

Citation: 2015 TCC 28
Date: 20150205
Docket: 2013-1868(IT)G

BETWEEN:

HARRIET PALMER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Edited from the transcript of Reasons for Judgment delivered orally from the Bench on December 18, 2014 at Charlottetown, Prince Edward Island.)

Campbell J.

[1] Let the record show that I am delivering oral reasons in the appeal of Harriet Palmer, which began in July and continued and finished yesterday.

[2] The Minister of National Revenue (the “Minister”) assessed the Appellant by Notices dated December 8, 2011, pursuant to Section 160 of the *Income Tax Act* (the “Act”). The Appellant was assessed as a result of a transfer of property from Randy Palmer through to their son, Christopher Palmer, and eventually to the Appellant.

[3] The issue before me is whether the Minister properly assessed the Appellant pursuant to subsection 160(2). The liability initially assessed against the Appellant was \$82,964.55.

[4] The hearing commenced in July 2014, and after hearing evidence from Patrick Bradley, the Canada Revenue Agency (the “CRA”) auditor, as well as Dwayne MacLeod from Collections division and evidence from Randy Palmer, I adjourned the hearing to allow the Appellant an opportunity to obtain an expert report on the fair market value of the subject property. Although this was an unusual procedural step, because the Appellant was self-represented and because the fair market value of the property was one of the key elements in her appeal, I

allowed the Appellant's request. Unfortunately, with respect to the expert report that was produced, I ruled that it was inadmissible for the reasons set out in my decision of November 26, 2014.

[5] At the outset of the recommencement of the hearing on December 17, 2014, Respondent counsel advised this Court that a concession in respect to the property value was being made. Assumption (g), set out in the Reply to the Notice of Appeal, placed a fair market value on the property as at March 26, 1999 of \$90,000. The Respondent now concedes that the property value is \$47,500, leaving the Appellant's half interest at \$23,750. This results in a liability reduction from \$82,964 to \$61,714 in respect to the Appellant's assessment.

[6] The Appellant is married to Randy Palmer. On March 26, 1999, Mr. Palmer transferred two parcels of land, property numbers 516880 and 528687 from his sole ownership to the joint ownership of the Appellant and himself.

[7] At the time of this transfer, the fair market value of the consideration was listed as nil. Pursuant to the Respondent's concession as of the date of this transfer respecting the fair market value, the Respondent submits that the Appellant's half interest in the fair market value of \$47,500 is now reduced to \$23,750.

[8] On June 1, 1999, the Appellant and her spouse transferred this property to their son, Christopher Palmer. At the time of this transfer, the parties listed the fair market value as nil.

[9] On August 31, 2004, Christopher Palmer transferred the property to the Appellant in her sole name. The fair market value was again listed as nil.

[10] The Respondent assumed, at assumption (l) of the Reply to the Notice of Appeal, that the fair market value of this property, as of August 31, 2004, was \$140,000.

[11] The relevant portions of section 160 of the *Act* provide 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 therefore, 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 the 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.

...

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.

[12] For this provision to apply, four conditions must be met:

1. there must be a non-arm's length transaction or deal;
2. a transfer of property must occur;
3. there must be an absence of consideration from the ultimate recipient;
and
4. the transferor must be liable for a tax debt in the year in which the transfer occurred or any preceding year.

[13] The Federal Court of Appeal, in discussing the purpose and intent of Section 160 in its decision in *The Queen v Livingston*, 2008 FCA 89, 2008 DTC 6233, referred to the case of *Medland v Canada*, 98 DTC 6358 (FCA). The application of this provision can admittedly produce harsh results, but it is contained in the *Act* as a tax collection tool to prevent taxpayers from transferring property to a spouse or other non-arm's length party in order to avoid collection efforts respecting a tax liability.

