Docket: 2014-1965(GST)G

BETWEEN:

ANNIE ST-PIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on November 30, 2015, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Julie Gaudreault-Martel
Counsel for the Respondent:	David Roulx

JUDGMENT

The appeal from the assessment, for which the notice was dated March 26, 2013, and numbered F-043428, against the appellant, is dismissed with costs in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 29th day of June 2016.

"Réal Favreau"

Favreau J.

Citation: 2016 TCC 146
Date: 20160629
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BETWEEN:

ANNIE ST-PIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from an assessment issued against the appellant by Revenu Québec acting as an agent of the Minister of National Revenue (the "Minister") under subsection 325(2) of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the "ETA"), for which the notice was dated March 26, 2013, and numbered F-043428.

[2] The appellant was assessed for an amount of $7,604.72 as a third party following a transfer of money in the amount of $27,000, made to her by the company Service d'urgence sinistre Yon inc. ("Service d'urgence") without consideration on her part.

[3] In establishing the appellant's assessment, the Minister based his conclusions on, among other things, the following conclusions and assumptions of fact, stated in paragraph 17 of the Reply to Notice of Appeal:

a) The appellant is a lawyer by training, and has been a member of the Barreau du Québec for many years;

b) The appellant and Mr. Dany Yon, sole shareholder of Service d'urgence, are related persons within the meaning of the ETA;

c) Indeed, the appellant was Mr. Dany Yon’s common-law partner at the time the transfer occurred (July 23, 2010);

d) The appellant lived in Boucherville from November 22, 2007, until July 5, 2011, with Mr. Dany Yon, in a single family home that belonged to her, in which Mr. Dany Yon lived from April 15, 2009, until April 13, 2011, according to the information provided by Mr. Dany Yon and the appellant to the SAAQ;

e) In addition, this information concurs with the information obtained by the Minister, that this single-family home in Boucherville was inhabited by Mr. Dany Yon from April 14, 2009, to April 28, 2011, and by the appellant from November 26, 2007, to July 25, 2011;

f) Prior to this, the appellant lived in the town of Saint-Denis-sur-Richelieu from August 25, 2006, to November 25, 2007, with Mr. Dany Yon, who lived there from November 15, 2006, to April 14, 2009;

g) In 2009, the appellant was also co-owner, with Mr. Dany Yon, of a mobile home acquired in August 2005 and located on a campground in Saint-Jean Baptiste;

h) Also, on July 5, 2011, when the Minister served Mr. Dany Yon with a writ of seizure at a property owned by the appellant, two vehicles belonging to Service d’urgence sinistre Yon inc., a company whose sole shareholder is Mr. Dany Yon, were found at the appellant’s home;

i) On July 13, 2011, the appellant contacted the Minister’s representative to mention that a friend had asked her if he could park his vehicles at her house, the whole time stating that she was unaware of which company the vehicles belonged to;

j) On August 16, 2011, the appellant only barely opposed the seizure of goods from her home;

k) On November 5, 2012, during the objection phase, the appellant’s representative, Olivier Brault, mentioned to one of the Minister’s representatives that it was not possible for the appellant to provide proof that the supposed loan repayment to Service d’urgence had been deposited;

l) He also mentioned, in this same interview, that the appellant was separated from Mr. Dany Yon and that the supposed repayment made by the appellant had been part of a separation obligation;

m) These unequivocal statements confirm the true partner relationship between the appellant and Mr. Dany Yon;

n) On March 13, 2013, the same representative, Olivier Brault, indicated to one of the Minister's representatives that Mr. Dany Yon had been the appellant's roommate in order to explain two cheques issued to her on May 7 and June 17, 2010, by Service d'urgence, apparently, as rent payments;

o) During the objection phase, the appellant's representative argued that Mr. Dany Yon had always been the appellant's roommate, adding that the parties had a verbal agreement regarding the lease, without providing any explanation of the relationship or arrangements that existed between the appellant and Mr. Dany Yon;

p) At the time that the sum of $27,000 was transferred, Service d'urgence, of which the sole shareholder is Mr. Dany Yon, the appellant's common-law partner, was liable to the Minister, for tax years 2007, 2008, 2009 and 2010, for a total sum of $654,858.04 under the *Taxation Act*, CQLR, c I-3, in GST and QST;

q) In addition to being related to Mr. Dany Yon, the appellant failed to prove that she repaid the $27,000 transfer made to her on July 23, 2010, by Service d'urgence;

