[OFFICIAL ENGLISH TRANSLATION]

2002-363(IT)I

BETWEEN:

LAURIER PEDNEAULT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 13, 2002, at Québec, Quebec, by

the Honourable Judge Alain Tardif

Appearances

Counsel for the Appellant: Louis Tassé

Counsel for the Respondent: Julie David

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the 1996 and 1997 taxation years is allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant received no personal benefit in his capacity as a shareholder of the company that owns the residence identified as Domaine Champlain, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 18th day of December 2002.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 6th day of February 2004.

Sophie Debbané, Revisor

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Date: 20021218
Docket: 2002-363(IT)I

BETWEEN:

LAURIER PEDNEAULT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] This is an appeal from notices of assessment for the 1996 and 1997 taxation years.

[2] The assessments were made on the basis of the following assumptions of fact:

[TRANSLATION]

(a) the appellant is the sole shareholder of "Congébec Ltée" (hereinafter the "Corporation");

(b) in 1984, the appellant acquired a principal residence located at 1412 Rue Notre-Dame in the municipality of Champlain, more than 80 km from the city of Quebec and less than 40 km from the city of Trois-Rivières;

(c) that property is located in an agricultural area and comprises a lot of 1.76 hectares on which there is a three-storey house built at the edge of the north shore of the St. Lawrence River, a garage

detached from the main building, a tennis court and an outdoor pool, the whole surrounded by a security fence;

(d) the property is called “Domaine Champlain”;

(e) in 1989, at the time of the appellant’s divorce, since the immovable was a property of the family patrimony, it became his exclusive property when the common patrimony was divided;

(f) during that period, the appellant acquired a new family residence in Saint-Augustin-de-Desmaures, in suburban Québec, which he had acquired for his benefit and that of his new spouse and their two children;

(g) on August 29, 1989, the appellant sold Domaine Champlain to the Corporation for more than $600,000, which, according to the Ministère du Revenu du Québec (hereinafter “MRQ”), was a price greater than its fair market value estimated at $500,000;

(h) the Corporation did not rent or make attempts to rent or obtain any income whatever from Domaine Champlain from the time it acquired the property in 1989;

(i) the Corporation did not demonstrate its intention to sell the property because no mandate was given to a real estate agent or broker and no regular and continuing advertising was done demonstrating an intention by the owner to sell directly;

(j) during the years from 1989 to 1995, the Corporation performed the following work at Domaine Champlain:

(1) landscaping (flowers, shrubs, lawn)
(2) construction of a tennis court
(3) installation of an outdoor pool and fence
(4) purchase of a pool water heating system
(5) installation of a home alarm system
(6) interior decoration and painting of certain rooms of the Domaine Champlain residence;

(k) since 1989, the date on which the Corporation acquired the property, the Corporation has employed Gilles Leblanc, a neighbour, to perform exterior work (lawn-mowing, maintenance of flowers and shrubs, snow removal and various jobs);

(l) during the years in issue, the appellant owned movables and personal belongings at Domaine Champlain worth $400,000 and

never showed that he intended to move them to his Saint-Augustin-de-Desmaures residence, to sell them or to dispose of them in any manner whatever;

(m) the appellant had the exclusive right to use the property, which belonged to the Corporation, either as a secondary residence or as a warehouse, for all the years in issue;

(n) the appellant made no payment to the Corporation for that use, and the Corporation never showed that it had acquired Domaine Champlain for business or investment purposes;

(o) the MRQ asked its assessment service to determine the fair market value of Domaine Champlain at the time the appellant sold it to the Corporation;

(p) that fair market value of $500,000 was used to calculate the taxable benefit the appellant had received from the Corporation in 1993 and 1997;

(q) the calculation of the taxable benefit is based on the average mortgage rate over three years plus a rate of return of 2.4%;

(r) the calculation also takes into account the cost of insurance, taxes and electricity paid by Congébec Ltée;

(s) for the years in issue, the Canada Customs and Revenue Agency (hereinafter "CCRA") used the same basis as the MRQ to calculate the appellant's taxable benefit;

(t) the CCRA assessed the taxable benefit received by the appellant at $70,850 for each of the years in issue;

(u) at the objection stage, there was an out-of-court settlement according to which the taxable benefit from the personal use of the property was reduced to a period of four months for the 1993 to 1995 taxation years inclusive;

(v) after the electricity and telephone statements were audited, Objections concluded that the same basis of four months a year was justified for the 1996 and 1997 taxation years because power consumption for those two years had been appreciably the same as for the 1994 taxation year;

(w) for 1996, the calculation of the taxable benefit also includes the goods and services tax (hereinafter "GST").

[3] The point at issue is as follows:

> [TRANSLATION]
>
> The point at issue is whether the Minister correctly added to the appellant's income the respective amounts of $25,173 and $23,526 in respect of a benefit to a shareholder for the 1996 and 1997 taxation years.

[4] The evidence filed by the appellant established on a balance of probabilities that the appellant had received no personal benefit from the fact that the company he controlled owned a lavish residence.

[5] In essence, it was shown that the company had acquired the residence so as to find a potential taker at a good price.

[6] To achieve that objective, the appellant had assigned a number of mandates to real estate agents, contrary to what is alleged in subparagraphs 13(i) and (l) of the Reply to the Notice of Appeal.

[7] He performed a number of jobs to maintain and enhance the facilities. The sole purpose of his presence on the premises was to ensure that everything went well.

[8] The assessments were made on the basis of assumptions, interpretations and speculations based on certain documentary information.

[9] The evidence showed that the facts were not consistent with the basis used by the respondent, although some evidence might have justified the assessments; I refer in particular to the electricity accounts, the amounts of which were comparable to those from previous periods for which the appellant had admitted he had received a benefit based on four months of use for the years 1993 to 1995 inclusive.

[10] Despite the assumptions based on the documentation consulted by the respondent, it was shown on a balance of probabilities that the appellant had not used the residence for personal purposes and that he had derived no benefit from it. The only purpose of his presence on the premises was to ensure that everything was done well to ultimately ensure a sale at the best possible price.

[11] For these reasons, the appeal is allowed. The matter shall be referred back to the Minister of National Revenue for reconsideration on the basis that, for the 1996 and 1997 taxation years, the appellant received no personal benefit in his capacity as shareholder of the company that owns the residence identified as Domaine Champlain, the whole without costs.

Signed at Ottawa, Canada, this 18th day of December 2002.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 6th day of February 2004.

Sophie Debbané, Revisor