Docket: 2009-3541(GST)G

BETWEEN:

ÉRIC ST-DENIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on December 4, 2012 and
March 18, 2013, at Montreal, Quebec.

Before: The Honourable Chief Justice Gerald J. Rip

Appearances:

Counsel for the Appellant:	Guy Matte
Counsel for the Respondent:	Danny Galarneau

JUDGMENT

The appeal from the assessment made pursuant to section 325 of Part IX of the *Excise Tax Act*, the notice of which is dated March 12, 2008, and bears the number BR-07-1481, is dismissed. The costs with respect to the December 4, 2012, hearing shall be borne by the appellant. The respondent is responsible, however, for the appellant's costs with regard to the preparation for and hearing of the February 26, 2013 motion to reopen the hearing and with regard to the reopening of the hearing on March 18, 2013.

Signed at Ottawa, Canada, this 6th day of June 2013.

"Gerald J. Rip"

Rip C.J.

Translation certified true
on this 31st day of July 2013.

Erich Klein, Revisor

Citation: 2013 TCC 179
Date: 20130606
Docket: 2009-3541(GST)G

BETWEEN:

ÉRIC ST-DENIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Rip C.J.

[1] The issue in this appeal is whether the assessment issued against Éric St-Denis under section 325 of the *Excise Tax Act* (ETA) is valid.

[2] On December 14, 2007, there were executed before notary Pierre Audet three deeds of sale whereby the appellant and his mother, Ms. Cousineau, acquired three buildings owned by 9161-4727 Québec Inc. (the Seller):

(a) The appellant acquired the property at 404 Ellice Street for $300,000.

(b) Ms. Cousineau acquired the property at 400 Ellice Street for $175,000.

(c) Ms. Cousineau acquired the property at 396 Ellice Street for $1.

[3] According to the appellant, he, not Ms. Cousineau, was to become the owner of the property located at 396 Ellice Street (the Property).

[4] On September 13, 2007, the appellant had signed a promise to purchase whereby he undertook to acquire 404 Ellice Street for $300,000 (the Promise to Purchase). In clause 8.1 of the Promise to Purchase, the Seller agreed to [TRANSLATION] "sell the property at 396 Ellice Street [the Property] for one dollar."

[5] Mr. Audet acknowledged at the hearing that the deed of sale for the Property, dated December 14, 2007 (the Deed of Sale) is erroneous as regards the acquirer of the Property. The appellant and his father, who was a witness during the negotiations between the appellant and the Seller and at the signing of the Deed of Sale, gave similar testimony. Mr. Audet admitted that he was responsible for the error.

[6] Again according to the appellant, it was on receiving from the City of Salaberry-de-Valleyfield the transfer tax notices, dated January 11, 2008, that he and Ms. Cousineau became aware of the error in the Deed of Sale. The appellant claims to have advised Mr. Audet immediately.

[7] To rectify the situation, on January 22, 2008, the appellant and Ms. Cousineau signed a deed of assignment prepared by Mr. Audet whereby Ms. Cousineau assigned the Property to the appellant for $1 (the Deed of Assignment).

[8] As of January 22, 2008, Ms. Cousineau owed an amount of $170,364.97 for three non-consecutive quarters starting October 1, 2004, and ending December 31, 2006, pursuant to subsection 228(2) of the ETA.

[9] As a result, the Ministère du Revenu du Québec (Revenu Québec) issued against the appellant, pursuant to section 325 of the ETA, the notice of assessment dated March 12, 2008, and bearing number BR-07-148 for the amount of $55,754.10 (the Notice of Assessment).

[10] On April 22, 2008, by a deed executed before Mr. Audet, the appellant, Ms. Cousineau and the Seller acknowledged that on December 14, 2007, the Property should have been sold by the Seller to the appellant and not to Ms. Cousineau (the "Deed of Correction").