r) In fact, the appellant argues that she repaid Service d'urgence $27,000 in cash on January 30, 2011, and submits as evidence a blacked-out excerpt from a bank statement issued by the Bank of Montreal;

s) This blacked-out statement shows that withdrawals in the amounts of $20,000 and $15,000 respectively, were made on January 18 and 21, 2011;

t) The opening bank account balance on December 25, 2011, was $4,079.08 and the closing balance on January 25, 2011, was $32.67;

u) This statement also shows that a total amount of $39,962.24 was debited and that a total amount of $44,008.65 was credited to the appellant's account during the period ending on January 25, 2011, without proof of any repayment;

v) The appellant refused to provide the Minister with a clean copy of her bank statement, claiming that the information contained therein was private;

w) The appellant also refused to explain where the four deposits made into her bank account during the month of January 2011 came from;

x) The appellant did not provide any explanation regarding the fact that the two withdrawals that allegedly served to repay the purported loan total amounted to more ($35,000) than the purported loan of $27,000;

y) The appellant did not explain the reasons why, on July 23, 2010, she allegedly "borrowed" a sum of $27,000 from Service d'urgence, when she claims to have lent this same company a sum of $7,000 on January 8, 2010;

z) The Service d'urgence tax return for the 2010 year was not produced;

aa) In addition, the Service d'urgence bank account has been inactive since October 5, 2010, that is to say, since a seizure was made by the Minister, and no evidence of any deposits into the Service d'urgence account was submitted by the appellant as proof of the purported repayment;

bb) The appellant is therefore the transferee of property from the ceding company, Service d'urgence, which belonged to her partner at the time of the transfer, and in consideration of which no amount was paid;

cc) The appellant is therefore jointly and severally liable for payment of the tax debt for which Service d'urgence is liable under the ETA, up to the amount by which the fair market value of the property exceeds the consideration paid.

[4] The Minister assessed the appellant for an amount payable pursuant to subsection 325(1) of the *ETA*. Section 325 of the *ETA* sets out the circumstances under which a person who is related to or not at arm's length from the transferor can be held liable for the transferor's tax debts. Subsection 325(1) reads as follows:

> **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.

[5] In order for section 325 to apply, two conditions must be met. Firstly, there must be a transfer of property between related individuals (spouses, common-law partners or children younger than 18 years of age) or between non-arm's length persons and, secondly, the fair market value of the property at the moment of transfer must exceed the consideration paid by the transferee for the transfer of the property.

[6] On July 23, 2010, the appellant acknowledged having received $27,000 from Service d'urgence, in the form of a bank draft from the Promenades de Montarville branch of BMO Bank of Montreal. According to her, it was a loan that she claimed to have repaid in full on January 30, 2011.

[7] The appellant also produced a document entitled "Loan" in which she acknowledged having received from Mr. Dany Yon and Service d'urgence a loan in the amount of $27,000, to be repaid in full, interest-free, no later than July 27, 2011. Hers was the only signature on this document, dated July 27, 2010.

[8] In her testimony, the appellant stated that she had used the money obtained from Service d'urgence to make the initial down payment on the purchase (with a friend, Brigitte Bélanger) of a three or four-unit building, located on Rue Joliette in Montreal. The appellant submitted as evidence a bank draft from the Promenades de Montarville branch of BMO Bank of Montreal, for the amount of $28,348.68, issued to François Gareau In Trust, notary. The appellant also submitted as evidence a photocopy of a bank statement for the period ending on August 25, 2010, on which is indicated a withdrawal of $28,348.68 made on August 5, 2010, via bank draft.

[9] To substantiate the repayment of the loan, the appellant submitted as evidence a document entitled "Acknowledgement of Receipt," which she acknowledged having prepared and by which Mr. Dany Yon, both personally and in his role as president and principal shareholder of Service d'urgence, acknowledged having received from Ms. Annie St-Pierre on January 30, 2011, the amount of $27,000 in cash, as full and final repayment of the loan issued on July 27, 2010, for the same amount. Mr. Dany Yon, both personally and in his role as president and principal shareholder of Service d'urgence, furthermore released, discharged and granted full and final release to Ms. Annie St-Pierre and undertook to indemnify Ms. Annie St-Pierre from any and all claims or actions of any kind resulting from the loan.

