

TAX COURT OF CANADA
RE INCOME TAX ACT

2002-1776(IT)I
2003-99(IT)G

BETWEEN: **LISE GRÉGOIRE**
 ANDRÉ LEFRANÇOIS
 Appellants

-and-

HER MAJESTY THE QUEEN
Respondent

[OFFICIAL ENGLISH TRANSLATION]

Held before the Honourable Justice **ALAIN TARDIF**, Tax Court of Canada, in the offices of the Courts Administration Service, Montréal, Quebec, on **March 12, 2009**.

REASONS FOR JUDGMENT

APPEARANCES:

PIERRE ROBILLARD
For the appellants

CHRISTINA HAM
For the respondent

Registrar/Technician: Josette Langlois

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1 START OF REASONS FOR JUDGMENT: 9:40 a.m.

2 HIS HONOUR: Listen, from the very
3 beginning, Mr. Lefrançois indicated that he was a
4 guidance counsellor at the Université du Québec in Hull.
5 He also stated that he was trained as a real estate
6 agent. His spouse indicated that she was a retired
7 teacher. The least we can say is these are two people
8 with above-average educations. That statement is
9 indisputable, inescapable.

10 One day, this couple decided to invest
11 in the real estate market, since they not only were
12 obviously educated, but Mr. Lefrançois also had
13 specialized training in real estate. They knew the rules,
14 they knew the field, and so they made a purchase of - we
15 don't exactly know of how many - but I understood that
16 Mr. Lefrançois had several and Ms. Grégoire had two.

17 The question is irrelevant and it
18 isn't being raised, except that, from what I understood,
19 Ms. Grégoire was more of a figurehead than anything,
20 because it seems she didn't care or cared very little
21 about how things were being managed. She fully trusted
22 her spouse. She said: [TRANSLATION] "We talked about it,
23 discussed it," but, evidently, her spouse made all the
24 decisions. I believe he had complete power over
25 everything that concerned the two properties.

26 At one point, for altogether
27 legitimate reasons, they decided to take certain actions

1 on the advice of a notary - to refer to his testimony -
2 or even of a tax specialist. And so a property was
3 transferred to Ms. Grégoire.

4 I noticed that, very often in his
5 testimony, Mr. Lefrançois spoke as if his spouse's two
6 properties belonged to him. I even remarked on it once or
7 twice: he spoke about his spouse's properties as if they
8 were his. That makes sense since he managed them exactly
9 as though those two properties were his.

10 The issue or issues on appeal are
11 related to expenses. As you know, a person who owns a
12 property and a residence is entitled to some benefits
13 with respect to his rental property, but not to his
14 residential property. So, normally, a person with even
15 minimal knowledge, knowing that he is entitled to
16 expenses, would - even if he doesn't have a special book
17 for his property - would have a folder where he would put
18 all his bills. That is not a big problem while he owns
19 only one property. The only issue that could arise from a
20 situation like that is whether the expenses claimed for
21 the property are personal in nature or whether they can
22 be attributed to the rental property. It's a relatively
23 simple distinction to make: there is the residence and
24 then there is the income property.

25 Thus, in cases like that, especially
26 since people in those types of situations tend to have
27 little or not much experience, it's understandable,

1 although they may not follow the best model, it's
2 understandable. It may be acceptable, because it can be
3 verified; it may take a little longer, but it is likely
4 to give reliable results. In this case, however, it's not
5 like that, not like that at all. In this case, there is a
6 couple that owns several properties, two of which are
7 identified, defined; two of which we know about. There
8 are apparently other properties, the number of which was
9 never established, but there are other ones. So, I think
10 it can be assumed that there are several properties. Mr.
11 Lefrançois manages them exactly as though they were all
12 his. There is already a first . . . there is already a
13 first reaction, a feeling: does this expense go with
14 1 McGill, 10 McGill or 30 McGill? This is a reaction
15 that, in my opinion, is basic, especially if we recall my
16 statement at the beginning of this judgment. These are
17 not laypersons. These people are not illiterate. These
18 are two very educated people, who probably have very
19 extensive knowledge. Despite this, they take their
20 expenses without noting on the invoices which property
21 they apply to, which property they were incurred for, and
22 put them all into one folder - not two, three, four or
23 five folders, which is to say, a folder per property -
24 but one folder, all jumbled together in one folder. Then,
25 they say: "Look, it's easy. It takes five gallons (5
26 gal.) of paint to do one apartment." There are ten (10),
27 so it was used for two properties, but which properties?

