

Docket: 2013-2876(GST)I

BETWEEN:

ANIK LEFRANÇOIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on November 13, 2014, at Ottawa, Ontario.

Before: The Honourable Justice Réal Favreau

Appearances:

Agent for the appellant: André Lefrançois  
Counsel for the respondent: Nicolas Ammerlaan

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**JUDGMENT**

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated August 23, 2012, and bears number F-039080, is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 3rd day of March 2015.

“Réal Favreau”

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Favreau J.

Translation certified true  
On this 19th day of May 2015  
Margarita Gorbounova, Translator

Citation: 2015 TCC 55  
Date: 20150303  
Docket: 2013-2876(GST)I

BETWEEN:

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### **REASONS FOR JUDGMENT**

Favreau J.

[1] This is an appeal from an assessment made on a third party 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 August 23, 2012, and bears number F-039080, relative to a transfer of property in the amount of \$20,000, made on August 25, 2009, by André Lefrançois to his daughter, Anik Lefrançois. The amount of taxes payable according to the assessment is \$994.55. When the money was transferred to his daughter's bank account, the appellant's father was a tax debtor in default of payment.

[2] According to André Lefrançois, the amount of \$20,000 transferred to his daughter Anik was a remittal of the excess money that she had given him for the construction of a condominium unit at 26 Bourget Street in Gatineau.

Facts

[3] Through a notarial act dated February 22, 2000, the appellant, then 26 years of age and a student in communications, acquired from a third party an immovable located at 60 Bourget Street in Gatineau for the price of \$43,333 paid in cash with a final release from the seller. The immovable in question was a vacant lot. According to the appellant, the amount of \$43,333 was lent to her by her mother, Lise Grégoire, André Lefrançois' spouse.

[4] The appellant got married in June 2000 to Antoine Corbeil, an engineer. In 2001, she moved to the United States and lived there until 2004. On her return to Canada in 2005, she taught French to federal public servants in the National Capital Region and lived in the two housing units she had had built during her absence on the lot at 60 Bourget Street in Gatineau.

[5] In 2001, the appellant took out a hypothecary loan at the Caisse Populaire Desjardins Saint-Raymond in Hull (now Gatineau) in order to finance the construction of two housing units on the lot at 60 Bourget Street in Gatineau. Based on a bank statement filed with the Court, the balance of the hypothecary loan at December 31, 2001, was \$183,750. The loan was payable in weekly instalments of \$321.09. The interest rate in effect on the loan was 6.25% annually and the total credit rate, including life insurance, was 6.863% annually

[6] The application for building permits for the two housing units on the lot at 60 Bourget Street was filed on May 11, 2001, by Lise Grégoire. The plans submitted were for a detached two-family dwelling (duplex), and the cost of the work was estimated at \$125,000.

[7] On November 15, 2004, the appellant increased the hypothecary loan with the Caisse Populaire Saint-Raymond de Hull to \$296,250 to complete the construction of the two housing units.

[8] On October 26, 2005, through a notarial act, the appellant sold the two housing units located at 60 Bourget Street in Gatineau to her father for a total price of \$654,000, namely, \$326,000 for unit 1 and \$328,000 for unit 2. The appellant's father took over the payment of the hypothec in principal and interest in the amount of \$295,350.24 owed to the Caisse Populaire Saint-Raymond de Hull starting on January 26, 2005, and the appellant acknowledged receiving as an advance on October 26, 2005, the amount of \$358,649.76, and giving release for that amount.

[9] The appellant's father resold the two housing units for \$535,000, namely, \$235,000 for unit 1 sold under a notarial act dated July 29, 2008, and \$300,000 for unit 2 sold under a notarial act dated March 18, 2009. The appellant's father thus realized a loss of \$119,000 on the resale of the two housing units, which was not claimed in his income tax returns for the taxation years concerned.

[10] As of October 26, 2005, the municipal assessment of the two units at 60 Bourget Street was \$179,000 for unit 1 and \$193,700 for unit 2. Based on appraisal reports filed by the respondent, as of October 27, 2005, the fair market value of unit 1 was \$209,000 and of unit 2 was \$245,000. At the hearing, Mr. Lefrançois stated that he had based himself on an appraisal report by Laurent Lemieux to establish the value of \$654,000 for the two housing units, but the report in question was not filed in evidence at the hearing.