[14] Caselaw is also clear that the tax liability may be followed through several transfers. In other words, as stated at paragraph 38 of the case of *Jurak v The Queen*, 2003 DTC 557:

[38] ... The transferee may himself become a transferor subject to subsection 160(1) of the Act if, at the time of the second transfer, he himself is a tax debtor liable either on his own account or jointly and severally with the first transferor.

...

[15] Those comments are particularly applicable to the facts before me where a number of transfers of the subject property occurred. However, the tax debt flows through the series of transfers among those non-arm's length parties.

[16] In addition to attempting to attack the fair market value of the property, the Appellant also questioned the underlying assessment. However, with the onus or burden of proof squarely on the Appellant's shoulders in this appeal, I have nothing in the documentary evidence or the oral testimony that would allow me to correct any alleged errors in the Minister's assessment.

[17] Although the Appellant subpoenaed and re-called the auditor at the second stage of the hearing in December, there was no evidence introduced through Patrick Bradley that changes or demolishes the Minister's assumptions. There were no business records, banking documents, or third party evidence produced to support the Appellant's contentions. In addition, the Appellant herself declined to testify although invited to do so. Although Mr. Palmer contended that he and the Appellant were not given an opportunity by the CRA to submit additional information on items extending from the personal expenditures to the encumbrances against the property, it is apparent from the proposal correspondence of January 7, 2003, that discussions were occurring between Patrick Bradley and the Palmers and that Mr. Bradley invited them to present any further records, comments, and so forth during the net worth audit.

[18] In his oral submissions, Respondent counsel referenced the particulars of the assessment contained in Tab 2 of Exhibit R-1. In that document, the CRA calculated the equity in the property at \$124,869. That is the property value referred to on August 3, 2004, of \$140,000, less encumbrances totalling \$15,130. With an assessed benefit amount of \$37,964, the Appellant would have to produce reliable evidence of encumbrances against the subject property in the vicinity of \$102,000 in order to affect the outcome of the assessment. Unfortunately, the Appellant failed to connect the amount of any of the encumbrances to the specific properties. Two of the collateral mortgages are against an additional property in Ellerslie as well as the subject property in Bideford, but I have no evidence of which part of the specific total mortgage amount might relate to the value of the subject property. In addition, I have no evidence before me that indicates whether the first collateral mortgage in the amount of \$47,000 and registered in April 2000 may have been satisfied prior to registering the next collateral mortgage of \$80,000 in September 2001 against the same properties. That factor would also affect the amount of the potential encumbrances as the principal outstanding on the prior mortgage may have been combined with additional funds borrowed on the subsequent mortgage. I simply have no way of ascertaining this. The third encumbrance, in the amount of \$25,000 and registered April 2002, does not appear to be in respect to the same parcels that are contained in the first two registered mortgages and, without accompanying survey plans, I have no means of determining this.

[19] The Appellant did not produce evidence that would answer the questions outlined in my aforereferenced comments. In addition, without expert evidence, the Appellant failed to demolish the Minister's assumptions respecting the fair market value of the property. With the onus on the Appellant, she has failed to demolish the Minister's assumptions contained in the Reply to the Notice of Appeal. With an absence of evidence, those assumptions stand. Consequently, I am allowing the appeal, but only to permit the Respondent's concession respecting the reduction in the fair market value of the property as of March 26, 1999 from \$90,000 to \$47,500, which results in an overall tax liability reduction from \$82,964 to \$61,714. Costs are awarded to the Respondent.

[20] That concludes my reasons in the appeal of Harriet Palmer.

Signed at Ottawa, Canada, this 5th day of February 2015.

“Diane Campbell”

Campbell J.

CITATION: 2015 TCC 28

COURT FILE NO.: 2013-1868(IT)G

STYLE OF CAUSE: HARRIET PALMER and HER MAJESTY
THE QUEEN

PLACE OF HEARING: Charlottetown, Prince Edward Island

DATES OF HEARING: July 17 and December 17, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF ORAL JUDGMENT: December 18, 2014

DATE OF WRITTEN REASONS: February 5, 2015

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Jan Jensen

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada