

Docket: 2010-1542(IT)G

BETWEEN:

STÉPHANIE LAPIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on April 26, 2012, at Montréal, Quebec

Before: The Honourable Justice François Angers

Appearances:

Counsel for the appellant: Richard Letendre

Counsel for the respondent: Christina Ham

JUDGMENT

The appeal is allowed in part, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment. There will be no award concerning costs.

Signed at Ottawa, Canada, this 11th day of September 2012.

“François Angers”

Angers J.

Translation certified true
On this 26th day of March 2013

François Brunet, Revisor

Citation: 2012 TCC 299
Date: 20120911
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BETWEEN:

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Appellant,

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REASONS FOR JUDGMENT

Angers J.

[1] This is an appeal from an assessment made by the Minister of National Revenue (the Minister) on June 30, 2009, under section 160 of the *Income Tax Act* (the Act). The amount of the disputed assessment, \$54,583.47, is a tax debt owed by 9077-5081 Québec Inc. (hereinafter 9077).

[2] 9077 was incorporated on May 13, 1999. Its president and sole shareholder was Reynald Lapierre, the appellant's father. 9077 purchased a business and began operating in July 1999. It was a hotel and restaurant business and a post office located in Métis-sur-Mer. The appellant did not help 9077 with the management of the business or with any other activity related to the business. She has been living in Montréal since August 1996.

[3] From 1999 to 2002, 9077 did not file any tax returns. On May 9, 2001, a Canada Customs and Revenue Agency (CCRA) representative met with Mr. Lapierre to inquire about this omission. At that time, the representative gave 9077 time to file documents — financial statements or other documents — but since he did not receive any, he made an assessment for 9077's 2000 taxation year, which ended on August 31. The assessment in question was based on the approximate sales figure that Mr. Lapierre had provided, less expenses, which the CCRA representative arbitrarily estimated to be 80% of sales.

[4] Assessments were made on the same basis for subsequent years, up to the date of a fire that completely destroyed the business's main building in February 2002. All the documentation was destroyed in the fire and no reconstructed financial statements have ever been produced. Although Mr. Lapierre claims that he operated the business at a loss, there is no way to get any numbers in this regard, and none of the evidence enables me to change the amount of the tax liability and arrive at a figure different from the assessment. I must also note that Mr. Lapierre's testimony was very evasive and vague, especially in relation to 9077's financial transactions.

[5] On May 3, 2002, 9077 received compensation from its insurers in the amount of \$405,095.23. It rebuilt a building, purchased new equipment, and sold the business in the fall of 2003. Mr. Lapierre testified that he also used 9077's insurance proceeds to repay \$190,000 or \$196,000 in shareholder advances that he had made to 9077. However, he provided no details regarding these advances. He testified that he used the money to acquire another business through 9115-8881 Québec Inc. (hereinafter 9115) and that 9077 deposited between \$100,000 and \$130,000 into the appellant's bank account. However, he admits that he did not do this the right way, in the sense that 9077 should have given him the amount of his advances directly so that he could personally purchase the new business, and deposit the money in the appellant's account personally, rather than 9077 doing so.

[6] In my opinion, this story regarding shareholder advances does not hold water because the total of the purchase price for the new business and the deposit into the appellant's bank account is \$284,000 (\$164,000 (Exhibit A-1, tab 5) plus the \$120,000 deposit), and Mr. Lapierre testified that 9077 owed him between \$190,000 and \$196,000. In any event, this is not what happened in reality.

[7] On May 3, 2002, 9077 deposited \$120,000 into the appellant's account at the Caisse populaire de Rimouski. According to Mr. Lapierre, this money was to be used for 9115's operations. Indeed, the appellant gave 9115 rather substantial amounts totalling \$114,000 between May 15 and November 14, 2002.

[8] The appellant has been residing in Montréal since August 1996. She has had an account at the Caisse populaire de Rimouski since she was five years old. She kept the account for her student loan. In 2002, she still owed \$13,500. Since she is an employee of the Royal Bank of Canada in Montréal, she also has an account with the Royal Bank.

[9] One or two days after 9077 deposited the \$120,000 into her account at the Caisse populaire, her father telephoned her in Montréal to tell her about it. He told her that there was \$10,000 for her and \$10,000 for her sister, and that \$100,000 had to be invested. He told her that she was the custodian of this amount. At the time, the appellant was a credit-card customer service representative and knew nothing about investments. Despite all this, she took it upon herself to do what her father asked of her.

[10] To facilitate everything, she transferred the \$100,000 in investment money from her account at the Caisse populaire to her account with the Royal Bank. The cheque is dated May 6, 2002, and was deposited the next day.

[11] Following this transfer, her father spoke to her about incorporating a new company so that he could buy a business, make it profitable and resell it. He said that she would be the CEO of the new company but would not have anything to look after. She therefore went to a notary's office to have 9115 incorporated and to open a bank account for it. She admits that she did not understand much about the process, and confirms that she had practically no involvement in 9115. Her father did not tell her anything about his tax problems.

[12] The appellant's father asked her for a first transfer of funds — \$25,000 — which took place on May 15, 2002. This amount went into 9115's account. On May 30 of that year, another transfer of \$25,000 took place, and transfers of various amounts continued until November 2002, at which point a total of \$114,000 had been transferred to 9115.

[13] On May 28, 2002, 9115 acquired a new business, and the deed of sale was signed by Reynald Lapierre as secretary of 9115. The appellant's signature is not on the deed. Mr. Lapierre was also the sole representative of 9115 for any accounts that it had at the Caisse populaire. Furthermore, in October 2009, the appellant learned that her signature had been forged on a suretyship dated May 22, 2006, in favour of the Caisse des Mutuellistes, in connection with a lease contract signed by 9115. She also learned that, on July 7, 2006, her signature had been forged on a personal guarantee to the Molson Company in consideration for the sale of Molson products to 9115. Naturally, the appellant suspects her father of the forgeries.

[14] The appellant received the notice of assessment at issue in this case in June 2009, but has also been the subject of an assessment by Revenu Québec since March 2007. She managed to obtain a release from Revenu Québec on January 4, 2010, following the sale of 9115's buildings on December 22, 2009, and for other

consideration. The appellant agreed to sign the sales documents regarding the building belonging to 9115 in order to settle her debt to Revenu Québec.

[15] On November 10, 2009, the appellant wrote a letter to a Revenu Québec representative to explain the nature of her dealings with her father. Moreover, the appellant has had no contact with her father since late 2007. It is clear that she has suffered several setbacks caused by a father she trusted. Out of the \$120,000 deposited into her account, the appellant received nothing, and her sister received only \$6,000, which she used to pay for school supplies.

[16] The issue to be determined, then, is whether the appellant is jointly and severally liable with 9077 to pay the amount of \$54,583.47 under subsection 160(1) of the Act. Does subsection 160(1) of the Act apply in the case at bar?

[17] Subsection 160(1) of the Act is worded 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 common-law partner or a person who has since become the person's spouse or common-law partner,

(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,

but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.

[18] In *The Queen v. Livingston*, 2008 FCA 89 at paragraph 17, the Federal Court of Appeal stated that there is a four-part test for the application of subsection 160(1):

- 1) The transferor must be liable to pay tax under the Act at the time of transfer.
- 2) There must be a transfer of property, either directly or indirectly, by means of a trust or by any other means whatever.
- 3) The transferee must either be
 - i. the transferor's spouse or common-law partner at the time of transfer or a person who has since become the person's spouse or common-law partner;
 - ii. a person who was under 18 years of age at the time of transfer; or
 - iii. a person with whom the transferor was not dealing at arm's length.
- 4) The fair market value of the property transferred must exceed the fair market value of the consideration given by the transferee.

[19] In the case at bar, it has been shown that the appellant and 9077 have not been dealing with each other at arm's length, and that 9077 has a tax liability of \$54,583.47. We must therefore determine whether there was a transfer of property, and, in the affirmative, whether the appellant gave consideration to 9077.

[20] It seems quite clear to me that there cannot have been consideration flowing from the appellant to 9077 following the receipt of the sum of money in question. Indeed, this money was returned and invested in 9115, so neither 9077 nor the appellant received anything at all.

[21] The appellant's testimony is entirely credible. Her father, as representative of 9077, deposited the amount of \$120,000 into her account at the Caisse populaire de Rimouski without her knowledge. She found about this fact when her father telephoned her to tell her, and it was only then that she became aware of her father's

instructions, given on a personal basis or as representative of 9077, regarding what she was to do with this money. At no time during this whole affair did the appellant believe she could do as she wished with the money in question, with the exception of the \$10,000 which her father or 9077 did give to her. In fact, she even returned this \$10,000, along with \$4,000 from her sister, to 9115 in accordance with her father's instructions.

[22] In my view, the father never personally, or as representative of 9077, intended to transfer ownership of the money in question, that is to say, the \$100,000, or an even larger amount, given that he demanded that \$114,000 be returned to him. He never intended the ownership of the amount to be transferred to the appellant, with the exception of the \$10,000, which was for her. Therefore, she could not use this amount as she pleased, and in my opinion, she was simply acting as mandatary (agent) of her father, who represented 9077. What transpired between 9077 and the appellant was in the nature of a mandate (agency) within the meaning of the *Civil Code of Québec*.

[23] The appellant received a clear mandate to invest \$100,000 of the \$120,000 in accordance with instructions given by her father or by 9077 (which her father represented) and to give \$10,000 to her sister and keep \$10,000. The only transfer of property to the appellant in this transaction was the transfer of the \$10,000 that was hers, although she did not keep it. In my opinion, the appellant cannot be jointly and severally liable to pay 9077's tax liabilities, except to the extent of the \$10,000 intended for her.

[24] In the case at bar, there was no conspiracy to prejudice the tax authorities, a fact which, as the Federal Court of Appeal noted in *Livingston, supra*, could be considered crucial. In fact, the money in question found its way into 9115, whose assets served to pay some of 9077's tax liabilities.

[25] The appeal is allowed in part, and the assessment is referred back to the Minister for reconsideration and reassessment in accordance with these reasons, having regard to the fact that the appellant is jointly and severally liable with 9077 to pay only \$10,000 of its tax liabilities. There will be no award concerning costs.

Signed at Ottawa, Canada, this 11th day of September 2012.

“François Angers”

Angers J.

Translation certified true
On this 26th day of March 2013

François Brunet, Revisor

CITATION: 2012 TCC 299
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STYLE OF CAUSE: Stéphanie Lapierre v. Her Majesty the Queen
PLACE OF HEARING: Montréal, Quebec
DATE OF HEARING: April 26, 2012
REASONS FOR JUDGMENT BY: The Honourable Justice François Angers
DATE OF JUDGMENT: September 11, 2012

APPEARANCES:

Counsel for the appellant: Richard Letendre
Counsel for the respondent: Christina Ham

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