[11] By a contract of sale under private writing dated October 1, 2004, the appellant's father transferred to the appellant, her mother and Martin Lefrançois, the appellant's brother, the ownership of a vacant lot at 30 Bourget Street in Hull with the goal of obtaining a building permit to build three housing units under divided co-ownership. The sale price of the immovable was \$60,000, while the appellant's father became its owner under an act executed before a notary dated August 25, 2000, for a price of \$67,275. Although the sale contract under private writing was dated October 1, 2004, it contained the following note in the second-last paragraph of the document:

[TRANSLATION]

This sale is the written articulation under private writing of a legal verbal agreement of sale between these same parties that took place on October 26, 2005.

[12] A document entitled [TRANSLATION] "Contract for the management of the project at 30 Bourget, now 22, 24, 26 Bourget" dated November 1, 2005, was filed at the hearing by the appellant under which the company Investar inc. received a mandate to build three co-ownership units at 22, 24 and 26 Bourget Street based on the plans and specifications prepared by Patrick Fillion's company Plan et Gestion Plus and accepted by the Ville de Gatineau. The document specified that the project had to be realized at the actual construction cost and be paid for in cash through transfers of funds to Investar inc., by each of the three owners of their respective lots.

Lise Grégoire	22 Bourget	Lot 3522957	\$22,728
Martin Lefrançois	24 Bourget	Lot 3522958	\$18,636
Anik Lefrançois	26 Bourget	Lot 3522959	\$18,636
			\$60,000

[13] By a notarial act dated January 20, 2006, the appellant's father transferred to her the part of the divided co-ownership located at 26 Bourget Street, Gatineau, for the price of \$18,636, the price of which was paid before January 20, 2006, and a general and final release was given by the seller.

[14] Based on an offer of financing presented to the appellant's father by the Caisse Populaire Saint-Raymond de Hull and dated August 3, 2007, he refinanced the hypothec on the two units at 60 Bourget Street through two term loans of \$190,000 each.

[15] The construction of the three housing units at 22, 24 and 26 Bourget Street in Gatineau began on October 4, 2004, as corroborated by the building permit issued by the Ville de Gatineau. The application for the building permit was filed by the appellant's father as an owner for self-building. The building permit was granted for a three-family detached home whose cost was estimated to be \$240,000.

[16] The appellant testified to the effect that she had given her father a total amount of \$358,649.76 to pay the actual construction cost of her housing unit located at 26 Bourget Street including the amount of \$328,000 obtained from the sale to her father of the housing unit at 60 Bourget Street.

[17] The [TRANSLATION] "actual construction cost" of the housing unit at 26 Bourget Street was established by the accounting firm PGPM to be \$338,000 including the cost of the lot of \$18,636. A new analysis of the actual construction cost of the appellant's condominium unit established the cost at \$310,440.43. Consequently, André Lefrançois had to give back to the appellant the total amount of \$48,209.33 rather than \$20,649.76, of which he had given her \$20,000.

[18] André Lefrançois was a guidance counsellor at the University of Quebec in Gatineau and retired in 2003. Following numerous problems with the tax authorities, he declared bankruptcy on August 30, 2011.

[19] Investar inc. whose mandate was to build the housing units at 22, 24 and 26 Bourget Street also declared bankruptcy in February 2011. André Lefrançois was the sole shareholder and director of that company.

Applicable statutory provisions

[20] Subsections 325(1), (2) and (5) of the ETA are applicable to the case at bar. These provisions read as follows:

**325 (1) Tax liability re transfers not at arm's length** — Where at any time a person transfers property, either directly or indirectly, by means of a trust or by any other means, to

(a) the transferor's spouse or common-law partner or an individual who has since become the transferor's spouse or common-law partner,

(b) an individual who was under eighteen years of age, or

(c) another person with whom the transferor was not dealing at arm's length,

the transferee and transferor are jointly and severally liable to pay under this Part an amount equal to the lesser of

(d) the amount determined by the formula

$$A-B$$

where

A is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property, and

B is the amount, if any, by which the amount assessed the transferee under subsection 160(2) of the *Income Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

(e) the total of all amounts each of which is

- (i) an amount that the transferor is liable to pay or remit under this Part for the reporting period of the transferor that includes that time or any preceding reporting period of the transferor, or
- (ii) interest or penalty for which the transferor is liable as of that time,

but nothing in this subsection limits the liability of the transferor under any provision of this Part.

**325 (2) Assessment** — The Minister may at any time assess a transferee in respect of any amount payable by reason of this section, and the provisions of sections 296 to 311 apply, with such modifications as the circumstances require.

**325 (5) Meaning of “property”** — In this section, “property” includes money.

### Analysis and conclusion

[21] To determine whether the transfer of \$20,000 represents the repayment of excess funds advanced by the appellant to her father for the construction of her condominium unit at 26 Bourget Street, it is important to first examine when and how the appellant transferred the money to her father.

[22] In reality, there is no documentary evidence on the record to the effect that the appellant had transferred money for the construction of her condominium unit. However, it was established that the condominium unit was indeed built and that the appellant really became its owner.

[23] According to the appellant and her father, the funds for the construction of said condominium unit came from the balance of the sale price of the units at 60 Bourget Street regarding which the appellant gave her father release for the amount of \$358,649.76. There is no evidence on the record that said amount of \$358,649.76 was actually given to the appellant by her father and that she had loaned that money back to her father afterwards. It is more likely than not that no money was exchanged between the appellant and her father as part of this transaction.

[24] The appellant had little to no income when she purchased the lot at 60 Bourget Street. She indicated that the purchase price of the lot (\$43,000) was lent to her by her mother. No evidence of the loan or transfer of money was filed with the Court. Just like for the acquisition of the lot, the appellant did not have the



money needed to build her condominium unit. In the circumstances, it seems more than likely to me that the appellant acted in this transaction as a nominee for her father, who was in serious financial trouble at the time.

[25] The sale of the immovable to her father on October 26, 2005, was made at a price that was clearly higher than the fair market value of the immovable, the value of which was around \$454,000 based on the appraisal reports filed by the respondent, not \$654,000. The resale of the condominium units in 2008 and 2009 for a total price of \$533,000 confirms that the value of the transaction between the appellant and her father was clearly exaggerated.

[26] The circumstances surrounding the construction of 26 Bourget Street are also very obscure. There is no evidence that the amount of \$18,636 for the purchase of the lot was paid by the appellant. In addition, there is no evidence that the appellant paid Investar inc. the amount of \$119,000 on November 15, 2004, to begin the construction of 26 Bourget Street. According to the version of the appellant and her father, that amount came from refinancing the hypothec, which was done on November 15, 2004. The new hypothec for an amount of \$296,250 minus the repayment of the old hypothec in the amount of \$177,250 made it possible to create liquidities of \$238,000 in total, namely, \$119,000 for each of the 2 units in the immovable. That version is in contradiction with the version stated in paragraph 7 above to the effect that the increase in the hypothecary loan was for the purpose of completing the construction of the two housing units at 60 Bourget Street.

[27] The appellant and her father claim that she paid him a total amount of \$358,649.76 for the construction of her housing unit at 26 Bourget Street, but no evidence of this transfer of money was filed with the Court. In her testimony, the appellant could not provide any clarifications about the advances given to her father or to Investar inc.

[28] Finally, I would like to note the confusion surrounding the actual construction cost of the unit located at 26 Bourget Street; we do not know whether it was \$338,000 or \$310,440.43 as the appellant's father claims. This only shows the confusion, disorder and lack of reliable accounting records surrounding the transactions of Mr. Lefrançois.

[29] Given the inconsistencies in the explanations provided by the appellant and by her father and given the lack of tangible evidence that the appellant had advanced to her father the amounts totalling \$358,649.76, I cannot agree that the

amount of \$20,000 may be considered as the repayment of an excess amount of the actual construction cost of the immovable located at 26 Bourget Street.

[30] For all these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 3rd day of March 2015.

“Réal Favreau”

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Favreau J.

Translation certified true  
On this 19th day of May 2015  
Margarita Gorbounova, Translator

CITATION: 2015 TCC 55  
COURT FILE NO: 2013-2876(GST)I  
STYLE OF CAUSE: Anik Lefrançois and Her Majesty the Queen  
PLACE OF HEARING: Ottawa, Canada  
DATE OF HEARING: November 13, 2014  
REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau  
DATE OF JUDGMENT: March 3, 2015

APPEARANCES:

Agent for the appellant: André Lefrançois  
Counsel for the respondent: Nicolas Ammerlaan

COUNSEL OF RECORD:

For the appellant:

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Firm:

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