**BETWEEN:**

**VINCENT BOIVIN**

**Appellant**

**and**

**HER MAJESTY IN RIGHT OF CANADA**

**Respondent**

Hearing held at Ottawa, Ontario, on September 8, 2010.

Judgment delivered at Ottawa, Ontario, on September 10, 2010.

REASONS FOR JUDGMENT:

NOËL J.A.

CONCURRED IN BY:

NADON J.A.  
TRUDEL J.A.

Federal Court of  
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## **REASONS FOR JUDGMENT**

### **NOËL J.A.**

[1] These are appeals from two judgments rendered by Justice Paris of the Tax Court of Canada (the TCC judge) confirming, in a single set of reasons, the validity of the assessments made by the Minister of National Revenue (the Minister) under section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1, (5th Supp.) (the Act).

[2] The two appeals have been consolidated, following an order by Justice Nadon dated November 24, 2009. Pursuant to that order, these reasons will be filed in the lead file (A-407-09), and a copy thereof will be filed as Reasons for Judgment in file A-406-09.

[3] The assessments in this appeal were made following the transfer of \$203,075.54 from Maurice Boivin to the succession of his late spouse Gabrielle Gauthier (the Succession), and also following the subsequent transfer of the amount of \$40,000 from the Succession to Vincent Boivin, son of Maurice Boivin. The Minister assessed the Succession on the basis of the transfer from Maurice Boivin to the Succession, without consideration, at a time when Mr. Boivin's tax debt had amounted to \$160,257.91. The assessment of Vincent Boivin was established on the grounds that the transfer was made without consideration at a time when the Estate had, pursuant to section 160 of the Act, a tax debt from the transfer made by Maurice Boivin to the Succession.

[4] The only point at issue, according to the Memorandum of Fact and Law filed by the appellants, is the unseizability of the funds transferred by Maurice Boivin to the Succession, and by the Succession to Vincent Boivin. At the hearing, counsel for the appellants attempted to raise several additional issues of a totally different nature. Counsel for the respondent objected to the late and unannounced submissions, thus there is no need to address those issues.

[5] The appellants contend that the funds transferred to them were unseizable under Quebec law, because they derived from the sale of property bequeathed to Maurice Boivin under a stipulation of unseizability, which extended under the terms of the will to property [TRANSLATION] “acquired by reinvestment” of the bequeathed immovable. (Appeal Book, page 220).

[6] The provisions of the *Civil Code of Québec*, R.S.Q., c. C-1991 (C.C.Q.) and of the *Québec Code of Civil Procedure*, R.S.Q., c. C-25 (C.C.P.) on which the appellants base their argument are as follows:

**2649.** A stipulation of unseizability is without effect, unless it is made in an act by gratuitous title and is temporary and justified by a serious and legitimate interest. Nevertheless, the property remains liable to seizure to the extent provided in the Code of Civil Procedure (chapter C-25).

It may be set up against third persons only if it is published in the appropriate register.

**2649.** La stipulation d'insaisissabilité est sans effet, à moins qu'elle ne soit faite dans un acte à titre gratuit et qu'elle ne soit temporaire et justifiée par un intérêt sérieux et légitime; néanmoins, le bien demeure saisissable dans la mesure prévue au Code de procédure civile (chapitre C-25).

Elle n'est opposable aux tiers que si elle est publiée au registre approprié.

**553.** The following are exempt from seizure:

...

(3) Property declared by a donor or testator to be exempt from seizure, which may however be seized by creditors posterior to the gift or to the opening of the legacy, with the permission of the judge and to the extent that he determines;

(4) Judicially awarded support and sums given or bequeathed as support, even if not declared to be exempt from seizure by the instrument evidencing the gift or bequest;

...

**553.** Sont insaisissables:

[...]

3. Les biens donnés ou légués sous condition d'insaisissabilité; néanmoins, ces biens peuvent être saisis à la poursuite des créanciers postérieurs à la donation ou à l'ouverture du legs, avec la permission du juge et pour la portion qu'il détermine;

4. Les aliments accordés en justice, de même que les sommes données ou léguées à titre d'aliments, encore que le titre qui les a constituées ne les ait pas déclarées insaisissables;

[...]

