

Docket: 2001-887(IT)G

BETWEEN:

MARY MADSEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 14, 2003 at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Timothy Clarke

Counsel for the Respondent: Eric Douglas

ORDER

Upon motion made by the Appellant pursuant to section 69 and subsection 168(b) of the *Tax Court of Canada Rules (General Procedure)* to reconsider the terms of the Judgment issued by this Court dated July 29, 2004;

And upon reading the written submissions filed by the parties;

It is ordered that the Judgment signed on July 29, 2004 stands in accordance with the attached Reasons for Order and Supplementary Reasons for Judgment.

Signed at Vancouver, British Columbia, this 25th day of February 2005.

"L.M. Little"

Little J.

Citation: 2005TCC110
Date: 20050225
Docket: 2001-887(IT)G

BETWEEN:

MARY MADSEN,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR ORDER AND
SUPPLEMENTARY REASONS FOR JUDGMENT**

Little J.

A. FACTS:

[1] The appeal was heard in Vancouver, British Columbia on April 14, 2003.

[2] There were two issues raised during the appeal:

- (a) Whether the Appellant was liable to pay the amount of \$102,500.00 that was assessed by the Minister of National Revenue (the "Minister") pursuant to section 160 of the *Income Tax Act* (the "Act") ; and
- (b) Whether the decision of the Supreme Court of Canada in *The Queen v. Markevich et al.*¹ applied. If the *Markevich* reasoning applied in this situation the Federal Government was barred by the statute of

¹ 2003 DTC 5185.

limitations from collecting the federal tax debt and the provincial tax debt.

[3] By Reasons for Judgment dated July 29, 2004 I concluded that the decision in *Markevich* did not apply in this situation.

[4] Counsel for the Appellant filed a Notice of Motion dated August 13, 2004. The Notice of Motion requested that I reconsider the terms of the Reasons for Judgment.

[5] In the Notice of Motion counsel for the Appellant said:

6. The Appellant therefore requests that Justice Little reconsider the terms of his Judgment and Reasons and that he specifically deal with the Primary Issue because it has been accidentally omitted or overlooked in the pronouncement.

[6] Section 168 of the *Tax Court of Canada Rules (General Procedure)* reads as follow:

168. Where the Court has pronounced a judgment disposing of an appeal any party may within ten days after that party has knowledge of the judgment, move the Court to reconsider the terms of the judgment on grounds only,

- (a) that the judgment does not accord with the reasons for judgment, if any, or
- (b) that some matter that should have been dealt with in the judgment has been overlooked or accidentally omitted.

[7] I have carefully reviewed the file and the Reasons for Judgment and I have concluded that counsel for the Appellant is correct in his statement in the Motion that I have not dealt with the Primary Issue. These Supplementary Reasons for Judgment review the relevant facts and deals with the Primary Issue.

[8] The facts may be summarized as follows:

A. FACTS:

[9] Gunnar Madsen (the "Transferor") is the spouse of the Appellant.

[10] On or about August 1, 1989 the Transferor transferred to the Appellant his one-half interest in a home located at 3065 Lazy A Street, Port Coquitlam, British Columbia (the "Property").

[11] At the time of the transfer of the Property to the Appellant on August 1, 1989 the Transferor owed income tax in an amount in excess of \$685,000.00. The tax was imposed in connection with the 1982-1983 taxation years. The Transferor disputed the tax assessments. The Transferor was unsuccessful in appeals filed with the Tax Court of Canada², the Federal Court of Appeal³ and the Supreme Court of Canada⁴.

[12] At the time of the transfer of the Property to the Appellant, the fair market value of the Property as determined by the Minister was \$205,000.00 and the fair market value of the Transferor's interest in the Property was \$102,500.00. (Note: – Counsel for the Appellant indicated at the commencement of the hearing that the fair market value of the Property on August 1, 1989 as determined by the Minister was not in dispute.)

[13] During the hearing the Appellant testified that when her husband transferred his interest in the Lazy A Property to her, she said that she promised to pay her husband an amount equal to the fair market value of the Property when she had sufficient funds to do so.

[14] The Appellant said that she personally prepared the document that was used to transfer a one-half interest in the Property with the assistance of a friend (Ms. Vierke) (She did not retain a lawyer).

[15] The value of the Property as determined by the Appellant at the time of transfer was \$135,500.00.

² See *Madsen et al. v. The Queen*, 98 DTC 1668.