[10] In her testimony, the appellant maintained that she had used the proceeds from the sale of her property located at 799 Chemin de Touraine in Boucherville to repay the loan to Service d'urgence. In support of these claims, the appellant submitted into evidence a statement of disbursements for the seller, prepared by the firm Bolduc & Huard Notaires Inc. and dated January 14, 2011, which shows the net proceeds from the sale as $92,859.13, an amount which was deposited by the appellant into her savings account on January 18, 2011. The bank statement for the appellant's savings account for the period ending on January 25, 2011, shows a deposit of $92,859.13 made on January 18, 2011, and a transfer of $35,000 made on the same day to the appellant's chequing account. According the appellant, this $35,000 transfer allegedly served to repay Service d'urgence.

[11] According to the appellant, she withdrew $20,000 in cash from her chequing account on January 18, 2011, as well as a sum of $15,000 in cash on January 21, 2011. The appellant's chequing account statement for the period ending on January 25, 2011, shows both of these withdrawals, totalling $35,000.

The appellant did not recall the denominations in which these withdrawals were made. The appellant allegedly kept all of this money at her home in a closet. By contrast, she was unable to provide the date on which she repaid the money to Mr. Yon, nor to specify the location where the repayment took place: at the bank, at her residence at 205 Rue Le Baron in Boucherville, or elsewhere, or whether other persons, such as bank clerks, were present for the loan repayment.

[12] The appellant also explained that prior to 2010, there had been no loans between herself and Mr. Yon, but that, beginning in January 2010, she had given him interest-free loans while he waited for some of his clients to pay the invoices for services he had rendered to them. She made specific reference to loans of $500, $7,000 and $10,000, which allegedly did not include interest and were allegedly all repaid in full. In addition, she argues that she was unaware of Mr. Yon's financial situation and that of Service d'urgence, and that she only learned of the existence of tax debts (goods and services tax and Quebec sales tax) for the first time on July 12, 2011, during the seizure of moveable property from her home on Rue Le Baron in Boucherville. This seizure was carried out by the Deputy Minister of Revenue (Quebec) following a judgment rendered on October 26, 2010, against Mr. Yon for amounts of goods and services tax for which he was assessed as administrator of his Service d'urgence company. Following this judgment, the Service d'urgence bank account was seized and has not been released.

[13] The appellant opposed the property seizure and sale and applied for cancellation of the seizure of moveable property that belonged to her. She was effectively granted a release from the seizure and sale of property she owned. Two of the three vehicles on the site were not seized, because they belonged to Service d'urgence. The other vehicle was owned by the appellant.

[14] Regarding her relationship with Mr. Yon, the appellant acknowledged that he had lived with her in her homes for intermittent periods and that she had had sexual relations with him. By contrast, she stated that Mr. Yon was not a common-law partner and she had never declared him as such in her tax statements.

[15] The appellant explained that she had met Mr. Yon in 2004 while she was a student and was working for a law firm. The appellant and Mr. Yon dated in the months after they met and he allegedly came to live with her in 2006 while she was the owner of the residence located on Rue Cartier in Saint-Denis-sur-Richelieu. The appellant sold this residence in September 2007 and bought another residence

located on Rue De Touraine in Boucherville in November 2007. From September to November 2007, the appellant lived with her sister. Mr. Yon lived with the appellant for long periods of time between 2007 and 2011. He allegedly moved out of the appellant's residence in 2008, and again in May 2009. Mr. Yon allegedly moved back in with the appellant from May to November 2010. Mr. Yon allegedly did not live with the appellant on a permanent basis (only intermittently, when he needed somewhere to stay) while she was the owner of the residence on Rue Le Baron in Boucherville, that is to say, from January 4, 2011, until February 2012. From February 2012 until May 14, 2012, the appellant lived with her sister. Beginning on May 14, 2012, the appellant lived at her residence located on the Rue des Sureaux in Boucherville and Mr. Yon did not live with her at all. The said residence was rented out beginning in January 2015, and the appellant lived at 28 Rue De Fontainebleau in Blainville with a partner. From 2006 to 2011, the appellant did not have any ongoing relationships with anyone.

[16] During her testimony, the appellant also gave explanations regarding her cohabitation with Mr. Yon. They had an agreement for sharing household expenses. Mr. Yon had to pay household expenses like electrical bills and groceries. The appellant was in charge of balancing the books and Mr. Yon was often late in paying his portion of the expenses. The appellant paid the phone bill and the school and municipal taxes, as well as the monthly mortgage payments. She was in charge of meal preparation, except for barbecuing. She did the grocery shopping, housekeeping and laundry, while Mr. Yon was responsible for cutting the grass. Mr. Yon gave her gifts on occasion. Mr. Yon and the appellant took vacations together to Mexico on a few occasions and went camping at the Domaine de Rouville in Saint-Jean Baptiste. In 2005, Mr. Yon and the appellant purchased land and a trailer together at the Domaine de Rouville campground, and in 2008, Mr. Yon purchased another trailer on his own, which he set up at the Domaine de Rouville campground and where he lived for a large portion of 2008.

[17] The appellant was financially independent and had no shared bank accounts with Mr. Yon. The appellant and Mr. Yon have no children together.

[18] Mr. Dany Yon testified at the hearing. He confirmed that he had loaned the appellant money on July 27, 2010, to purchase property. According to him, the appellant repaid him the loan in question in person, on January 30, 2011, in cash at the Bank of Montreal. He even stated that he signed the Acknowledgement of Receipt on the very same day the loan was repaid. Mr. Yon went on to confirm that

the appellant had, on several occasions, loaned him money in amounts smaller than $10,000, to live on.

[19] In cross-examination, Mr. Yon had to confirm the home addresses that he had provided to various entities or institutions from 2006 to 2012. In particular, he had given 131 Rue Cartier in Saint-Denis-sur-Richelieu and 799 Chemin De Touraine in Boucherville as home addresses to Revenu Québec, to the Régie de l'assurance maladie du Québec (RAMQ), and to the Société de l'assurance-automobile du Québec (SAAQ). To Canadian Tire Financial Services, with whom he held a credit card, he provided a home address of 799 Chemin de Touraine, in Boucherville. When creating a family trust on June 28, 2007, Mr. Yon stated that he lived at 131 Rue Cartier in Saint-Denis-Sur-Richelieu. On April 8, 2009, Mr. Yon was served a notice of garnishment of wages at his home located at 799 Chemin de Touraine in Boucherville. According to Mr. Dany Yon's criminal and penal records, he was residing at 205 Rue Le Baron in Boucherville in July 2012, the date on which he allegedly committed assaults for which he faced four charges.

[20] Mr. René St-Pierre, the appellant's father, also testified at the hearing. He confirmed that he knew Mr. Yon personally, and appeared to have a good relationship with him. He had met Mr. Yon at each of the three residences in which the appellant had lived, on moving days and at family parties. He stated that the relationship between his daughter and Mr. Yon was sometimes stormy and that he had witnessed few displays of affection between Mr. Yon and his daughter, while at the same time admitting that he did not know the details of his daughter's relationship with Mr. Yon. According to him, the appellant was not dating anyone besides Mr. Yon.

[21] At the hearing, four representatives for the Quebec and federal tax authorities testified. Their testimonies mostly dealt with the assessments issued against Service d'urgence and Mr. Yon and with the collection actions that had been taken by the tax authorities.

[22] Service d'urgence was assessed in a notice dated February 3, 2011, for the GST/QST reporting periods from December 4, 2006, to August 31, 2010, which were outstanding. The amount due under this assessment was $189,369.61.

[23] Service d'urgence was also assessed in a notice dated February 4, 2011, for a total amount of $451,072.29 in fees, interests and penalties due under the *Act*

respecting the Québec sales tax for the period from December 4, 2006, to August 31, 2010. On December 2, 2011, Service d'urgence was again assessed under the *Quebec Taxation Act* for an amount of $230,022.79 (balance of $222,722.79 owing) for its tax year ending on December 31, 2008, and for a total amount of $40,117.50 (balance of $40,022.52 owing) for its tax year ending on December 31, 2009.

[24] Within the context of the collection actions taken against Mr. Yon and Service d'urgence, particular attention was paid to the home addresses of Mr. Yon and the appellant. Address verification showed that all of Mr. Yon's addresses were connected to those of the appellant and that, for the entire period from fall 2006 until spring 2011, Mr. Yon never really lived anywhere other than with the appellant, with the exception of very short periods of time.

Issues in dispute

[25] The following issues are in dispute:

a) was the appellant Mr. Dany Yon's common-law partner or not at arm's length from him; and

b) did the appellant repay the amount of $27,000?

