Docket: 2011-2124(IT)G

BETWEEN:

ROBERT BLAINE COPELAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 12, 2016, at Kelowna, British Columbia

Before: The Honourable Justice F.J. Pizzitelli

Appearances:

Counsel for the Appellant:	Greg J. Pratch
Counsel for the Respondent:	Shannon M. Currie

JUDGMENT

The appeal made under the *Income Tax Act* with respect to the Notice of Assessment, Number 731201, dated September 3, 2009, is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 20th day of May 2016.

"F.J. Pizzitelli"

Pizzitelli J.

Citation: 2016 TCC 124
Date: 20160520
Docket: 2011-2124(IT)G

BETWEEN:

ROBERT BLAINE COPELAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Pizzitelli J.

[1] This matter involves an assessment against the Appellant in the amount of $105,287.68 pursuant to Section 160(1) of the *Income Tax Act* (the "*Act*") which provision in essence allows the Minister of National Revenue (the "Minister") to assess joint and several liability to a transferor and transferee where property is transferred to a person who is not at arm's length at the time of transfer when at the time of transfer the transferor had a tax debt. The amount of liability is the amount by which the fair market value of the property transferred exceeds any fair market consideration given for the transferred property.

[2] The parties filed a Partial Agreed Statement of Facts and Issues (the "PASF") with exhibits of true copies of documents that both agreed were true copies of the documents they represent, were signed by the persons who purported to have signed them and were signed on the dates purportedly signed unless stated otherwise, which PASF was admitted as Exhibit AR-1.

[3] The facts agreed upon in the PASF or not in dispute from the evidence relevant to the issues follow. The Appellant was the sole shareholder of a corporation by the name of Tradepro Consolidated Industries Inc. ("Tradepro"), which was an amalgamated corporation from the amalgamation of two predecessor corporations that occurred on August 10, 2006, namely of 549883 B.C. Ltd ("549883") and Tradepro Holdings Inc. ("Holdings"), both of which the Appellant was also the sole director and shareholder of. Tradepro sold a commercial property

located in Kelowna, British Columbia, on August 11, 2006, proceeds of which were deposited in the credit union account of 549883, on August 14, 2006, as evidenced by two cheques made payable to 549883 for $74,453.11 and $43,472.91, from an attorney's trust account respectively, totalling $117,926.02. There is no dispute from the evidence at trial that this commercial property was initially owned by 549883 before the aforesaid amalgamation and partially leased to a gym as well as to the other predecessor, Holdings, which operated an insulation business. 549883 owned and operated the property in question and owned shares in an entity known as InsulPro (Peoples) Ltd. ("InsulPro"), which had earlier bought out its insulation business. 549883 sold its shares in InsulPro effective February 1, 1999 to InsulPro Industries Inc., the other shareholder of InsulPro, pursuant to an agreement of that date that closed in July of 1999 for a price to be discussed later.

[4] The agreed evidence is that three bank draft cheques were issued to a "Blaine Copeland" all dated August 30, 2006, for a total of $111,000 from the same credit union account above mentioned following the closing of the Kelowna property sale; namely No. 7135 for $11,000, No. 7136 for $50,000 and No. 7137 for $50,000. The parties agree the fair market value of such cheques totalled $111,000. Both cheque Nos. 7135 and 7136 totalling $61,000 were deposited to the account of another corporation, Trade Quote Systems Inc., ("Trade Quote"), a corporation involved in developing software systems for the insulation business, of which the Appellant was also the sole director and shareholder, on different dates in October, 2006. The only agreement as to the deposit of the remaining cheque No. 7137 is that it was negotiated on January 15, 2007 at the Bank of Montreal in Kelowna.

[5] Following both the sale of the property and the issuance and the deposit of the cheques from the proceeds above, Tradepro was reassessed for its 1999 and 2000 taxation years relating to its predecessor's tax returns, 549883, on February 15, 2007 and there is no dispute that on September 3, 2009, the date the Appellant was assessed pursuant to subsection 160(1) above, Tradepro was liable to pay at least $105,287.68 in total income tax with respect to its 1999 and 2000 taxation years such that a tax debt was owing.

[6] The parties are in agreement that the only issues to be decided in this matter pursuant to subsection 160(1) are: (1) whether there were any transfers of property from Tradepro to the Appellant and if there were, then (2) was there any consideration given for the transfers.

[7] The position of the Appellant is that the cheques issued to Blaine Copeland were funds on account of repayment of his father's - Terry Blaine Copeland's - loans of $186,000 to 549883 made in September of 1999 and hence were not transfers to him but loan repayments received by him as agent for his father. The Appellant testified that both he and his father used their middle names, "Blaine", to facilitate the cashing or dealing of his father's funds by him, as his father's agent or representative, pursuant to an agreement made between his father, 549883 and himself that gave the Appellant full authority and discretion to invest his father's money. He states he received such cheques on behalf of and invested $61,000 of such proceeds, represented by the two cheques deposited in Trade Quote's account, for his father pursuant to such authority and that the third cheque was deposited directly by his father into his own bank account after it was determined they were not required by the Appellant's businesses. In the alternative argues the Appellant, even if the cheques issued to Blaine Copeland represented transfers to the Appellant within the meaning of the subsection, the repayment of the debt owing to the father and its subsequent reduction as a result of such payment is the consideration given and having a value of $110,000, an amount exceeding the tax debt.

[8] The position of the Respondent is that the Appellant had no agency agreement with his father, the Appellant's father made no such loans to 549883 and did not have the ability to do so, and that the cheques represented payments to the Appellant himself, not his father, and so there was no consideration given for same.

[9] Subsection 160(1) reads as follows:

> 160(1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to
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> > (a) the person's spouse or common-law partner or a person who has since become the person's spouse or common- law partner,
> >
> > (b) a person who was under 18 years of age, or
> >
> > (c) a person with whom the person was not dealing at arm's length,
>
> the following rules apply:

> (d) the transferee and transferor are jointly and severally, or solidarily, liable to pay a part of the transferor's tax under this Part for each taxation year equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74.1 to 75.1 of this Act and section 74 of the Income Tax Act, chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted for it, and
>
> (e) the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of
>
> > (i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and
> >
> > (ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (2) for that amount) in or in respect of the taxation year in which the property was transferred or any preceding taxation year,
>
> but nothing in this subsection limits the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of this subsection.

[10] There is no dispute as to purpose and the interpretation of the subsection 160(1) by the parties hereto *per se* and it is established law from *The Queen v Livingston*, 2008 FCA 89, 2008 DTC 6233, relied on by both parties, that four criteria must be met for subsection 160(1) to apply, namely:

1. There must be a transfer of property;
2. The parties must not be dealing at arm's length;
3. There must be no consideration or inadequate consideration flowing from the transferee to the transferor, and
4. The transferor must be liable to pay tax under the *Act* at the time.

[11] There is no dispute that the Appellant was related to Tradepro, the transferor, at the time of the purported transfer and as such was not dealing at

arm's length with such transferor and there is no dispute the said transferor was liable to pay tax of $105,287.68 at the time, so factors 2 and 4 of *Livingston* above are not in issue. Only factors 1 and 3 are in issue which I will discuss in turn.

I. Was There A Transfer Of Property

[12] The Appellant argues that he received the three cheques from the transferor as agent for his father, pursuant to a written agreement he and his father had that allowed the Appellant to receive any amounts owing by Tradepro to his father and invest it, in his total discretion, but only for the benefit of his father, without any benefit to the Appellant, which the Appellant argues he did by investing $61,000 in Trade Quote through the deposit of two of the cheques into its bank account and by giving his father the third cheque which he alleges was negotiated by his father at his Bank of Montreal account in Kelowna.

[13] It should be noted that it is agreed the Appellant's father was Terry Blaine Copeland who resided in Vancouver and who unfortunately died in 2013.

[14] The Appellant in essence argues there was an agency and no transfer "because he did not exercise the kind of personal control over the property necessary to find there was a transfer of property" according to the case of *Leblanc v The Queen*, [1999] TCJ No. 60, 99 DTC 410, at paragraph 24. In *Leblanc*, a taxpayer's husband became ill, requiring 24-hour care and unable to manage his financial affairs or even sign cheques, requiring the taxpayer to take over his financial affairs. She deposited his RRSP into their joint bank account and did not treat the funds as her own but applied funds only towards her husband's legal obligations. The court found that in these circumstances the taxpayer was acting as agent for her husband, in essence out of necessity, and that the property did not vest or pass to the Appellant. There is no indication in the case at hand that the Appellant became an agent for his father out of necessity and so that case has little application, having regard to its different facts.