Appellant's arguments

[11] Reduced to its simplest expression, the appellant's position is that section 325 of the ETA does not apply in this appeal because there was no transfer of

property between persons not dealing at arm's length. Throughout the hearing, the appellant put forward many arguments in support of this position.

[12] First of all, the appellant maintains that the transfer of the Seller's Property to Ms. Cousineau through the Deed of Sale was the result of an error by not only Mr. Audet but also the parties to the Deed of Sale. The appellant contends that the following elements militate in favour of the recognition of this error: (1) the testimony of the appellant, the appellant's father and Mr. Audet regarding the error, (2) the presence in the Promise to Purchase of clause 8.1, according to which [TRANSLATION] "[t]he Seller undertakes to sell the property at 396 Ellice Street [the Property] for one dollar", and (3) a comparison of the sale price of the Property and the properties at 400 and 404 Ellice Street and the values shown on the transfer tax notices for those properties.

[13] In his response to the respondent's written submissions, the appellant states that he is not trying to contradict what Mr. Audet was mandated to record in the authentic act that is the Deed of Sale. The appellant argues, rather, that there was an error of consent with regard to the Deed of Assignment between Ms. Cousineau and the appellant.

[14] The appellant contends that the Deed of Assignment was prepared erroneously by Mr. Audet for the purpose of avoiding the payment of transfer taxes and that this Deed is not in accordance with the appellant's intentions. Accordingly, the appellant relies on articles 1399, 1400, 1407 and 1422 of the *Civil Code of Québec* (the CCQ)[1] to assert that he can validly request the annulment of the Deed

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[1] Articles 1399, 1400, 1407 and 1422 CCQ read as follows:

1399. Consent may be given only in a free and enlightened manner.	**1399**. Le consentement doit être libre et éclairé.
It may be vitiated by error, fear or lesion.	Il peut être vicié par l'erreur, la crainte ou la lésion.
1400. Error vitiates consent of the parties or of one of them where it relates to the nature of the contract, the object of the prestation or anything that was essential in determining that consent.	**1400**. L'erreur vicie le consentement des parties ou de l'une d'elles lorsqu'elle porte sur la nature du contrat, sur l'objet de la prestation ou, encore, sur tout élément essentiel qui a déterminé le consentement.
An inexcusable error does not constitute a defect of consent.	L'erreur inexcusable ne constitue pas un vice de consentement.

of Assignment, in which case the Deed will be deemed never to have existed. The assessment should therefore be vacated because the Deed of Assignment on which it is based will have been annulled. The appellant thus maintains that he is not required to proceed by improbation to obtain the annulment of the Deed of Assignment.

[15] The appellant asserts that the respondent must assess him on the basis of real transactions and argues, accordingly, that the respondent is required to act in accordance with the Deed of Correction. The appellant submits that the Deed of Correction set the facts straight regarding the purchase of the Property, so that the acquirer of the Property was the appellant and not Ms. Cousineau, in conformity with the Promise to Purchase. That is tantamount to asking that the Deed of Correction be given the following effects: (1) the retroactive annulment of the Deed of the Assignment and (2) the correction of the Deed of Sale. In other words, the appellant contends that because he, his mother and the Seller acknowledged in the Deed of Correction that the Property had belonged to the appellant since December 14, 2007, that being the date the Deed of Sale was signed, the Property had at that time passed directly from the Seller's patrimony to the appellant's.

[16] The appellant also emphasizes that the Deed of Sale and the Deed of Assignment were not counterletters or simulations and the Minister therefore cannot benefit from the protection under article 1452 CCQ afforded third parties who are in good faith.[2] The appellant points out as well that Ms. Cousineau never

