

Docket: 2008-2456(IT)I

BETWEEN:

SUSAN BJORNSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on April 22, 2010, at Edmonton, Alberta

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Robert Neilson

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**JUDGMENT**

The appeal from the Reassessment made under the *Income Tax Act*, being Notice of Reassessment Number 50588, dated February 11, 2008, is allowed, without costs.

Signed at Vancouver, British Columbia, this 21st day of June 2010.

“L.M. Little”

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Little J.

Citation: 2010 TCC 337  
Date: 20100621  
Docket: 2008-2456(IT)I

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SUSAN BJORNSON,

Appellant,

and

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### **REASONS FOR JUDGMENT**

Little J.

A. Facts

[1] The Appellant is married to Darrell Schacher (the “Spouse”).

[2] On August 20, 1998, the Appellant and her Spouse purchased a 1998 GMC Savana Starcraft Travel Van (the “1998 GMC Van”) at a price of \$67,970.57.

[3] The Minister of National Revenue (the “Minister”) maintains that, on or about August 16, 2000, the Spouse transferred his interest in the 1998 GMC Van to the Appellant. (Note: The Appellant and the Spouse do not agree that this transfer occurred.)

[4] The Minister determined that, at the time of the transfer of the Spouse’s interest in the 1998 GMC Van to the Appellant, the fair market value of the 1998 GMC Van was \$43,000.00 and the amount owing on the 1998 GMC Van was \$23,831.90. The Minister therefore concluded that the equity of the Appellant and her Spouse in the 1998 GMC Van in August, 2000 was \$19,168.10.

[5] The Minister also concluded that the Appellant did not make any payment to her Spouse when she acquired his interest in the 1998 GMC Van in August, 2000.

[6] The Minister determined that, when the Spouse transferred his interest in the 1998 GMC Van to the Appellant, the Spouse owed unpaid personal income taxes to the Canada Revenue Agency (the “CRA”) in the amount of \$27,585.61.

[7] By Notice of Assessment dated February 9, 2007, the Minister assessed the Appellant to include the amount of \$15,584.05 in the Appellant’s income pursuant to section 160 of the *Income Tax Act* (the “Act”).

[8] On March 7, 2007, the Appellant filed a Notice of Objection.

[9] By Notice of Reassessment dated February 11, 2008, the Minister varied the original Assessment by reducing the amount owing by the Appellant by \$6000.00 to \$9,584.05.

[10] The Appellant filed a Notice of Objection and when the Reassessment was confirmed, the Appellant filed a Notice of Appeal to the Tax Court.

## B. Issue

[11] Does subsection 160(1) of the *Act* apply in this situation to require the Appellant to include the amount of \$9,584.05 in her income?

## C. Analysis and Decision

[12] During cross-examination, the following exchange took place between counsel for the Respondent and the Appellant:

Mr. Neilson:                    So I understand that you disagree with the fact that there has been a transfer [of the 1998 GMC Van].

Ms. Bjornson:                That’s right, yeah.

(Transcript, page 66, lines 23-25)

[13] During the trial, Mr. Schacher said that, in his opinion:

...the whole view of this whole proceeding, it seems to be like a total overkill on Revenue Canada’s part.

(Transcript, page 97, lines 8-10).

[14] Mr. Schacher said that:

They [CRA] just – they just finished getting – you know, throwing us out of our house of twenty years. ...[T]hey fought Susan in court for her half of the house. They got – they ended up getting three-or-four hundred thousand dollars, and now they are coming after her for what? Another \$9,000? It's – it's crazy. It's ridiculous. It's overkill to the max...

(Transcript, page 97, lines 11-18)

Justice Little: Have you declared bankruptcy?

Mr. Schachter: Yes, I have. [December 5, 2009]

(Transcript, page 98, lines 16-17)

(Note: The Spouse said that he owed the CRA \$620,000.00 (Transcript, page 99, line 15).

[15] During the hearing, the Spouse said that the agreement was that, if he forfeited assets of \$467,000.00, he would not be required to go to jail. The Spouse also said that two weeks after the settlement, he was reassessed for another \$249,000.00 in tax (Transcript, page 101, lines 14-21).

[16] It is apparent from the above comments that the Appellant and her Spouse have had a series of major tax disputes with CRA officials prior to the transaction under review. Relations between the Appellant, her spouse and CRA officials were, obviously, very strained.

