

**Date: 20081001**

**Docket: A-591-07**

**Citation: 2008 FCA 294**

**CORAM: DÉCARY J.A.  
SEXTON J.A.  
SHARLOW J.A.**

**BETWEEN:**

**WILLIAM J. HASIUK**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on October 1, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on October 1, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

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**BETWEEN:**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on October 1, 2008)**

**SHARLOW J.A.**

[1] Mr. Hasiuk is appealing the judgment of Justice O'Connor (2007 TCC 724). That judgment confirmed an income tax reassessment for 1988 which included \$94,475 in Mr. Hasiuk's income pursuant to subsection 56(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.). The basis of that reassessment was that Mr. Hasiuk directed or concurred in the transfer of \$94,475 from his corporation, 711624 Ontario Limited ("711"), to 590393 Ontario Limited ("590"), a corporation owned by Mr. Hasiuk's sons.

[2] The \$94,475 in issue represents the proceeds of sale of a house and lot sold in 1988, net of closing costs. According to the documentary evidence, the lot was owed by 711 and sold by 711. The proceeds of sale were deposited to the trust account of 711's solicitor on closing. The solicitor made out a trust cheque in the amount of \$94,475 to 711. That cheque was endorsed by one of Mr. Hasiuk's sons and deposited to the account of 590. There is no evidence that 711 held the lot in trust for 590.

[3] Mr. Hasiuk attempted to establish at trial that there was an arrangement between 711 and 590 that 590 would build the house and be entitled to the proceeds of sale of the house and lot. He gave oral evidence to that effect, as did his sons. The accountant for 590 testified that 590 reported the \$94,475 payment as income for the relevant year. The sale proceeds were not reported as income by 711, but were added to its income by reassessment, net of the cost of the lot (\$15,000). An appeal by 711 was dismissed when 711 did not appear at the hearing.

[4] This appeal raises no legal issue. There is no dispute about the meaning of subsection 56(2) of the *Income Tax Act*. The debate is entirely a factual one. Essentially, the parties disagree about whether 590 received the \$94,475 as compensation for building the house. It is common ground that if that amount was paid to 590 as compensation for building the house, subsection 56(2) would not apply.

[5] A finding of fact by a trial judge cannot be reversed on appeal absent palpable and overriding error (*Housen v. Nikolaisen*, [2002] 2 S.C.R. 235 at paragraph 10.) The record of this case discloses no such error. On the contrary, having reviewed the oral and documentary evidence to which we were referred, and having considered the submissions of counsel for both parties, we

conclude that it was reasonably open to Justice O'Connor to find that that 590 did not receive the \$94,475 as compensation for building the house.

[6] This appeal will be dismissed with costs.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-591-07

**(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE T. O' CONNOR,  
TAX COURT OF CANADA, DATED NOVEMBER 30, 2007)**

**STYLE OF CAUSE:** WILLIAM J. HASIUK v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 1, 2008

**REASONS FOR JUDGMENT OF  
THE COURT BY:** (DÉCARY, SEXTON & SHARLOW  
J.J.A.)

**DELIVERED FROM THE BENCH BY:** SHARLOW J.A.

**APPEARANCES:**

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Andrew Miller FOR THE RESPONDENT  
Ifanyi Nwachukwu

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