1 In other words, expenses are attributed to this property
2 or that in a very arbitrary and completely unacceptable
3 way. Then it gets more complicated; then it gets much
4 worse because some of the properties belong to
5 Mr. Lefrançois and some to Ms. Grégoire, but despite that
6 fact, everything is confused and everything is jumbled
7 together.

8 I think that to accept
9 Mr. Lefrançois's explanations, which, incidentally, were
10 for the most part rather difficult to understand,
11 confusing, unclear, and sometimes downright
12 incomprehensible, even though we know that he is a
13 guidance counsellor at the Université du Québec. He was
14 asked to explain the situation, and the answers he gave -
15 listen, I intervened, I didn't understand the answers. I
16 believe that, in certain situations, even you, who had
17 prepared this case, based on some of the question you
18 formulated and asked your client, you could not
19 understand his answers.

20 Among other things, he completely
21 mixed up the start of the audit, referring to September,
22 even though the draft assessment was what he had received
23 in September. He talked about a half-basement, then he
24 contradicted himself when counsel wanted to know what a
25 half-basement was. I wanted to intervene then by saying:
26 "Listen, let's stop right there and ask for the
27 transcript." He definitely said three or four times that

1 there had been a flood and that all the papers were in
2 the half-basement. It was such an obvious contradiction,
3 such a surprising kind of confusion that, at one point, I
4 was thinking that what often happens is people get
5 nervous when testifying. They are not used to appearing
6 in Court; it's not something they do on a daily or weekly
7 basis. That could explain, could justify a certain
8 nervousness. This nervousness, this discomfort could
9 cause one to be less precise, less articulate than he
10 would like. But Mr. Lefrançois is not a shy man.
11 Mr. Lefrançois is not someone to be intimidated. He is
12 not someone who is quote end quote, a docile person (not
13 in a negative sense). Mr. Lefrançois is someone who knows
14 what he wants, knows where he is going and exactly what
15 to expect. Thus, based on the appellant's personality, it
16 becomes extremely difficult to understand some of his
17 very unclear explanations.

18 I understand, I see what happened in
19 this situation. It's a situation, which, regrettably, is
20 found regularly in cases like this one. It is assumed
21 that the confusion, the disorder, the absence of
22 accounting and records is a behaviour, an approach that
23 works well, that works well and that is very profitable.
24 Because when they are faced with an audit, and it's an
25 indescribable mess, they claim that there was, in his
26 case, a flood, and he insisted on that a great great
27 great deal, they offer various explanations in order to

1 try in some way to get a little consideration from the
2 persons performing the audit. They offer a whole series
3 of explanations, and I have to tell you that very often
4 this works well for the people who play that card. To
5 find in favour of Mr. Lefrançois would be to enshrine the
6 principle that confusion, disorder and the absence of
7 records is the correct approach to tax matters. And you
8 will understand that I refuse, I outright refuse to
9 condone such confusion, such incoherence by taking into
10 consideration the explanations that, in my opinion,
11 remain unclear and confused.

12 As for section 42, I believe it
13 applies in the exact way that the auditor applied it. And
14 finally, the question of interest. Concerning the
15 question of interest, I will openly admit that I never
16 understood Mr. Lefrançois's explanations, but one thing
17 is certain, one thing is clear, one thing is
18 indisputable: the interest that Ms. Grégoire paid to
19 Mr. Lefrançois was deductible from her income, but it was
20 only deductible for the period during which she collected
21 rent. As soon as she sold the property, the admissibility
22 of or the claim for interest deductions became invalid.
23 In my view, that is absolutely indisputable evidence, and
24 I don't understand, I cannot explain to myself - in any
25 case, I certainly did not understand - the kind of
26 unclear, confused explanations he gave to try to claim
27 that his spouse was entitled to that interest. But one

1 thing is certain; the facts are so clear, so transparent,
2 that it's unquestionable that the auditor was correct in
3 refusing to take into account the interest for the period
4 after the property was sold.

5 For all of these reasons, there is not
6 a doubt in my mind that this appeal must be dismissed,
7 and that is the finding I will make: the appeal is
8 dismissed. And since it's under the informal procedure,
9 it is without costs.

10 END OF REASONS FOR JUDGMENT

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14 Translation certified true
15 on this 24th day of June 2009
16 Margarita Gorbounova, Translator