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1407. A person whose consent is vitiated has the right to apply for annulment of the contract; in the case of error occasioned by fraud, of fear or of lesion, he may, in addition to annulment, also claim damages or, where he prefers that the contract be maintained, apply for a reduction of his obligation equivalent to the damages he would be justified in claiming.	**1407**. Celui dont le consentement est vicié a le droit de demander la nullité du contrat; en cas d'erreur provoquée par le dol, de crainte ou de lésion, il peut demander, outre la nullité, des dommages-intérêts ou encore, s'il préfère que le contrat soit maintenu, demander une réduction de son obligation équivalente aux dommages-intérêts qu'il eût été justifié de réclamer.
1422. A contract that is null is deemed never to have existed.	**1422**. Le contrat frappé de nullité est réputé n'avoir jamais existé.
In such a case, each party is bound to restore to the other the prestations he has received.	Chacune des parties est, dans ce cas, tenue de restituer à l'autre les prestations qu'elle a reçues.

[2] Article 1452 CCQ reads as follows:

indicated to the tax authorities that she was the owner of the Property, and that the rental income from the Property was included in the appellant's tax returns.

[17] In the alternative, the appellant contends that the Deed of Assignment is a transaction within the meaning of article 2631 CCQ,[3] namely a contract by which the parties prevent a future contestation. Hence, the appellant submits that through the Deed of Assignment he was able to recover the rights that he already held in the Property and that its purpose was to ensure that no proceedings would be instituted by him. The appellant concludes from this that the consideration he provided to acquire the Property is greater than $1.

Respondent's arguments

[18] The respondent presents the following arguments in support of her position that the Deed of Assignment resulted in a transfer of the Property between Ms. Cousineau and the appellant on January 22, 2008, for consideration lower than its fair market value.

[19] The respondent submits that the Deed of Sale and Deed of Assignment are authentic acts. These deeds consequently make proof against all persons of the

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1452. Third persons in good faith may, according to their interest, avail themselves of the apparent contract or the counter letter; however, where conflicts of interest arise between them, preference is given to the person who avails himself of the apparent contract.

1452. Les tiers de bonne foi peuvent, selon leur intérêt, se prévaloir du contrat apparent ou de la contre-lettre, mais s'il survient entre eux un conflit d'intérêts, celui qui se prévaut du contrat apparent est préféré.

[3] Article 2631 CCQ reads as follows:

2631. Transaction is a contract by which the parties prevent a future contestation, put an end to a lawsuit or settle difficulties arising in the execution of a judgment, by way of mutual concessions or reservations.

A transaction is indivisible as to its object.

2631. La transaction est le contrat par lequel les parties préviennent une contestation à naître, terminent un procès ou règlent les difficultés qui surviennent lors de l'exécution d'un jugement, au moyen de concessions ou de réserves réciproques.

Elle est indivisible quant à son objet.

juridical acts which they set forth and of those declarations of the parties which directly relate to the acts. Without improbation, the appellant cannot contradict the Deed of Sale and Deed of Assignment (art. 2821 CCQ[4]).

[20] The Minister relies on *Leclerc v. Her Majesty the Queen*, [2001] T.C.J. No. 422 (QL), at paras. 26-27, to affirm that the drafting and signature of a new contract such as the Deed of Correction did not change the tax reality created by the Deed of Sale and Deed of Assignment.

[21] The respondent emphasizes that the Deed of Sale is fully compatible with the wording of the Promise to Purchase, considering the relationship between the appellant and Ms. Cousineau. However, no evidence in that regard was provided during the hearing. The respondent also states that there is no reference in the Deed of Assignment to the alleged error that supposedly occurred at the signing of the Deed of Sale.

[22] Since the Deed of Correction is posterior in date to the assessment in issue, the respondent asserts that it cannot be set up against her.

[23] The respondent also states that Louise Cousineau acted as the true owner of the Property, notably by collecting the rent from the Property and by sending an eviction notice to the tenant.