[7] The TCC judge dismissed the appeals principally on the basis of the Supreme Court's decision in *Poulin v. Serge Morency et Associés Inc.*, [1999] 3 S.C.R. 351 (*Poulin*). In that case, the Supreme Court held that seizability was the rule and unseizability the exception, so that the statutory provisions ordering unseizability were to be narrowly construed. In this case, the TCC judge concluded that the power to stipulate the unseizability of property under article 2649 of the C.C.Q. does not extend to property acquired by reinvestment of bequeathed property.

[8] In support of their appeals, the appellants point out that the *Poulin* decision relates to an interpretation of section 222 of the *Act respecting the Government and Public Employees Retirement Plan*, R.S.Q., c. R-10 (Retirement Plan Act) and not to article 2649 of the C.C.Q. According to them, the principle established by the Supreme Court in *Poulin* only applies in the specific context of that case. They argue that the TCC judge failed to make the distinction between legal unseizability and conventional unseizability under article 2649 of the C.C.Q.

[9] It is true that the *Poulin* case is related to unseizability under the Retirement Plan Act. However, it seems clear that the underlying principle may have a broader application.

[10] In *Poulin*, the Supreme Court refers to articles 2644 and 2645 of the C.C.Q. to state the principle by which seizability is the rule and unseizability the exception (*Poulin*, paragraph 18). Specifically, the Court indicates that (*idem*):

Provisions that depart from the principle must be narrowly construed: . . . . In addition, given that [they] affect the rights of the creditors, they may be expected to be worded clearly and precisely.

[11] Like section 222 of the Retirement Plan Act, article 2649 of the C.C.Q. overrides the principle of seizability of property, but only to the extent provided. On its face, this exception thus created extends only to property transferred by the legatee (or the donee) because no mention is made of its reinvestment.

[12] In order for the stipulation of unseizability under article 2649 of the C.C.Q. to extend to reinvestment, it would have had to be provided in clear and precise terms, which is not the case.

[13] In my opinion, the TCC judge correctly concluded that the stipulation of unseizability outlined in the will of the late Gabrielle Gauthier can not extend to property acquired by reinvestment.

[14] Counsel for the respondent asserted that, in any event, Parliament is not bound by the unseizability enacted by the laws of the provinces (*Marcoux v. Canada (Attorney General)*, 2001 FCA 92, 2001 CarswellNat 568 (FCA), paragraph 10; *Bouchard v. Canada (Attorney General)*, 2009 FCA 321, 2009 CarswellNat 3505 (FCA), paragraph 20; see also *Canada v. Rose.*, 2009 FCA 93, 2009 CarswellNat 5699 (FCA), paragraphs 29 and 30). Because the amounts assessed are not protected from seizure according to Quebec law, there is no need to address this question.

[15] I would dismiss the appeal with costs in the lead file only.

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“Marc Noël”

J.A.

“I agree.  
M. Nadon J.A.”

“I agree.  
Johanne Trudel J.A.”



**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKETS:**

A-407-09 and A-406-09

**(APPEAL FROM JUDGEMENTS OF THE HONOURABLE MR. JUSTICE PARIS  
OF THE TAX COURT OF CANADA DATED SEPTEMBER 3, 2009, DOCKETS NO.  
2007-3503(IT)G and 2007-3623(IT)G.)**

**STYLE OF CAUSE:**

A-407-09

Maurice Boivin, in his capacity as liquidator of  
the succession of the late Gabrielle Gauthier and  
Her Majesty in Right of Canada

A-406-09

Vincent Boivin and Her Majesty in Right of  
Canada

**PLACE OF HEARING:**

Ottawa, Ontario

**DATE OF HEARING:**

September 8, 2010

**REASONS FOR JUDGEMENT:**

NOËL J.A.

**CONCURRED IN BY:**

NADON J.A.

TRUDEL J.A.

**DATED:**

September 10, 2010

**APPEARANCES:**

Darquise Jolicoeur

FOR THE APPELLANTS

Pascal Tétrault

FOR THE RESPONDENT

**SOLLICITORS OF RECORD:**

Beaudry, Bertrand, s.e.n.c.r.l.  
Gatineau, Québec

FOR THE APPELLANTS

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT