

Docket: 2011-2196(IT)G

BETWEEN:

HELEN JULIANNE GOLDHAWK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 1, 2013, at Hamilton, Ontario.

Before: The Honourable Justice Johanne D' Auray

Appearances:

Counsel for the Appellant: Nicholas F. Ferguson

Counsel for the Respondent: Marcel Prevost

JUDGMENT

The appeal from the assessment made under subsection 160(1) of the *Income Tax Act*, notice of which is dated April 2, 2005 and bears number 15284 is dismissed.

Costs are awarded to the respondent.

Signed at Montreal, Quebec, Canada, this 2nd day of May 2014.

“Johanne D' Auray”

D' Auray J.

Citation: 2014 TCC 132
Date: 20140502
Docket: 2011-2196(IT)G

BETWEEN:

HELEN JULIANNE GOLDHAWK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

D' Auray J.

Question in Issue

[1] The question in this appeal is whether the appellant, Ms. Helen Julianne Goldhawk (“Ms. Goldhawk”), is jointly and severally liable to pay the taxes owed by her spouse, Mr. Albert Goldhawk (“Mr. Goldhawk”), following the transfer of Mr. Goldhawk’s share of the matrimonial home to Ms. Goldhawk, pursuant to section 160 of the *Income Tax Act* (“the Act”)?

Facts

[2] Ms. Goldhawk is a social worker and Mr. Goldhawk is now retired however during the relevant period he worked as a chartered accountant.

[3] In 1989, Mr. Goldhawk started a business with Mr. Quattrini who was also a chartered accountant. The business operated as a partnership and provided accounting services.

[4] However, before forming the partnership, Mr. Quattrini insisted that Mr. Goldhawk enter into a marriage contract with his wife whereby in the event of a divorce or a separation, Ms. Goldhawk would not have a right to Mr. Goldhawk’s partnership interest in D.J. Quattrini, C.A. and Quattrini & Associates Limited (the “partnership”).

[5] At the time of the appeal, Ms. Goldhawk and Mr. Goldhawk had been married for 46 years. Prior to 1989, the Goldhawks did not have a marriage contract. Therefore before signing a marriage contract whereby she would relinquish her rights to her spousal interest in the partnership Ms. Goldhawk sought legal advice.

[6] Ms. Goldhawk's lawyer advised her against signing such a marriage contract, however it was a delicate situation for Ms. Goldhawk; on one hand, she was advised not to sign the marriage contract, on the other hand by not signing the marriage contract she would deny Mr. Goldhawk the opportunity to start his accounting practice.

[7] Ms. Goldhawk and Mr. Goldhawk both testified that they agreed that Ms. Goldhawk would sign the marriage contract relinquishing her rights to Mr. Goldhawk's partnership's interests in exchange for the share of Mr. Goldhawk in the matrimonial home. According to their testimonies, this oral agreement was reached shortly before Ms. Goldhawk signed the marriage contract on June 5, 1989. Notably, however, there is no documentation to support the contention that the oral agreement took place, and there is no witnesses confirming their discussion.

[8] Once the marriage contract was signed, Mr. Goldhawk started his accounting practice with Mr. Quattrini. Over the course of the 1990s, Mr. Goldhawk's relationship with Mr. Quattrini deteriorated. The tension in their professional relationship culminated in May of 2001 when Mr. Quattrini physically locked Mr. Goldhawk out of the office. Ultimately, Mr. Goldhawk was successful in a civil law suit against Mr. Quattrini.

[9] Both Ms. Goldhawk and Mr. Goldhawk testified that in light of the difficulties Mr. Goldhawk was facing with his business partner in 1999, and fearing that the partnership would soon dissolve, they took steps to ensure that all their legal affairs were in order.

[10] On October 21, 1999, Mr. Goldhawk transferred to Ms. Goldhawk his share in the matrimonial home. At the time of the transfer of the matrimonial home to Ms. Goldhawk, Mr. Goldhawk was liable to pay tax under the Act. The fair market value of the matrimonial home was \$225,000.

[11] In the transfer of the deed of the matrimonial home, under the heading “*Consideration*” it is written “*Natural Love & Affection & \$1.00*”. It also reads “*Deed given to place title in wife’s name alone and for no other purpose*”.

[12] Ten years had passed between the time the Goldhawks purportedly orally transferred the matrimonial home and when the actual transfer of the title occurred. Ms. Goldhawk explained that there was a ten year delay in the transfer of the title since both of them were leading busy lives.

[13] None of the documents filed in evidence during the trial made reference to the supposed oral agreement whereby Mr. Goldhawk purportedly transferred his share of the matrimonial home to Ms. Goldhawk his spouse in exchange for the 1989 marriage contract.

Position of the Parties

Appellant’s Position

[14] Ms. Goldhawk submits that she paid sufficient consideration for the receipt of her husband’s interest in the residence. She argued that the transfer of the home was in exchange for the concessions she made in the marriage contract, and thus sufficient and valuable consideration was paid such that section 160 of the Act should not apply.

Respondent’s Position

[15] The respondent submits that the fair market value of the property at the time of the transfer of the deed in 1999 was \$225,000, and the consideration paid by the appellant in return for Mr. Goldhawk’s interest in their residence was \$1. As such, under section 160 of the Act, Ms. Goldhawk and Mr. Goldhawk are jointly and severally liable to pay the amount that Mr. Goldhawk was liable to pay under the Act in respect of the 1999 taxation year or any year preceding, totalling at \$26,341.90. The respondent denies the contention that Ms. Goldhawk and her husband entered into an oral agreement in 1989.

Analysis

[16] Ms. Goldhawk could not explain why the oral agreement between her and her spouse with respect to the transfer of the matrimonial home was not indicated in any of the documents filed in evidence with this Court.

[17] For example, when the respondent asked why there was no mention of the oral agreement in the marriage contract dated June 5, 1989, Ms. Goldhawk could not explain why this was the case.

[18] When this same question was put to Mr. Goldhawk, he stated that the sole purpose of the marriage contract was to satisfy his partner's request and concerns. Mr. Goldhawk explained that the marriage contract did not include any reference to the oral agreement since the transfer of the matrimonial home was a personal matter between him and his spouse, and in essence, there was no reason that his partner had to know about his personal agreement with his wife.

[19] Ms. Goldhawk could not explain why the deed that transferred to her Mr. Goldhawk's share in the matrimonial home did not mention the oral agreement. Quite the contrary, in fact, the deed stated the *consideration* was "*Natural Love & Affection – and the deed was given to place title in wife's name alone and for no other purpose. No consideration whatsoever passes between the parties.*"

[20] Mr. Goldhawk suggested that it was an error committed by the drafting lawyer. The lawyer acting for the Goldhawks for the house transfer deed was not called as a witness.

[21] In Ms. Goldhawk's Notice of Objection dated July 18, 2005, there is also no mention of an oral agreement transferring Mr. Goldhawk's share of the matrimonial home to her. The only ground raised for objecting to section 160 assessment was:

The amount that you claim is owed by AE Goldhawk is incorrect in that payments have been made.

[22] Ms. Goldhawk could not explain why the Notice of Objection was absent of any reference to the oral agreement. Further, Ms. Goldhawk could not explain why in the Notice of Appeal filed on her behalf, the oral agreement transferring the

matrimonial home to her was also not raised as an argument to avoid the application of section 160 of the Act.

[23] As to the testimony of Mr. Goldhawk, I accept Mr. Goldhawk's testimony that the marriage contract dated June 5, 1989, was exclusively to satisfy his business partner's concerns. I find it conceivable that this is the reason why reference was not made to the transfer of the matrimonial home in the marriage contract.

[24] However, I am troubled that the transfer of the deed did not make reference to the oral agreement. Quite the opposite, in fact, the transfer expressly states that the deed was to be placed in Ms. Goldhawk's name for no other purpose and for no consideration. Therefore, the witness testimony directly contradicts the documentary evidence.

[25] I am not convinced by the testimony of Mr. Goldhawk that the absence of reference to the oral agreement in the transfer of the deed was an error committed by the lawyer. Instead, I am inclined to believe that the document speaks to the mind of the parties at the time they transferred the deed. In other words, I believe that the transfer of the deed was not done in completion of any previous agreement. The transfer of the deed in 1999 may have been prompted by concerns about Mr. Goldhawk's business partner or perhaps the respondent is correct in suggesting that Mr. Goldhawk was concerned about the sums he owed to the Canada Revenue Agency. In either or both events, I believe that if Mr. Goldhawk had transferred the deed according to a previous contractual engagement he made in 1989, this would have been reflected in the documentation, and it would have been argued in the Notice of Objection and in the Notice of Appeal.

[26] In my view, the witnesses were given ample opportunity to explain why there was a significant discrepancy between their testimony and the documents, and they did not give acceptable or sufficient responses that could explain why the transfer of the deed did not reflect the oral agreement. Ms. Goldhawk could not offer a single explanation to this effect, and Mr. Goldhawk's testimony was self-serving, when he claimed that it was an error committed by the drafting lawyer who was not called to testify. In my opinion, Ms. Goldhawk did not demolish the assumptions of fact made by the Minister in this regard; therefore I must accept the nature of the transfer of the deed being as it is presented in the documents, namely, a transfer of Mr. Goldhawk's share of the matrimonial home without consideration.

[27] In this appeal the conditions of subsection 160(1) of the Act are met:

1. Mr. Goldhawk was liable to pay tax at the time of the transfer of his share of the matrimonial home to Ms. Goldhawk;
2. The transferee, Ms. Goldhawk, was the spouse of the transferor, Mr. Goldhawk;
3. The fair market value of the share of Mr. Goldhawk matrimonial home exceeded the fair market value of the consideration given by Ms. Goldhawk.

[28] The appeal is dismissed, with costs.

Signed at Montreal, Quebec, this 2nd day of May 2014.

“Johanne D’ Auray”

D’ Auray J.

CITATION: 2014 TCC 132
COURT FILE NO.: 2011-2196(IT)G
STYLE OF CAUSE: HELEN JULIANNE GOLDHAWK v HER MAJESTY THE QUEEN
PLACE OF HEARING: Hamilton, Ontario
DATE OF HEARING: November 1, 2013
REASONS FOR JUDGMENT BY: The Honourable Justice Johanne D' Auray
DATE OF JUDGMENT: May 2, 2014

APPEARANCES:

Counsel for the Appellant: Nicholas F. Ferguson
Counsel for the Respondent: Marcel Prevost

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