Docket: 2010-766(IT)I

BETWEEN:

JEFFREY SYRYDIUK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 24, 2010 at Toronto, Ontario

Before: The Honourable Justice C.H. McArthur

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Alisa Apostle

JUDGMENT

The appeals from assessments of tax made under the *Income Tax Act* for the 2005 and 2006 taxation years are dismissed.

Signed at Ottawa, Canada, this 15th day of October 2010.

"C.H. McArthur"

McArthur J.

Citation: 2010 TCC 520
Date: 20101015
Docket: 2010-766(IT)I

BETWEEN:

JEFFREY SYRYDIUK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

McArthur J.

[1] This appeal is from an assessment of the Minister of National Revenue adding the sum of $14,971 to the Appellant's taxable income for the years 2005 & 2006.

[2] The issue boils down to whether the Appellant received a taxable benefit in the form of insurance premiums for disability insurance paid by his employer Vitaid Ltd. (Vitaid) during the years under appeal.

[3] The position of the Appellant includes: the disability insurance policy was purchased for the benefit of the employer; in the alternative, the insurance policy was part of the employer's group sickness or accident insurance plan and therefore exempt pursuant to subparagraph 6(1)(*a*)(i); and finally Vitaid misled the taxpayer on the tax consequences of the insurance and therefore should be held liable for the tax payable.

[4] The Respondent submits that the premiums on the disability insurance paid by the taxpayer's employer are a taxable benefit under paragraph 6(1)(*a*) and are not exempt under subparagraph 6(1)(*a*)(i). The benefit of the disability insurance was to the taxpayer and any advantage to the employer was incidental; "group insurance" should be defined based on insurance legislation and the taxpayer's policy does not

fit that definition; misunderstanding of tax consequences does not exempt from tax owing.

[5] For the most part, the facts are not in dispute. An edited version of the assumption of facts with my commentary follows.

[6] The Appellant was employed by Vitaid during the years under appeal, 2005 and 2006. The Appellant reported annual income of approximately $205,000 to $225,000. Vitaid paid premiums for the Appellant's personal disability and critical illness insurance policies. I believe Vitaid paid the premiums for three key man insurance policies.

[7] The Minister denies the Appellant's submissions that these were group policies or Vitaid's standard sickness or accident insurance policies.

[8] The Appellant claims that the payment of premiums and resulting insurance coverage was made for Vitaid's benefit. He states the following in his Notice of Appeal:

> Mr. Syrydiuk ought not to be responsible in equity for the unreported taxes for the 2005 and 2006 taxation years as they were the result of a situation unnecessarily created by and for the benefit of Vitaid Ltd. without Mr. Syrydiuk's knowledge, consent or control.

Although writing in the third person, the Appellant added:

> Clearly these policies were issued by and for the benefit of Vitaid Ltd. The annual cost of the premiums for these policies was more than $30,000 of which the disability policy alone was over $14,000. In November 2002, Mr. Syrydiuk could not afford to purchase, or even accept, any of these policies if there were any associated costs to himself given his tenuous personal and financial situation and lack of a formal relationship with Vitaid.
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> Vitaid also deliberately withheld information regarding the personal taxable benefit it had created for Mr. Syrydiuk and of their failure to increase his income accordingly when they chose to omit reporting these tax benefits in preparing Mr. Syrydiuk's T4 forms for 2005 & 2006 as required by law. These negligent actions by Vitaid again prevented Mr. Syrydiuk from being alerted to this impropriety or any recourse. It should be noted that excluding matters related to the disability policy, Mr. Syrydiuk was properly alerted to each and every other taxable benefit added to his compensation during his tenure with Vitaid (Exhibits 5 &6). This anomaly supports that Vitaid knowingly and deliberately withheld information in this matter creating an unfair situation with Mr. Syrydiuk outside of his control.

> Mr. Syrydiuk should not be held liable for outstanding taxes, interest or penalties as ignorance of the facts that give rise to a tax liability is not the same is ignorance of the law.
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> . . . Vitaid had an obligation to declare, withhold and remit all taxes related to this assessment and should be directed by the Court to do so.
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> In addition, Revenue Canada could have resolved this issue immediately upon discovering the unreported employee tax benefit during the Vitaid Ltd. audit by denying Vitaid's claim and requiring that Vitaid to pay any outstanding taxes, interest and penalties. This action would have prevented unfairly involving Mr. Syrydiuk into a situation outside his knowledge or control and causing him undue hardship and unnecessary costs for the past year.
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> Vitaid was fully aware of its tax obligations they created with the disability policy by naming Mr. Syrydiuk as the Owner. This was confirmed to Mr. Syrydiuk on July 20, 2009 in his conversation with Kent Wooton of Worthington Financial, the insurance agent who sold the policies to Mr. Steward/Vitaid in 2002.
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> It obviously was a complete surprise when Mr. Syrydiuk was contacted by the Revenue Canada Audit Department on January 8, 2009 (Exhibit 3); a full six years after the policies were issued. This was the first time that Mr. Syrydiuk was ever alerted to the possibility of personal benefit derived from any of the key man insurance policies purchased by Vitaid in 2002. From the onset Mr. Syrydiuk always understood that these policies to be for the benefit of Vitaid and that these specific policies would not give rise to a taxable benefit for himself. This understanding was further supported by the following:…

[9] The Appellant's submissions included the following; Vitaid received a benefit from purchasing insurance for the Appellant, as well as two key employees. Mr. Syrydiuk refers to the testimony of Mr. Wooton, the insurance agent, who stated that Vitaid purchased insurance to protect itself. The Appellant relied on *Rachfalowski v. The Queen*[1] for the assertion that if the primary benefit falls to the employer, it should not be a taxable benefit to the employee. In *Rachfalowski*, the Tax Court of Canada found that the benefit of the golf club membership was to the employer and therefore, it was not a taxable benefit to the employee.

[10] He relies on the Canada Revenue Agency Interpretation Bulletin and Information Circular to support his position that it is possible for individual insurance policies owned by employees to be combined to form a common plan. He also relies

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[1] 2008 TCC 258.

on *Meyer v. The Queen*[2], where the taxpayer was the only employee involved in a group plan.

[11] He argues that since Vitaid created this tax liability without his knowledge or consent, it should be directed to pay it.

[12] The Respondent relies in part on the test set out by the Supreme Court of Canada in *The Queen v. Savage*[3] (as quoted in *Schroter v. Canada*[4]):

> In *The Queen v. Savage*, [1983] 2 S.C.R. 428, the Supreme Court held the meaning of the phrase "benefits of any kind whatsoever" in paragraph 6(1)(*a*) was "clearly quite broad" and the phrase "in respect of" was intended to convey the widest possible scope. The paragraph was held to take into income a material acquisition which conferred an economic benefit, so long as the acquisition did not fall within one of the exceptions, and so long as the acquisition was received in connection with employment.

[13] Further, if there was a benefit to the employer in purchasing insurance for the taxpayer, it was only incidental. The primary benefit of this insurance policy accrued to the taxpayer.

[14] With respect to the position that it was not a group policy, the Minister relies on the following exert from *Plumb v. The Minister of National Revenue*:[5]

> I am of the view that the words "group insurance" have an ordinary and popular meaning which involves a contract that provides for the insurance of a number of persons individually. A typical example is a contract between an insurer and an employer providing for the insurance of employees of the employer.

[15] Counsel submits the following definition from the Carswell textbook on insurance law should be applied in deciding whether the policy in question qualifies as "group sickness or accident insurance plan" under subsection 6(1)(*a*)(i):

> "Group insurance" means insurance, other than creditor's group insurance and family insurance, by which the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person.

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2 [1977] CTC 2581.
3 [1983] 2 SCR 428.
4 2010 FCA 98 at para 16.
5 64 DTC 5145.

Legislation

Income Tax Act[6]

> 6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amount as are applicable
>
> Value of benefits
> (a) the value of board, lodging or other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, except any benefit
> (i) derived from the contributions of the taxpayer's employer to or under a registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit sharing or group term life insurance policy.

Analysis

[16] The Appellant's first submission, taken from his reasons for appeal, is one of equity. He states he should "not be responsible in equity for the unreported taxes". He continues at length to argue that his additional tax was created by Vitaid without his knowledge and therefore Vitaid should be responsible for the tax. Clearly, this Court does not have jurisdiction to exempt a taxpayer from liability on equitable grounds. The Tax Court is created by the Federal Legislation. While the *Income Tax Act* legislation can and is interpreted in a fair and equitably manner, the Court cannot change the law. That is the prerogative of Parliament. (*Grimard v. The Queen*.[7])

[17] The meaning of "benefit of whatever kind" in paragraph 6(1)(*a*) is to be interpreted broadly.[8] Benefits are not restricted to one's employment salary. In *Hoefele* (Indexed as *Krull v. Canada*)[9] the Federal Court of Appeal found that an interest subsidy provided by the employer for its employee's mortgage did not increase the taxpayer's equity in his or her home and therefore was not a benefit. Presently, the policy premiums did not increase the Appellant's net worth but obviously he would benefit in the event of personal disability or critical illness. His wife Alexandra was named the beneficiary in the disability policy. The Appellant signed his approval to these policies prior to their issuance. Thus from a contractual

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6 RSC 1985, c.1 (5th Supp.).
7 2009 FCA 47.
8 *The Queen v. Savage*, [1983] 2 SCR 425.
9 [1996] 1 CTC 131 (FCA) (Indexed as *Krull v. Canada*).

viewpoint, it was the Appellant's policy. Bowman J. in *Rachfalowski* found that a golf membership was primarily for the benefit of the employer who insisted that his employee accept it. In our instance while Mr. Syrydiuk was not aware that the premiums would be taxable to him, he was aware of the benefit that would flow to him in the event of his illness or accident. I have no doubt that a reasonable man or woman on the street would not hesitate in finding these large premiums a personal benefit to the taxpayer. There is insufficient evidence to conclude that Vitaid benefited more than the Appellant and I am not satisfied that would have affected this decision.

[18] The reasons for the decision in *Mindszenthy v. R*[10] apply equally to Mr. Syrydiuk. In *Mindszenthy* the appellant bought an imitation Rolex watch for a business presentation. The employer found out and presented the appellant with a genuine Rolex watch. The Tax Court of Canada found the appellant received the watch in his capacity as an employee thus making it a taxable benefit under subsection 6(1)(*a*). Bowman C.J. wrote:

> He [taxpayer] accepted the gift in good faith without being aware of the tax consequences. Had he known that it carried a tax burden, he might have refused to accept it. Instead of being a clear benefit, it gave rise to liability and, as an economic matter, it forced him to pay in taxes a great deal more than he would have paid for a watch in the first place.

[19] I now turn to whether the policy in issue is exempt from taxation under subparagraph 6(1)(*a*)(i) which exempts a "group sickness or accident insurance plan". In *Meyer* the issue was whether a sickness and accident insurance plan provided by the employer qualified as a group sickness and accident insurance plan even though the employer had only one employee. The Court concluded that even if it could find that the employer had a sickness and accident plan, it nevertheless could not qualify as a "group".

[20] The following writing of Cattanach J. in *Plumb* applies equally to this appeal.

> I am of the view that the words "group insurance" have an ordinary and popular meaning which involves a contract that provides for the insurance of a number of persons individually. A typical example is a contract between an insurer and an employer providing for the insurance of employees of the employer.

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10 [1993] 2 CTC 2648.

The Appellant's policy does not fit this description. Mr. Syrydiuk's policy was designed for him alone; it was not created to cover a group. I do not accept that one person's single policy can meet the definition of "group policy" since "group" is defined in the Canadian Oxford Dictionary 2005 as "a number of persons or things located or considered together." The Appellant's policy was not considered together with a number of persons or things. It was not a group policy within the ordinary meaning of the word.

[21] The Appellant further submitted in his second argument that Vitaid did not increase his income to cover the taxable benefit and it may have hidden this fact from the Appellant and the Canada Revenue Agency. Again, this is an issue between the Appellant and Vitaid. If, as stated by the Appellant, Vitaid's actions have substantially reduced his compensation, then his recourse is against his former employer.

[22] The Appellant was a contracting party in the insurance policy with Maritime Life. He and his wife were the named beneficiaries. He, and not Vitaid, executed the policy. There was privacy of contract between the Appellant and Maritme Life and Vitaid was not a party to it. The evidence does not support the Appellant's submissions that it was Vitaid's policy and for Vitaid's benefit. The appeal is dismissed.

Signed at Ottawa, Canada, this 15th day of October 2010.

"C.H. McArthur"

McArthur J.

CITATION:	2010 TCC 520
COURT FILE NO.:	2010-766(IT)I
STYLE OF CAUSE:	JEFFREY SYRYDIUK AND HER MAJESTY THE QUEEN
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REASONS FOR JUDGMENT BY:	The Honourable Justice C.H. McArthur
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APPEARANCES:

For the Appellant:	The Appellant himself
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