

[OFFICIAL ENGLISH TRANSLATION]

2000-1997(IT)I

BETWEEN:

JACQUES BOIVIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 20, 2002, at Trois-Rivières, Quebec, by

the Honourable Judge Alain Tardif

Appearances

Counsel for the Appellant:

John Turpin

Counsel for the Respondent:

Alain Gareau

JUDGMENT

The appeal from the assessments under the *Income Tax Act* for the 1996, 1997 and 1998 taxation years is allowed with respect to the \$390 monthly periodic payments until June 20, 1996, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 18th day of October 2002.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 30th day of December 2003.

Sophie Debbané, Revisor

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Date: 20021018
Docket: 2000-1997(IT)I

BETWEEN:

JACQUES BOIVIN,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] This is an appeal concerning the 1996, 1997 and 1998 taxation years.

[2] To support the assessments under appeal, the Minister of National Revenue (the “Minister”) had assumed the following facts set out in paragraphs 7 and 8 of the Reply to the Notice of Appeal (the “Reply”):

[TRANSLATION]

- (a) on February 18, 1996, an agreement on corollary relief was signed by the Appellant and Ginette Vézina;
- (b) on April 29, 1996, the Superior Court rendered a divorce judgment between the parties and confirmed and gave force and effect to the agreement on corollary relief of February 18, 1996 (see Schedule A);

- (c) under the terms of the agreement, the Appellant was to make monthly periodic payments of \$390 to the Caisse populaire de La Turque as support for Ginette Vézina;
- (d) the \$390 monthly periodic payments represented monthly mortgage payments for the family home, all rights of which the Appellant transferred to Ginette Vézina;
- (e) the Appellant was to make each \$390 payment to the Caisse populaire de la Turque on the 1st day of each month until the balance of the mortgage was entirely paid off;
- (f) clause 2(A) of the agreement indicates that the Appellant paid the Caisse populaire de La Turque as support for Ginette Vézina an amount of \$390 per month, representing the monthly mortgage payment for the residence located at 1080 Des Cerisiers in La Turque starting on April 1, 1995, until February 18, 1996, and was to pay up to a total amount of \$26,507.13, representing the mortgage balance as of February 18, 1996;

At that point in the proceedings, the Minister also relied on the following assumptions of fact:

[TRANSLATION]

- (a) the agreement specifically provided that the \$390 monthly and periodic payments were tax deductible for the Appellant and taxable for Ginette Vézina;
- (b) the mortgage payments made by the Appellant after June 20, 1996, were made to pay off another mortgage on the Appellant's new home;
- (c) under the agreement, the Appellant did not commit any amount of money during 1997 and 1998.

[3] The Appellant testified briefly in support of his appeal and the substance of the facts assumed proved to be entirely consistent with reality.

[4] The Appellant's testimony reiterated the same facts, placing them in context. He explained that he had had to proceed in that manner on the advice of qualified persons and that otherwise he would not have been able to meet all of his

obligations, even jeopardizing his ability to pay the support owing to his former spouse.

[5] Rather than risk that his former spouse be forced to leave her residence and he his own home, he decided to proceed in accordance with the facts set out in the Reply, that is, to consolidate everything in a single reduced obligation. He argued that the payments made to repay his new mortgage at the financial institution should be deductible since they were the direct and unequivocal consequence of the transaction he had had to make for his own good and the good of his former spouse.

[6] The Appellant's case is highly sympathetic, especially since he demonstrated that he had completely fulfilled his support obligation by paying in advance the amounts he had to pay under an agreement. Therefore, he has completely fulfilled the support obligation towards his former spouse.

[7] The issue is whether the payments made, not to his former spouse but to a financial institution in connection with a loan, may be deducted from his income on the basis that the payments were deductible as support at the time they were made for and on behalf of his former spouse.

[8] There is no doubt that the intention was noble and commendable. However, he clearly extinguished the support debt by acting in that manner. In other words, when the Appellant decided to pay in advance the amount he had contracted to pay under the agreement, he terminated the obligations arising from the support agreement.

[9] The support obligation having been discharged, the legal rights and obligations associated with the support agreed upon and confirmed by the court no longer existed with the result that his former spouse simultaneously lost her rights arising from that judgment, and the Appellant was released from his obligations.

[10] Even though the Appellant had to continue paying the same amount, it was no longer a support payment but essentially a disbursement in connection with the repayment of a loan secured by a new mortgage. The tax benefits inherent and intrinsic to the support were not transferable to the payments the Appellant had to make to the Caisse populaire since it was no longer support but essentially an obligation in the normal course of business.

[11] The Respondent nonetheless admitted that the payments made by the Appellant until the end of June 1996 met the provisions of the *Income Tax Act* (the "Act") to be deductible.

[12] Accordingly, further to the Respondent's admission, I am allowing the appeal with respect to the \$390 monthly periodic payments up to June 20, 1996. As for the mortgage payments associated with the new mortgage for the period subsequent to June 20, 1996, they were not deductible under the *Act*.

Signed at Ottawa, Canada, this 18th day of October 2002.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 30th day of December 2003.

Sophie Debbané, Revisor