[24] Relying on the assessment roll dated March 11, 2008, the respondent contends that the fair market value of the Property was $161,400 at the time the Deed of Assignment was signed. The respondent therefore maintains that Ms. Cousineau transferred the Property to the appellant for a consideration that was $161,399 less than its fair market value. Thus, the respondent is of the opinion

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[4] Article 2821 CCQ provides:

2821. Improbation is necessary only to contradict the recital in the authentic act of the facts which the public officer had the task of observing.	**2821**. L'inscription de faux n'est nécessaire que pour contredire les énonciations dans l'acte authentique des faits que l'officier public avait mission de constater.
Improbation is not required to contest the quality of the public officer or witnesses or the signature of the public officer.	Elle n'est pas requise pour contester la qualité de l'officier public et des témoins ou la signature de l'officier public.

that the appellant is jointly and severally liable to pay the amount Ms. Cousineau owed pursuant to the ETA for the periods in question.

Analysis

[25] As determined by the Federal Court of Appeal in *Raphael v. Canada*, 2002 FCA 23, at para. 4 and *The Queen v. Livingston*, 2008 FCA 89, at para. 17, four conditions must be met in order for subsection 160(1) of the *Income Tax Act* (the ITA), which is the counterpart to subsection 325(1) of the ETA, to apply:

(i) a transfer of property took place;

(ii) the transferor and the transferee were not dealing at arm's length;

(iii) inadequate consideration was given by the transferee to the transferor; and

(iv) the transferor had an unpaid tax liability at the time of the transfer.

[26] The first condition was dealt with by the appellant in his notice of appeal and the third condition was addressed briefly by him in his written submissions. Each of these two conditions will be considered in turn.

Existence of a transfer

[27] In this appeal, the Property seems to be have been transferred twice:

(a) On December 14, 2007, pursuant to the Deed of Sale, Ms. Cousineau acquired the Property from the Seller for $1;

(b) On January 22, 2008, under the Deed of Assignment, the appellant acquired the Property from Ms. Cousineau for $1.

[28] Since the Deed of Sale and the Deed of Assignment are two authentic acts, these constitute, at first glance, valid transfers. Indeed, a duly registered notarized deed of sale constitutes a valid transfer because, pursuant to articles 2814 and 2819

CCQ,[5] it is an authentic act that fully makes proof against all persons of the juridical act which it sets forth and of those declarations of the parties which directly relate to the act (see *Romar v. Canada*, [2012] T.C.J. No. 97 (QL), at para. 28, affirmed by the Federal Court of Appeal at [2013] F.C.J No. 74 (QL), application for leave to appeal to the Supreme Court filed May 6, 2013).

[29] The appellant states that the transfer of the Seller's Property to Ms. Cousineau through the Deed of Sale resulted from an error by Mr. Audet the

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[5] Articles 2814 and 2819 CCQ state:

2814. The following documents in particular are authentic if they conform to the requirements of law: 1° official documents of the Parliament of Canada or the Parliament of Québec; 2° official documents issued by the government of Canada or of Québec, such as letters patent, orders and proclamations; 3° records of the courts of justice having jurisdiction in Québec; 4° records of and official documents issued by municipalities and other legal persons established in the public interest by an Act of Québec; 5° public records required by law to be kept by public officers; 6° notarial acts; 7° minutes of determination of boundaries.	**2814**. Sont authentiques, notamment les documents suivants, s'ils respectent les exigences de la loi: 1° Les documents officiels du Parlement du Canada et du Parlement du Québec; 2° Les documents officiels émanant du gouvernement du Canada ou du Québec, tels les lettres patentes, les décrets et les proclamations; 3° Les registres des tribunaux judiciaires ayant juridiction au Québec; 4° Les registres et les documents officiels émanant des municipalités et des autres personnes morales de droit public constituées par une loi du Québec; 5° Les registres à caractère public dont la loi requiert la tenue par des officiers publics; 6° L'acte notarié; 7° Le procès-verbal de bornage.
2819. To be authentic, a notarial act shall be signed by all the parties; it then makes proof against all persons of the juridical act which it sets forth and of those declarations of the parties which directly relate to the act. Where the parties are unable to sign, their declaration or consent shall be given before a witness who signs. Minors, persons of full age who are unable to give consent and persons who have an interest in the act may not be witnesses	**2819**. L'acte notarié, pour être authentique, doit être signé par toutes les parties; il fait alors preuve, à l'égard de tous, de l'acte juridique qu'il renferme et des déclarations des parties qui s'y rapportent directement. Lorsque les parties ne peuvent pas signer, leur déclaration ou consentement doit être reçu en présence d'un témoin qui signe. Ne peuvent servir de témoins, les mineurs, les majeurs inaptes à consentir, de même que les personnes qui ont un intérêt dans l'acte.

