

Docket: 2012-2330(GST)I

BETWEEN:

ROLLAND SARRAZIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on December 13, 2013, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the appellant: Armand Elbaz
Counsel for the respondent: Julie Dillie

AMENDED JUDGMENT

The appeal from the assessment made in respect of the appellant under the *Excise Tax Act*, notice of which is dated January 31, 2011, and bears number F-030486, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 17th day of June 2014.

“Réal Favreau”

Favreau J.

Translation certified true
on this 31st day of July 2014
Margarita Gorbounova, Translator

Citation: 2014 TCC 127
Date: 20140617
Docket: 2012-2330(GST)I

BETWEEN:

ROLLAND SARRAZIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR AMENDED JUDGMENT

Favreau J.

[1] The appellant is appealing from an assessment made against him by the Minister of Revenue of Quebec, as agent for the Minister of National Revenue, under subsection 325(2) of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended (the ETA), notice of which is dated January 31, 2011, and bears number F-030486.

[2] The amount of the assessment is \$21,160.83 in duties and arises from a transfer of land which occurred on April 16, 2010, between the appellant and his son, Roch Sarrazin.

[3] In assessing the appellant, the Minister of Revenue of Quebec relied on, *inter alia*, the following findings and assumptions of fact:

[TRANSLATION]

- (a) The facts admitted above;
- (b) In 2010, Roch Sarrazin, the appellant's son, was liable to pay more than \$100,000 under the E.T.A.;
- (c) On November 25, 2009, Roch Sarrazin acquired from the appellant, by way of gift, an immovable located in Rivière-Rouge identified as being Lot 36,

Category A, in the Township of Marchand in the District of Labelle (hereinafter “the property”);

- (d) On April 16, 2010, Roch Sarrazin resold said property to the appellant;
- (e) The selling price of the property was \$2,000;
- (f) On April 16, 2010, the property’s fair market value was \$60,144;
- (g) Roch Sarrazin sold to the appellant, his father, the property for consideration of less than the fair market value of the property in question;
- (h) The appellant is therefore jointly and severally liable for the tax debt for which Roch Sarrazin is liable under the E.T.A. up to the amount by which the fair market value of the property exceeds the fair market value of the consideration paid.

[4] At the outset of the hearing, counsel for the appellant who replaced Michel Gauthier as a result of illness, filed an appraisal report that was disclosed to the respondent on December 9, 2013, that is, 3 days prior to the hearing date for the appellant’s appeal. Counsel for the respondent objected to the filing of the appraisal report by relying on the non-compliance with the requirements of section 7 of the *Tax Court of Canada Rules (Informal Procedure)* (the Rules). Since the appellant and the appraiser were not present, counsel for appellant made a request for an adjournment. Counsel for the respondent objected to the request for an adjournment because the respondent was ready to proceed and her witness was present at the hearing.

[5] After hearing the parties, the Court refused to admit the appraisal report because the requirements of section 7 of the Rules were not complied with when the appellant had more than 13 months to file his appraisal report, that is, since November 7, 2012, date on which the first adjournment was granted by the Court to allow the appellant to adequately prepare for his appeal. The request for an adjournment was also denied because it was the second request for an adjournment and the appellant did not even deign to attend the hearing to explain the reasons for the delay in filing the appraisal report.

[6] Under a notarized deed of gift dated November 25, 2009, the appellant gratuitously transferred to his son an undeveloped parcel of land located in the town of Rivière-Rouge, known and described as forming part of lot numbers THIRTY-SIX and THIRTY-SEVEN, Category “A”, in the official cadastre of the Township of MARCHAND, in the registration division of Labelle (“the property”). The amount constituting the basis of imposition for transfer duties was \$57,996 but the transaction was not subject to the payment of the transfer duties as it was entered into between persons who are related by blood.

[7] Pursuant to a sale agreement under private writing dated December 2, 2009, Roch Sarrazin transferred ownership of the property back to the appellant for a selling price of \$2,000, which, under the terms of the deed, was paid by the appellant on the day of the transfer and in respect of which a release was provided. The amount constituting the basis of imposition for transfer duties was \$60,144 but the transaction was not subject to the payment of the transfer duties as it was entered into between persons who are related by blood.

[8] According to the property assessment roll of the Municipality of Rivière-Rouge effective for the 2011, 2012 and 2013, fiscal years, the value of the property as of the market reference date, that is, July 1, 2009, was \$51,000, whereas the value was \$53,700 according to the previous assessment roll, that is, that applicable to years from 2008 to 2010. The standardized assessment value for transfer purposes as of April 16, 2010, was \$60,144.

[9] Michel Ethier testified for the respondent at the hearing and explained that Roch Sarrazin had, as of November 25, 2009, the following tax debts:

- Goods and services tax (for reporting periods from 2002 to 2009)	= \$21,160.83
- Quebec sales tax	= \$26,072.86
- Quebec income taxes	= <u>\$13,133.79</u>
Total	= \$60,167.48

[10] A certificate for the amount of goods and services tax owed by Roch Sarrazin was registered in the Federal Court on September 8, 2010. Roch Sarrazin made an assignment in bankruptcy on February 22, 2012, and was discharged from bankruptcy on July 20, 2013.

Analysis

[11] For subsection 325(1) of the ETA to apply, the following four conditions must be met:

- (i) a transfer of property occurred;
- (ii) the transferor and the transferee are not dealing at arm's length;
- (iii) there was not adequate consideration flowing from the transferee to the transferor; and
- (iv) the transferor has an outstanding tax liability at the time of the transfer.

[12] Only the third condition was raised by the appellant in his Notice of Appeal. According to him, the land has no market value because it is mostly marsh land and is not suitable for development or farming. The appellant's family uses it for hunting purposes.

[13] In this appeal, the property was transferred twice:

- (a) on November 25, 2009 pursuant to a deed of gift, Roch Sarrazin acquired the property for no consideration;
- (b) on December 2, 2009, pursuant to a sale agreement, the appellant acquired the property from Roch Sarrazin for \$2,000. The sale agreement was under private writing and the titles of the appellant's property were validly published as evidenced by the attestation statement from Notary Louise Cyr dated March 25, 2010.

[14] A deed of gift is a notarial act that is authentic and makes complete proof against all persons of the juridical act which it sets forth and of those declarations of the parties which directly relate to the act. A duly registered deed of gift constitutes a valid transfer.

[15] Since the sale agreement is not notarized, it cannot constitute an authentic act. However, the sale agreement is nevertheless a valid transfer for tax purposes on the basis on the following attestation statement recorded in the minutes of the Notary of April 16, 2010, filed as Exhibit 17083431:

[TRANSLATION]

1. The content of this deed is accurate;
2. I have verified the identity, quality and capacity of the parties to this summary document;
3. The summary document accurately reflects the parties' intent;
4. The deed is valid as to form;
5. The title of the owner has already been validly published.

[16] There is no doubt that Roch Sarrazin and the appellant were not dealing with each other at arm's length when the property was transferred pursuant to the sale agreement as they were related by blood.

[17] The respondent's witness showed that Roch Sarrazin had an outstanding tax liability when the property was transferred pursuant to the sale agreement.

[18] To establish the fair market value of the property at the time of the transfer, the Minister of Revenue of Quebec relied on the municipal assessment dated April 16, 2010, that is, the date of entry on the property assessment roll of the transfer of ownership of the property. According to the document, the standardized assessment value of the property for the 2008-2010 triennial roll was \$53,700, whereas the standardized assessment value for transfer purposes was \$60,144. These values were established based on the date of contract to July 1, 2006.

[19] In *Eric St-Denis v. The Queen*, 2013 TCC 179, Chief Justice Rip of this Court summarized the relevance of the municipal assessment to establish the fair market value of a property as follows:

[44] It is well established that the municipal assessment, while relevant in determining the fair market value of a property, is not by itself representative of the fair market value of that property. This was the conclusion reached by Campbell J. in *Truong v. Canada*, 2011 DTC 1275, at para. 27 and Webb J. in *Somers v. Canada*, [2008] T.C.J. No. 217 (QL), at para. 38. However, the assessment of property taxes may be accepted as one of a number of indicators of the fair market value of a property (*Truong, supra*, at para. 27).

[20] Under section 2 of *An Act respecting duties on transfers of immovables*, Chapter D-15.1 of the Statutes of Quebec, the basis of imposition for transfer duties shall be the greatest of the following amounts:

- (1) the amount of the consideration furnished for the transfer of the immovable;
- (2) the amount of the consideration stipulated for the transfer of the immovable;
- (3) the amount of the market value of the immovable at the time of its transfer.

[21] In this case, the amount constituting the basis of imposition for transfer duties established in the sale agreement was \$60,144, which represents the fair market value of the property at the time of the transfer.

[22] Or, the appellant did not provide any evidence to discharge his burden of proving that the assessment of the fair market value of the property by the respondent was erroneous and to rebut the presumption of validity of the assessment.

[23] The appraisal report that the appellant intended to file at the hearing could not be admitted because the author of the report was not present to be cross-examined.

[24] In these circumstances, I must accept the determination of the Minister of Revenue of Quebec that the fair market value of the property at the time of the transfer was \$60,144.

[25] For all these reasons, the appeal is dismissed and the assessment is maintained.

Signed at Ottawa, Canada, this 17th day of June 2014.

“Réal Favreau”

Favreau J.

Translation certified true
on this 31st day of July 2014
Margarita Gorbounova, Translator

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REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau
DATE OF JUDGMENT: April 30, 2014
DATE OF AMENDED JUDGMENT: June 17, 2014

APPEARANCES:

Counsel for the appellant: Armand Elbaz
Counsel for the respondent: Julie Dillie

COUNSEL OF RECORD:

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