³ See *Madsen v. The Queen*, 99 DTC 5470 (F.C.A.).

⁴ See *Madsen v. Canada*, [2001] SCCA No. 96.

[16] The document used to transfer the one-half interest in the Property from Mr. Madsen to the Appellant stated that the consideration that the Appellant paid was \$1.00.

[17] On June 21, 1994 the Appellant purchased a property in Arizona using her own funds. The Appellant testified that she recorded title in the Arizona Property as follows:

The Appellant	-	50%
Mr. Madsen	-	50%

[18] Counsel for the Appellant maintains that the one-half interest in the Arizona Property that was transferred by her to Mr. Madsen in 1994 was at least equal to \$142,000.00 (Cdn. funds).

[19] On May 3, 1999 the Minister assessed the Appellant for tax in the amount of \$102,500.00. The Notice of Assessment (the "Assessment") states that the Assessment is in respect of the following:

Liability under subsection 160(1) of the *Act* in the amount of \$102,500.00 in respect of a transfer on or about August 1, 1989 from Gunnar Madsen to Mary Madsen of property, namely, 3065 Lazy A Street, Port Coquitlam, B.C.

B. ISSUE:

[20] The issue is whether the Appellant is liable to pay the amount of \$102,500.00 that was assessed by the Minister pursuant to the section 160 Assessment issued on May 3, 1999.

C. ANALYSIS:

[21] Section 160 of the *Act* permits the Minister to collect a tax debt from someone other than the tax debtor provided the various statutory conditions contained in the section are met.

[22] Subsection 160(1) of the *Act* reads as follows:

160. (1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

- (a) the person's spouse or a person who has since become the person's spouse,
- (b) a person who was under 18 years of age, or
- (c) a person with whom the person was not dealing at arm's length,

the following rules apply:

(d) the transferee and transferor are jointly and severally liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and

(e) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of

(i) 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, and

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act in or in respect of the taxation year in which the property was transferred or any preceding taxation year.

[23] Subsection 160(2) reads as follows:

160. (2) The Minister may at any time assess a taxpayer in respect of any amount payable because of this section and the provisions of this Division apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152.

...

[24] Counsel for the Appellant said that it is the Appellant's contention that the transfer of the one-half interest in the Lazy A Property by the husband to the Appellant was to be at the fair market value of the Property. Counsel for the Appellant said that the Appellant intended to pay her husband whatever his interest in the Property was in 1989. However the Appellant said that she did not have sufficient funds to pay her husband in 1989. The Appellant said that she and her husband agreed that when she had sufficient funds she would pay him for his interest in the Property.

[25] Counsel for the Appellant said that in 1991 a company by the name of GMT Holdings Ltd. was formed and that company prospered.

[26] As noted above the Appellant testified that in 1994 she and her husband purchased a property jointly in the State of Arizona. In effect the Appellant used her own funds to purchase an interest in the Arizona Property for her husband.

[27] Counsel for the Appellant maintains that by purchasing an interest in the Arizona Property for her husband in 1994 the Appellant has paid her husband in full for his interest in the Lazy A Property that he transferred to her in 1989.

[28] I have carefully reviewed the evidence of the Appellant regarding the transfer by her husband of a one-half interest in the Lazy A Property in 1989 and I have concluded that the suggestion that she would pay her husband the fair market value of the Lazy A Property "when she had funds" was nothing more than a vague and uncertain promise with no specific terms. There was nothing in writing to confirm this arrangement and the document that was used to transfer the Property was not prepared by a lawyer. Furthermore, there was no evidence presented to the Court to confirm the Appellant's self-serving testimony. In my opinion the "vague promise" that the Appellant would pay her husband fair market value cannot be accepted as consideration sufficient to prevent the application of section 160.

[29] The appeal is dismissed, with costs.

Signed at Vancouver, British Columbia, this 25th day of February 2005.

"L.M. Little"

Little J.

CITATION: 2005TCC110

COURT FILE NO.: 2001-887(IT)G

STYLE OF CAUSE: Mary Madsen and
Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: April 14, 2003

REASONS FOR ORDER AND
SUPPLEMENTARY REASONS
FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF REASONS FOR
ORDER AND SUPPLEMENTARY
JUDGMENT: February 25, 2005

APPEARANCES:

Counsel for the Appellant: Timothy W. Clarke

Counsel for the Respondent: Eric Douglas

COUNSEL OF RECORD:

For the Appellant:

Name: Timothy W. Clarke

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