notary and by the parties to the Deed of Sale. Indeed, the appellant claims that he, and not Ms. Cousineau, was to have become the owner of the Property.

[30] The appellant states that a comparison of the sale prices of the Property and the properties located at 400 and 404 Ellice Street and the values indicated on the transfer tax notices for those properties shows that the transfer of the Seller's Property to Ms. Cousineau through the Deed of Sale was an error. It would not be logical for the appellant to have acquired the property at 404 Ellice, valued at $142,350 according to the transfer tax notice, for $300,000 while Ms. Cousineau acquired the Property as well as 400 Ellice, together worth $238,940 according to the transfer tax notice, for $175,000. Although at first blush this argument seems convincing, no evidence was provided regarding the source of the funds that were used to acquire the three properties. If the appellant had shown that he was the one who provided the funds and/or that he was the hypothecary debtor, for example, I would have been better able to accept this argument. Unfortunately, this was not done.

[31] Moreover, there is evidence that casts doubt on the truthfulness of the appellant's statement that the name of the acquirer in the Deed of Sale was erroneous. First, although Mr. Audet recognized that there was an error in the Deed of Sale, he also stated that he conducted an explanatory reading of the Deed of Sale and acted [TRANSLATION] "in accordance with good practice" when the various deeds of sale were signed before him on December 14, 2007. According to the appellant, he himself, his father, the Seller and Ms. Cousineau were present at Mr. Audet's office when the deeds of sale were signed on December 14, 2007. It is hard to believe that none of these individuals noticed such a flagrant error.

[32] Second, it seems that Ms. Cousineau acted as the true owner of the Property until the Deed of Assignment was signed. More specifically, the appellant admitted that a notice of eviction addressed to the tenant of the Property had been written by Ms. Cousineau. Also, it was proven that the rental cheques for the months of December 2007 and January 2008 had been cashed by Ms. Cousineau. The appellant's testimony in this regard is that he and his mother had decided to proceed this way since they realized an error had been made in the Deed of Sale and this error meant that only Ms. Cousineau was authorized to act as the owner of the Property. Therefore, the appellant stated, Ms. Cousineau had cashed the cheques and then given him the money, and it was he who reported the rental income in his tax returns. Three comments are worth making on this subject.

[33] First of all, the appellant did not present any evidence that the rent was turned over to him by his mother, and Ms. Cousineau's bank statement does not show any withdrawals of amounts identical to those indicated on the rental cheques deposited to her account. Furthermore, the appellant's income tax return for 2007 was not adduced as evidence, and the fact that the appellant included rental income in his tax return for 2008, dated April 29, 2010, is not of much help to him because this tax return was prepared well after the appellant had been assessed under section 325 of the ETA. Lastly, the sequence of events seems problematic. According to the evidence in the record, the rent cheques for December 2007 and January 2008 were cashed by Ms. Cousineau on December 5, 2007, and January 8, 2008, respectively. These dates raise several questions since the appellant said he realized there was an error in the Deed of Sale when he received the transfer tax notices. These notices are dated January 11, 2008, which is after Ms. Cousineau had cashed the rent cheques for December 2007 and January 2008. Moreover, it would seem that the rent cheque for December had been cashed before the Deed of Sale was even signed, since that document is dated December 14, 2007. In short, an analysis of the sequence of events undermines the appellant's credibility.

[34] Third, the respondent correctly notes in her reply to the notice of appeal that there is no reference in the Deed of Assignment to any error in the Deed of Sale. It was only in the Deed of Correction, drafted after receipt of the Notice of Assessment, that reference is made to an error.

[35] Fourth, a letter was written on March 6, 2008, by Martin Couillard, counsel representing the appellant at the time, to ask the Revenu Québec debt management officer in charge of Ms. Cousineau's debt to withdraw the requirement to pay and garnishment addressed to the tenant of the Property. This letter makes no mention of the alleged error. Rather, the relevant part of the letter states: [TRANSLATION] "In this regard, our client advises us that he has been the owner of the property located at 396 Ellice Street in Valleyfield [the Property] since January 22, 2008."

[36] In short, these elements lead me to doubt the truthfulness of the appellant's claims that an error was made in the Deed of Sale. Even if I were wrong and the acquisition of the Property by Ms. Cousineau was the result of a genuine error, the appellant would have been required to proceed by improbation to contradict the Deed of Sale on the matter of the identity of the purchaser since that was a fact which the public officer had the task of observing (art. 2821 CCQ). This is moreover acknowledged by the appellant, who is attempting, rather, to have the Deed of Assignment annulled because of a defect of consent. The appellant relies on articles 1399, 1400, 1407 and 1422 CCQ to request the annulment of the Deed

of Assignment on grounds of error. Consequently, the appellant contends that the assessment should be vacated because the Deed of Assignment on which it is based is deemed never to have existed.

[37] For this argument to be accepted, the appellant had the burden of proving that on the one hand the error was an excusable one and that on the other hand the error was decisive as regards his consent (*Baudoin et Jobin, Les Obligations*, 6th edition, 2005, Éditions Yvon Blais, at para. 231). However, absolutely no evidence was adduced as to the existence of any error vitiating the consent to the Deed of Assignment, since that argument was only clearly stated in the appellant's written submissions. The appellant and his notary both testified that an error was committed in the Deed of Sale with regard to the identity of the purchaser, but they did not mention the existence of an error of consent with respect to the Deed of Assignment. It must also be noted that the Deed of Correction makes no mention of an error in the Deed of Assignment. It simply states its purpose as being to [TRANSLATION] "rectify and clarify the transfers of title that have been published with regard to the immovable described below". Thus, there is no basis for a finding that the appellant's consent to the Deed of Assignment was vitiated, especially since I have come to the conclusion that the identity of the purchaser indicated in the Deed of Sale was not erroneous.

[38] Finally, the appellant states in his written submissions that the Deed of Correction [TRANSLATION] "effectively annuls the [Deed of Assignment] retroactively and places the parties involved . . . in the same situation as that which existed prior to the Deed of Transfer and after the accepted offers of purchase were signed . . . ." The appellant cites in support of his contention that the respondent must act in accordance with the provisions of the Deed of Correction many decisions that have recently allowed documents to be corrected. With respect, the appellant's position cannot be accepted. The jurisdiction to correct documents resides with the provincial superior courts on a motion for a declaratory judgment, and not with the federal courts. Moreover, correction is permitted for private writings. The Deed of Sale and Deed of Correction, on the other hand, are authentic acts that require improbation if the appellant wishes to modify their content.

[39] The need for improbation in order to contradict the terms of a transfer recorded in a notarial act was moreover recognized in tax matters in *Giguère v. Canada*, [1992] T.C.J. No. 400 (QL). As in this appeal, the appellant in that case relied in particular on a document subsequently executed before a notary to argue that a notarized contract of sale did not represent the reality of the transaction

between him and his mother. More specifically, the appellant attempted to show that his mother had sold an immovable to him and his brother, and not solely to him as stated in the contract of sale. Former Chief Justice Couture rejected this evidence, in particular because the appellant had not brought any improbation proceedings.

