

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170621

Docket: A-241-16

Citation: 2017 FCA 134

**CORAM: DAWSON J.A.
WEBB J.A.
RENNIE J.A.**

BETWEEN:

ANN KLUNDERT

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on June 21, 2017.
Judgment delivered from the Bench at Vancouver, British Columbia, on June 21, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

WEBB J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on June 21, 2017).

WEBB J.A.

[1] This is an appeal from the judgment of the Tax Court of Canada (2016 TCC 130) dismissing Ann Klundert's appeal from the assessment dated June 25, 1999 issued under subsection 160(1) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) (ITA). Section 160 allows the Minister to assess a person for the tax liability of that person's spouse if property is transferred to that person by his or her spouse and provided that the assessment is limited to the

lesser of the amount of the tax debt of the transferor (as determined under that section) and the amount by which the fair market value of the property transferred exceeds any consideration given for such property.

[2] Ann Klundert's spouse (Dr. Jack Klundert) is an optometrist. During the years 1993 to 1997 he was practising in Ontario. For each of these years he filed income tax returns claiming that he was not obligated to pay income taxes on his income. In 2010 he was convicted of tax evasion in relation to his failure to report income ranging from \$241,625 to \$434,931 for these years. Dr. Klundert was also assessed under the ITA for these years. His appeal of these assessments was not successful.

[3] Prior to May 18, 1994, Dr. Klundert had directed the Ontario Health Insurance Plan (OHIP) to deposit the payments for his services into a joint bank account that he held with his spouse. Commencing May 18, 1994, he changed the instructions and directed OHIP to deposit the payments for his services into Ann Klundert's bank account (which was with same branch as the joint account). From May 1994 to December 1997 a total of \$959,403 was deposited by OHIP into this account. For the taxation years 1993 to 1996 Dr. Klundert had failed to pay income taxes of \$993,730 under the ITA. As of January 2012, the tax debt of Dr. Klundert was reduced to \$145,357.

[4] The only issues before the Tax Court were whether the payments by OHIP to Ann Klundert's bank account were transfers of property made by Dr. Klundert and whether any consideration had been provided by Ann Klundert for the deposits that were made to her account.

[5] The Tax Court Judge found that the deposits made to Ann Klundert's bank account were transfers made to her by Dr. Klundert as they were payments by OHIP for his services and she was the legal and beneficial owner of these funds once they were deposited into her account. In this appeal Ann Klundert raises the same arguments that were raised before the Tax Court. We have not been persuaded that the Tax Court Judge committed any error in determining that the funds became her property when they were deposited into her bank account and therefore that Dr. Klundert transferred property to her by directing OHIP to make these deposits.

[6] The liability of Ann Klundert under paragraph 160(1)(e) of the ITA is limited to the lesser of:

- (a) The amount by which the fair market value of the property transferred to her exceeds the consideration given by her for the property; and
- (b) The total liability of Dr. Klundert under the ITA in respect of the taxation year in which the property was transferred or any preceding year.

[7] There was no dispute that the relevant deposits to Ann Klundert's bank account totaled \$959,403. There was also no dispute that Dr. Klundert's relevant tax liability was \$145,367 as of 2012. Therefore, in order for the limiting amount to be the amount based on the fair market value of the property transferred, the amount of the consideration given by Ann Klundert would have to be in excess of \$800,000. In light of this, Ann Klundert did not pursue her arguments related to the consideration.

[8] As a result the appeal will be dismissed, with costs.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-241-16

(APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE V. MILLER OF THE TAX COURT OF CANADA, DATED MAY 26, 2016, NO. (DOCKET 2013-3531(IT)G)

STYLE OF CAUSE: ANN KLUNDERT v. HER MAJESTY THE QUEEN

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JUNE 21, 2017

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
WEBB J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: WEBB J.A.

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