[15] The strongest evidence of such written agreement to support the Appellant's agency argument amounts only to the oral evidence of the Appellant himself, who testified that he and his father entered into such agreement on or about September, 1999 at the time his father loaned $186,000 to TradePro, at which time there is evidence of two other documents signed, namely an informal document the Appellant refers to as a loan agreement signed only by the Appellant for the benefit of his father and another guarantee by the Appellant and 549883 purportedly in favour of his father, both of which the Appellant kept copies of before purportedly

sending the originals to the Canada Revenue Agency ("CRA"). No explanation has been given to why he would have taken only copies of the other documents and not the so called agency or control agreement , which I do no find credible. Frankly, I have some serious concerns about the credibility of the Appellant and am not prepared to accept his oral evidence on this matter without compelling evidence to corroborate it.

[16] The Appellant's former bookkeeper, TT, also testified that when she was hired in 2003 she received a file from the former accountant, AT, that she says contained copies of the so called loan agreement, guarantee, "control agreement" as she called it, and a promissory note in favour of the father to evidence a loan. She gave no evidence as to the details of the so called control agreement that would enable me to reasonably conclude that the terms thereof established an agency or anything else. Frankly, as I will also discuss later, I have some concerns about the reliability of her testimony in any event.

[17] The Appellant testified his father had habitually lent him money, including in the early 1990's and so he and his father had a relationship of trust, where he invested for his father's benefit on many occasions, including in past ventures or businesses the Appellant was involved in, yet provided no real details or evidence of same or proof thereof, neither documentary nor in the form of oral testimony of other witnesses having actual knowledge thereof. The Appellant tried to argue that TT was in fact aware of his father's loan to 549883, but the evidence is that she was not employed by the company or the Appellant at the time of the purported loan and so had no actual direct knowledge thereof, instead relying on the information and documents allegedly provided by others, in particular the company's former accountant.

[18] In short, the Appellant has not met the onus of establishing an agency agreement with his father. Moreover, without any evidence as to the terms of the alleged agreement, the Court is unable to conclude that one of the fundamental elements of an agency agreement, the capacity of the principle to control the agent's actions, is present. See *The Queen v Glengarry Bingo Assn.*, [1999] FCJ No. 316, at paragraph 32. The oral evidence of the Appellant suggests he had total control over his actions.

[19] In any event, the facts are clear that the three cheques were issued to Blaine Copeland in August, 2006 and he held onto them until he deposited two cheques into Trade Quote's bank account in October, 2006, a company of which he was the sole director and shareholder, and that the third cheque was negotiated at a

Kelowna branch of the Bank of Montreal in January of 2007. The cheques were issued in his name, not Terry Copeland's name and thus he had possession and control of them and decided what to do with them including holding onto them as he saw fit for as long as he determined.

[20] As for his testimony that he and his father shared his middle name, Blaine, thus suggesting the cheques were issued directly to his father, there is no evidence his father went by the name Blaine Copeland only and his father was only referred to as Terry throughout the trial by the Appellant and TT, the bookkeeper who testified she met him twice when he visited Kelowna to see his son. There was no evidence whatsoever tendered to suggest his father Terry, who resided in Vancouver, either went by the name Blaine Copeland nor owned the bank account the third cheque was allegedly negotiated at and it would seem a simple matter to have confirmed that fact with the local Kelowna bank branch which was not done or with some other family member or witness having knowledge thereof.

[21] In *Livingston*, where the taxpayer also argued that there was no transfer of property because beneficial title to the funds remained with the transferor, essentially akin to the control argument the Appellant is making here, the court rejected such argument and bluntly stated at paragraph 21:

> The deposit of funds into another person's account constitutes a transfer of property. To make the point more emphatically, the deposit of funds by Ms. Davies into the account of the respondent permitted the respondent to withdraw those funds herself anytime. The property transferred was the right to require the bank to release all the funds to the respondent. The value of the right was the total value of the funds.

[22] In the case at hand, the Appellant caused the three bank drafts, a form of certified funds, totalling $111,000 to be issued into its name essentially having caused the bank to release those funds to him. At this point there was clearly a transfer of property to him in the most direct way. There was no evidence of limitations or restrictions on the use or honourment of those drafts and the Appellant was free to do as he pleased with them, regardless of any moral or even legal commitment he alleges he may have had as to the use of such funds. He clearly transferred $61,000 into his other corporation's bank account which he solely controlled. As stated by Tardif J. in *Doucet v The Queen*, 2007 TCC 268, 2008 DTC 4055, at paragraph 35, a case that also involved the issuance of bank drafts to the transferees therein:

> From the time of the transfer of the amounts in question, the appellants had full control over that money. What they decided to do with it, or the fact they obeyed instructions, takes nothing away from the fact that they were entirely free to do whatever they wished with the amounts transferred. Even if it was only for a short period, legally speaking they became, in relation to third parties, including the respondent, the absolute owners of the amounts transferred, and that is enough for section 160 of the Act to be applicable.

[23] Accordingly, I find there was a transfer to the Appellant of funds from Tradepro (formerly 549883) pursuant to subsection 160(1) of the *Act*.

II. Was There Consideration For The Transfer

[24] The consideration factor from *Livingston* above was aptly described in paragraph 27 thereof:

> Under subsection 160(1), a transferee of property will be liable to the CRA to the extent that the fair market value of the consideration given for the property falls short of the fair market value of that property. The very purpose of subsection 160(1) is to preserve the value of the existing assets in the taxpayer for collection by the CRA. Where those assets are entirely divested, subsection 160(1) provides that the CRA's rights to those assets can be exercised against the transferee of the property. However, subsection 160(1) will not apply where an amount equivalent in value to the original property transferred was given to the transferor at the time of transfer:…

[25] There is no dispute between the parties that it is established law that where a transfer of property is in the nature of a loan repayment that money obtained from the loan can be viewed as fair market consideration for the property. See *Kardaras v The Queen*, 2014 TCC 135, at paragraph 30 and *Isaac v The Queen*, 2006 TCC 25, at paragraph 42.

[26] However, as the Respondent has argued, relying on *Cohen v The Queen*, 2008 TCC 550, 2008 DTC 5089, at paragraph 17, the evidence must show a contemporaneous account of the debt and the evidence must be genuine and truthful.

[27] This whole issue depends on whether I am satisfied from the evidence of the Appellant that Tradepro, formerly 549883, owed a debt of $186,000 to Terry Blaine Copeland, the deceased father of the Appellant, as alleged by the Appellant.

[28] The Appellant argues that his father, Terry, loaned $186,000 to 549883 (the predecessor to Tradepro), (the "Loan") starting in September, 1999 to assist that corporation to buy and build the plant on the property owned by it in Kelowna, British Columbia, as above indicated, which Loan was sourced from the 30 percent share of the proceeds of the sale of InsulPro shares Terry was entitled to between a casual agreement made between father and son. In essence argues the Appellant, the 3 bank drafts totalling $111,000 represent a repayment of such indebtedness received by the Appellant on Terry's behalf.

[29] Frankly, I am not satisfied as to the existence of the Loan for several reasons. First, the Appellant argues that there are two pieces of documentary evidence for the Loan both dated September 20, 1999, namely a short document signed only by the Appellant on behalf of 549883, which the Appellant referred to as the "loan agreement" and a personal guarantee of the Appellant in favour of his father, Terry Blaine Copeland. He did not identify any other documents that would support the Loan during his testimony.

[30] The one page loan agreement consists of the following three short paragraphs:

> This agreement made the 20 day of Sept. 1999 between 549883 BC LTD and Terry Copeland. Terry copeland agrees to pay 549883 BC LTD the sum of $186,000.00 and in return 549883 BC LTD agrees that the funds will be used to complete the warehouse building located at 391 Tilley rd. Kelowna B.C..
>
> 549883 BC LTD agrees that in return for the said funds Terry Copeland will own a minimum of 30% of the sell value of the above mentioned property to a minimum of $186,000.00 plus bank accrued interest to the date of sale and or once the full costs of construction are recouvered by 549883 BC LTD Terry Copeland will share in the net profits generated by the property.
>
> This agreement is legal and binding to both parties.

[31] While I appreciate that documents between related parties, particularly between parents and their children, are often simplistic due to the relationship and the trust that exists between them, it is a fundamental principle of contract law that an agreement between two parties must be between the two parties. The Appellant is the only party that signed the agreement and so he cannot bind the father to advance the sum of $186,000 by this document.

[32] While I appreciate the evidence of the Appellant is that the building was in fact built, which I accept since there is evidence it was in fact sold, and that it is the proceeds of such sale that are the source of funds for the transfers in issue in this matter, this document is not credible evidence that the Loan was advanced.

[33] Moreover, since the evidence of the Appellant is that his attorney, one M. J. advised him he should have some documents to evidence the Loan, it seems peculiar to me that the lawyer would have prepared the guarantee and not the loan agreement as well in more detailed form since it is the basis for the purported Loan and would normally set out its terms. Moreover, the guarantee signed by the Appellant in favour of his father is inconsistent with the loan agreement in that it is dated the same day but only refers to an amount of $180,000. The Appellant's explanation, that his father changed his mind and offered to advance $186,000 at the last minute, for the difference in amounts between the documents is not very convincing given that the documents are dated the same day. No explanation was given as to why the reference to $180,000 in the guarantee could not have been manually amended. After all, the date of the loan agreement was manually inserted. Moreover, the Appellant is also shown as a borrower on the guarantee together with 549883, another inconsistency between the documents. I note as well the guarantee is signed but not witnessed as contemplated by its penultimate wording nor is a seal attached.

[34] The Appellant testified his lawyer advised him to document the transaction for his father and could have provided corroborative evidence as to the intention between the parties and the transaction purported to be documented in such an inconsistent way, yet was not called to testify by the Appellant, notwithstanding the Appellant's admission that such lawyer was alive and still practising in Kelowna.

[35] Secondly, there is no credible evidence that the father had the means to provide, or had a source for, such funds. The Appellant testified that his father was entitled to receive 30 percent of the proceeds of the sale by 549883 of its shares in InsulPro which was completed in July, 1999. Even assuming this was the case, as no documentary evidence was tendered in support of that assertion, the Appellant argued that he received 30 percent of the proceeds of $632,000 which would amount to $189,600, an amount sufficient to fund the alleged Loan of $186,000. The problem is that the evidence is absolutely clear from the Respondent's appeals officer who testified and identified in the documentary evidence, the agreement of purchase and sale of shares, supplied by the Appellant's accountant, that clearly states the purchase price was only $350,000. Accordingly based on this amount,

the father would have been only entitled to $105,000 so the Appellant's testimony that his father's source of funds for the Loan was only from the sale of shares cannot be true.

[36] The Appellant's credibility on this matter was frankly seriously put into question at least twice. Firstly, the evidence is that on discovery the Appellant testified that he had no idea as to where his father got the money to loan to 549883, yet a year later during trial he magically asserts it was from the proceeds of the InsulPro sale of shares his father was entitled to, without proof of such entitlement.

[37] Even when the evidence of the Respondent on the sale was put to him in cross-examination he still maintained the sale proceeds were $632,000. Their accountant , K.A., filed an objection to the tax returns of 549883 as actually filed by such company for the 1999 and 2000 years on the basis the capital gains reported by the previous accountant was incorrectly based on a sale price of $632,000. The evidence submitted by such accountant in support of such objection is that the previous accountant had included bank deposits to the company account totalling $282,000 that were loans to the company from three parties and not proceeds of sale and identified them to the CRA appeals officer in writing. In addition, a copy of the agreement of purchase and sale was provided to the CRA showing the sale price of $350,000. As a result of such objection and submissions, the appeals officer reduced the taxable capital gains payable by more than half from $357,000 to $168,000. Clearly, the taxed party or vendor of shares was only 549883 having regard to the reassessment, and not the father for 30 percent or any portion thereof, further suggesting the father had no interest in the shares and thus not entitled to any dispersal of funds.

[38] In addition, the evidence of the CRA collections officer, whom I found credible, is that he reviewed the tax returns of the father for the years 1995 to 2001 and discovered that Terry Copeland was on social assistance during the majority of those years and never claimed income in excess of $10,000 and only claimed income of $1.00 for any years not on social assistance. Even if the father did obtain $105,000 from the proceeds of the sale, there is *prima facie* evidence he would not have had the means to come up with the difference to reach $186,000. Of course that begs the question as to why someone with almost negligible income would be allowing the investment of all his new found funds in his dire circumstances. The Appellant acknowledged in testimony that his father had been ill and not working, notwithstanding his earlier suggestion that he and his father worked together, thus lending credibility to the Respondent's assertions.

[39] Thirdly, the CRA collections officer identified the CRA printouts pertaining to the assets and liabilities of 549883 identified in its tax returns as filed by such company for the taxation years ending April 30, 1999 to 2005. The evidence is clear that in none of those years did the entries for "long term debt" including "loans to related parties" and "bank loans" reach the levels of the $186,000 allegedly advanced by the father after September 20, 1999. In fact, the total long term debts for the fiscal year ending April 30, 2000, the first year end during which the father's Loan could have been recorded showed long term liabilities to be a negative $8,853, or in essence a receivable from its shareholders and directors whose loan balance was $12,443 the year before in 1999. The long term debt balances for the years ending April 30, 2001 and 2002 were $97,496 each and never exceeded that amount for subsequent years, except for the 2005 year where long term debts included $82,053 payable as a bank loan and due to the related person of $52,687, which combined still don't equal the amount of the alleged Loan.

[40] There is simply no credible evidence the father's alleged Loan was recorded on the books and records of 549883 as filed with the CRA.

[41] It should be noted that the Appellant's bookkeeper, TT, testified that the CRA records were incorrect on the basis she saw evidence of and recorded in the general ledger a promissory note of $200,000. TT testified she joined the Appellant's company, Tradepro in February of 2003 and was charged with creating the general ledgers of 549883 for the fiscal years commencing April 30 of 2001, 2002 and 2003. She testified she had received a package of documents from the previous accountant, AT, which included the loan agreement and guarantee documents identified by the Appellant earlier but also the control agreement which the Appellant called the agency agreement he testified he sent to CRA without taking a copy. She even testified she saw a fourth document that even the Appellant did not mention in his testimony, namely a promissory note for $186,000. Based on these documents, she testified she recorded the Loan from Terry Copeland in the general ledger and identified in a general ledger for the period May 1, 2004 to April 30, 2005 a "Promissory note T. Copeland" for $200,000. She testified that she recalls the initial note she saw was $186,000 and that the difference in the 2005 year general ledger entry must represent accumulated interest that the accountant would have booked every year as an adjusting entry. She testified her role was to enter all transactions from source documents like invoices, credit card statements and bank statements onto the general ledger and prepare draft balance sheets and income statements and forward

them to the company accountants to finalize financial statements and prepare tax returns.

[42] She testified that based on her work the records of the CRA showing balance sheet entries and income statements was in error.

[43] Frankly, I am not inclined to accept the testimony of TT as credible or reliable on the matter for a few reasons.

[44] Firstly, she testified the accountant would have given her adjusting entries after completing each years financial statements and that the accountant would have calculated interest on the promissory note, so she would have been aware of the interest particulars for the years she prepared the records. If the promissory note was shown as having a balance forward of $200,000 from the forwarding entries she received from the former accountant that she saw for the first time in 2003, then if interest was charged by adjusting entry subsequent to that, why is there reference to the same amount for the promissory note in the 2005 year end?

[45] Secondly, she interpreted the very short and vague loan agreement identified by the Appellant as being the basis for concluding the Loan was "secured" by the property sold. There is absolutely no reference in that short loan agreement to any security or mortgage nor evidence one was taken. She either is not knowledgeable about such matters, which seems unlikely given her experience and the fact she still continues to run a bookkeeping business or she really had no first-hand knowledge of the issue, making her testimony unreliable.

[46] Thirdly, she testified that her role was limited to preparing the general ledger through the journal entries and preparing draft balance sheets and income statements and providing them to the company accountant for finalization and preparation and filing of tax returns. Clearly, she did not have final say in the final product and accordingly I am inclined to accept the statement information as filed as being more reliable. Moreover, it is simply not credible to suggest the CRA filings were an error when one considers that they represent filings over several years that do not accord with her evidence.

[47] Finally, TT only provided the general ledger for the period ending April 30, 2005 which was printed out in June of 2014 upon the request of the Appellant as indicated and no other period, even though she testified she prepared them for the 2001 year end onward until 2006. More detailed records were clearly available for the earlier years that presumably could have shed further light on the evidence that

were not submitted as evidence when the Appellant clearly had the ability to do so, particularly before TT's software program crashed afterwards as she stated.

[48] The only *prima facie* indication that the bank drafts were evidence of a repayment of a Loan was the fact there was a notation on the bottom left corner of each of them that indicated: Memo: Loan repayment. Unfortunately, for the Appellant the evidence does not support such statement.

[49] Having regard to the limited evidence of the Appellant, the many inconsistencies in such evidence and my concerns regarding his lack of credibility and the unreliability of both the Appellant and his bookkeeper's evidence, I cannot find that there was a Loan made by the Appellant's father in any amount to the transferor and hence no consideration was given for the transfer of funds to the Appellant pursuant to subsection 160(1) of the *Act*.

[50] Since all the elements of subsection 160(1) are met, the Appellant's appeal is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 20th day of May 2016.

"F.J. Pizzitelli"

Pizzitelli J.

CITATION:	2016 TCC 124
COURT FILE NO.:	2011-2124(IT)G
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REASONS FOR JUDGMENT BY:	The Honourable Justice F.J. Pizzitelli
DATE OF JUDGMENT:	May 20, 2016

APPEARANCES:

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