

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130116

Docket: A-150-12

Citation: 2013 FCA 10

**CORAM: NOËL J.A.
PELLETIER J.A.
MAINVILLE J.A.**

BETWEEN:

ISABELLA SOKOLOWSKI ROMAR

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on January 15, 2013.

Judgment delivered at Montréal, Quebec, on January 16, 2013.

REASONS FOR JUDGMENT BY:

MAINVILLE J.A.

CONCURRED IN BY:

**NOËL J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] This is an appeal from a judgment of Justice Angers of the Tax Court of Canada (the judge), rendered April 25, 2012 on the basis of reasons which bear citation number 2012 TCC 104, dismissing the appeal from the assessment of \$949,999 made in respect of the appellant under subsection 160(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act).

[2] Subsection 160(1) deals with, among other things, transfers of property between spouses. It allows the Minister to collect from a spouse who benefited from a transfer “the amount, if any,

by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property”, up to the amount of the tax liability of the other spouse for the taxation year in which the transfer took place or any preceding taxation year.

[3] The issue is whether the sale of the family home by the appellant’s husband to the appellant on June 30, 1988 for the amount of \$1 was part of a larger transaction, namely, the dissolution of the partnership of acquests between the spouses on April 20, 1989.

[4] The parties acknowledge that the fair market value of the residence was \$950,000 when it was sold in 1988. Furthermore, it is not disputed that the appellant’s husband had an outstanding tax liability exceeding \$950,000 for the 1988 taxation year or a preceding taxation year.

[5] Upon reading the notarial contracts at issue, and in light of all of the evidence before him, the judge concluded that the sale transaction and the dissolution of the matrimonial regime were distinct transactions and that, in the circumstances, subsection 160(1) of the Act applied to the total value of the home at the time of the transfer less one dollar. I see no error by the judge in these respects.

[6] Indeed, the notarial contract of sale dated June 30, 1988 expressly states that the spouses were married under the partnership of acquests regime and that [TRANSLATION] “[t]here is no pending agreement between the spouses concerning the modification of their civil status or matrimonial regime”. The notarial contract further states that [TRANSLATION] “[t]his sale was

therefore concluded for the amount of one dollar (\$1.00) and other good and valuable consideration that the purchaser has paid in cash to the seller and that the latter acknowledges having received from the purchaser, to whom he grants a FINAL AND GENERAL DISCHARGE”.

[7] The subsequent dissolution of the partnership of acquests on April 20, 1989 does not establish that an additional consideration was paid for the sale by one spouse to the other of their principal residence. The notarial documents concerning the dissolution of the matrimonial regime and the resulting partition of the assets clearly specify that the family home was registered in the name of the appellant at the time of the partition, thus explicitly confirming the previous sale transaction. Each spouse’s waiver of his or her rights to the property passing to the other spouse as a result of the partition flows from the very logic of the dissolution of the partnership of acquests and the waivers do not in themselves establish that an additional consideration was paid for the family home.

[8] The *Civil Code of Lower Canada* provided in articles 1208 and 1210 that a notarial contract signed by the parties is authentic and makes complete proof between the parties to it of the obligation expressed in it and of what is expressed in it by way of recital, if the recital has a direct reference to the obligation or to the object of the parties in executing the instrument. The *Civil Code of Québec* reiterates these principles in articles 2814 and 2819.

[9] In these circumstances, the judge did not commit a reviewable error by giving effect to the clear provisions of the notarial contract of sale, which were not contradicted by the notarial instruments regarding the dissolution of the matrimonial regime.

[10] I will therefore dismiss the appeal with costs.

“Robert M. Mainville”

J.A.

“I agree.

Marc Noël J.A.”

“I agree.

J.D. Denis Pelletier J.A.”



FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-150-12

(APPEAL FROM A JUDGMENT BY ANGERS J. OF THE TAX COURT OF CANADA DATED APRIL 25, 2012, DOCKET 2010-707(IT)G)

STYLE OF CAUSE: Isabella Sokolowski Romar v.
Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 15, 2013

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: NOËL J.A.
PELLETIER J.A.

DATED: January 16, 2013

APPEARANCES:

Richard Généreux FOR THE APPELLANT

Nathalie Labbé FOR THE RESPONDENT
Valérie Messoré

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