[40] *Leclerc v. Canada*, *supra*, also has significant similarities with the present appeal. In that case, Judge Dussault did not accept that an essential element of a notarial act could be modified by a subsequent notarial act. The appellant and her husband had signed a notarial act entitled [TRANSLATION] "Rectification and Acquittance" whose purpose was to modify the consideration indicated in the original notarial act so as to reflect what they claimed was the true intention of the parties at the time. Judge Dussault stated that they should have proceeded by improbation, failing which the consideration indicated in the original notarial act could not be modified (at para. 28).

[41] In short, the Deed of Correction cannot be given the retroactive effect that the appellant would attribute to it. The Property was therefore transferred from Ms. Cousineau to the appellant when the Deed of Assignment was signed on February 22, 2008.

Value of the consideration paid by the appellant

[42] In the alternative, the appellant submits that the Deed of Assignment constitutes a transaction as defined in article 2631 CCQ, namely a contract by which the parties prevent a future contestation. The appellant argues that the value of the consideration is not $1, as stated in the Deed of Correction, but is, rather, equal to the fair market value of the Property, because by signing the Deed of Assignment, the appellant was amicably resolving the error that occurred in the Deed of Sale and was waiving the exercise of his rights to the Property against the Seller and Ms. Cousineau. Since I have found that the identity of the acquirer shown in the Deed of Sale was erroneous, this argument cannot be accepted. Moreover, as discussed above, Judge Dussault, in *Leclerc v. Canada*, *supra*, rejected the idea that the consideration indicated in a notarial act could be modified other than by an improbation proceeding.

Fair market value of the Property

[43] To establish the fair market value of the Property at the time of the transfer, the Minister relied on the municipal assessment roll dated March 11, 2008.

According to this document, the standardized assessment value of the Property for the 2008-2010 triennial roll is $161,400.

[44] It is well established that the municipal assessment, while relevant in determining the fair market value of a property, is not by itself representative of the fair market value of that property. This was the conclusion reached by Campbell J. in *Truong v. Canada*, 2011 DTC 1275, at para. 27 and Webb J. in *Somers v. Canada*, [2008] T.C.J. No. 217 (QL), at para. 38. However, the assessment of property taxes may be accepted as one of a number of indicators of the fair market value of a property (*Truong*, *supra*, at para. 27).

[45] The appellant did not present any evidence enabling him to discharge his burden of showing that the respondent's assessment of the fair market value of the Property is erroneous (see, for example, *Truong*, *supra*, at para. 27 and *Côté-Sicé v. Canada*, [1999] T.C.J. No. 1363 (QL), at para. 8). As a result, I must accept the Minister's position that the fair market value of the Property at the time of the transfer was $161,400.

Conclusion

[46] For all these reasons, the appeal is dismissed and the assessment is confirmed.

[47] Counsel for the respondent failed to appear at the trial set to take place on December 4, 2012. On February 28, 2013, I allowed a motion by the respondent seeking a suspension of the deliberation and the reopening of the hearing in order to allow the respondent to adduce her evidence. I did, however, order the respondent to pay the appellant's costs with regard to the preparation for and hearing of the February 26, 2013 motion to reopen the hearing, and with regard to the reopening of the hearing on March 18, 2013. The costs relating to the hearing of December 4, 2012, shall be borne by the appellant.

Signed at Ottawa, Canada, this 6th day of June 2013.

"Gerald J. Rip"

Rip C.J.

Translation certified true
on this 31st day of July 2013.

Erich Klein, Revisor

CITATION:	2013 TCC 179
COURT FILE NO.:	2009-3541(GST)G
STYLE OF CAUSE:	ÉRIC ST-DENIS v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	December 4, 2012, and March 18, 2013
REASONS FOR JUDGMENT BY:	The Honourable Chief Justice Gerald J. Rip
DATE OF JUDGMENT:	June 6, 2013

APPEARANCES:

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Counsel for the respondent:	Danny Galarneau

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