[17] As noted above, the Appellant does not agree that her Spouse transferred his interest in the 1998 GMC Van to her in the year 2000. The Appellant said that she understood that she always owned the 1998 GMC Van.

[18] Exhibit R-1 shows that the Appellant and her Spouse purchased the 1998 GMC Van jointly on August 20, 1998 for \$67,970.57.

[19] Exhibit R-2 is a Bill of Sale, dated August 16, 2000, which provides that Mr. Schacher transfers his interest in the 1998 GMC Van to the Appellant. Mr. Schacher's signature on the Bill of Sale is witnessed by Tom Henderson.

[20] In cross-examination, Mr. Schacher said that the Appellant did not give him cash for his interest in the 1998 GMC Van (Transcript, page 103).

[21] Based on the evidence before me (Exhibit R-2), I have concluded that Mr. Schacher transferred his interest in the 1998 GMC Van to the Appellant on August 16, 2000.

[22] I must now determine the fair market value of the 1998 GMC Van on August 16, 2000.

[23] The Appellant and her Spouse filed a document headed "Used Car Appraisal" (Exhibit A-1). This document was prepared by Little Lot (Appraisals) Ltd. The document was signed by Donald E. Danyluk, President of Little Lot (Appraisals) Ltd. In Exhibit A-1, Mr. Danyluk states that, in his opinion, the value of the 1998 GMC Van as of August 16, 2000 was \$21,658.00.

[24] In his appraisal report, Mr. Danyluk makes some important and valuable comments. I cite the following:

Purchased brand new, February 25, 98. Exact price (new) difficult to determine as trade in was involved. Trade valued at \$15,000 in real money, with appx \$37,000 difference paid. New price estimate around \$52,000 and prices haven't changed much, up to present.

[25] Under "Appraisers comments" in Exhibit A-1, Mr. Danyluk states:

Chartered accountants, when preparing tax returns and calculating "depreciation", often use a guideline deemed to be acceptable to the government.

15% depreciation in the first calendar year (12 months) no matter what month of the year the purchase was made. (aver=6mo)

30% depreciation in the second calendar year and 30% each year thereafter. Using a 100% to 0% scale, we have 100% = new, 85% = ½ yr old, 59.50% from ½ to 1½ years old, and 41.65% from 1½ to 2½ years old.

Whether one bases the depreciates amounts on the number of months old the vehicle was, or simply states the value to be 85% at the end of 1998, 59.50% at

the end of 1999, 41.65% during 2000 and up to the end of 2000, the end result is the same.

41.65% x \$52,000 (estimated NEW price) works out to \$21,658.

[26] Counsel for the Respondent called Diane Major as a witness. Ms. Major is an Appeals Officer at the CRA in the Edmonton District Office. Ms. Major prepared a letter dated July 24, 2007 (Exhibit R-7). In her letter, Ms. Major determined that the 1998 GMC Van had a value on August 16, 2000 of \$43,000.00.

[27] However, Ms. Major does not properly deal with the fact that the original purchase of the 1998 GMC Van included a trade-in of a 1993 Ford. In his report, Mr. Danyluk reduced the value of the 1998 GMC Van based on the fact that the sale included a trade-in of a 1993 Ford. Furthermore, there is no evidence that Ms. Major has any appraisal experience, whereas Mr. Danyluk carries on business as an automobile appraiser.

[28] I accept the appraisal prepared by Mr. Danyluk and I conclude that the 1998 GMC Van had a fair market value of \$21,658.00 on August 16, 2000 and not the \$43,000.00 value as determined by the Minister.

[29] The evidence indicated that the amount owing to GMAC Financial on the 1998 GMC Van was \$23,831.90 (Exhibit R-8). It follows that at the time that the Spouse transferred his interest in the 1998 GMC Van to the Appellant, there was no equity owned by the Spouse on the 1998 GMC Van. It therefore follows that section 160 of the *Act* does not apply in this situation.

[30] The appeal is allowed, without costs.

Signed at Vancouver, British Columbia, this 21st day of June 2010.

“L.M. Little”

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Little J.

CITATION: 2010 TCC 337  
COURT FILE NO.: 2008-2456(IT)I  
STYLE OF CAUSE: Susan Bjornson and Her Majesty The Queen  
PLACE OF HEARING: Edmonton, Alberta  
DATE OF HEARING: April 22, 2010  
REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little  
DATE OF JUDGMENT: June 21, 2010

APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Robert Neilson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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