Parties' positions

[26] The appellant maintains the following:

a) that she was not Mr. Dany Yon's common-law partner within the meaning of the *ETA* at the time of the loan nor at the time of the repayment;

b) that she repaid in full on January 30, 2011, the $27,000 loan that Mr. Dany Yon had given her, and that he gave her the duly signed Acknowledgement of Receipt;

c) that the repayment of the loan constitutes a valid consideration that prevents the application of section 325 of the *ETA*. The appellant bases her case on the decision rendered by Mr. Justice Boyle in the

case of *Martin v. The Queen*, 2013 TCC 38, which expressed this principle with respect to section 160 of the *Income Tax Act*.

[27] The respondent maintains the following:

a) Service d'urgence, for which Mr. Dany Yon is the sole shareholder, transferred $27,000 to the appellant;

b) the appellant and Mr. Dany Yon are related persons since they were common-law partners when the loan was agreed to on July 23, 2010;

c) the appellant has never proved the alleged repayment of the $27,000 loan;

d) subsection 325(1) of the *ETA* applies in this case and the appellant was assessed on a pro rata basis for the Service d'urgence tax debts under the *ETA* and for this company's total tax debts, up to the value of the advantage received. The appellant was assessed using the following calculation:

$$\frac{\text{Debts under the ETA} = \$184{,}444.98}{\text{Total tax debts} = \$654{,}858.04} \times \$27{,}000 = \$7{,}604.72$$

<u>Analysis</u>

[28] Subsection 126(1) of the *ETA* states that related persons shall be deemed not to deal with each other at arm's length and that it is a question of fact whether persons not related to each other were, at any particular time, dealing with each other at arm's length.

[29] Subsection 126(2) of the *ETA* specifies that persons are related to each other for the purposes of this Part of the *ETA* if, by reason of subsections 251(2) to (6) of the *Income Tax Act*, they are related to each other for the purposes of that Act.

[30] Subsection 251(2) of the *Income Tax Act* states that individuals connected by common-law partnership are deemed to be affiliated with one another.

[31] The definition of the term "common-law partner" is stated in subsection 248(1) of the *Income Tax Act*, which reads as follows:

common-law partner, with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

(a) has so cohabited throughout the 12-month period that ends at that time, or

(b) would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to paragraphs 252(1)(*c*) and (*e*) and subparagraph 252(2)(*a*)(iii).

and, for the purpose of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship.

[32] To be considered common-law partners, the appellant and Mr. Dany Yon must have cohabited *in a conjugal relationship* for 12 months, without living separately for a period greater than 90 consecutive days.

[33] It is worth noting that no definition of the expression “cohabiting in a conjugal relationship” is found in the *Income Tax Act* and that one must therefore refer to those criteria set out in *Molodowich v. Penttinen*, (1980) O.J. No. 1904, which were also used by the Supreme Court of Canada (the “SCC”) in *M. v. H.*, [1999] 2 SCR 3, at paragraphs 59 and 60. There the SCC clearly defines a “conjugal relationship” as follows:

Molodowich v. Penttinen (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), sets out the generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, it was recognized that these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal. While it is true that there may not be any consensus as to the societal perception of same-sex couples, there is agreement that same-sex couples share many other “conjugal” characteristics. In order to come within the definition, neither opposite-sex couples nor same-sex couples are required to fit precisely the traditional marital model to demonstrate that the relationship is “conjugal”.

Certainly an opposite-sex couple may, after many years together, be considered to be in a conjugal relationship although they have neither children nor sexual

> relations. Obviously the weight to be accorded the various elements or factors to be considered in determining whether an opposite-sex couple is in a conjugal relationship will vary widely and almost infinitely. The same must hold true of same-sex couples. Courts have wisely determined that the approach to determining whether a relationship is conjugal must be flexible. This must be so, for the relationships of all couples will vary widely. . . .

[34] This Court has applied these criteria on many occasions, notably in *Milot v. Canada*, [1995] T.C.J. No. 412, when considering the concept of a conjugal relationship.

Issue 1: Non-arm's length relationship between the appellant and Dany Yon

[35] In the present case, the issue is whether there is a non-arm's length relationship between the appellant and Mr. Dany Yon.

[36] In 2006 and 2007, Mr. Dany Yon lived a few days per week in the appellant's house on Rue Cartier, and this continued until the house was sold in September 2007.

[37] Then, from 2007 to 2011, the appellant lived in the house on Chemin De Touraine and Mr. Yon also lived there at times. This house was sold in January 2011 and the appellant then moved to Rue Le Baron. The evidence has revealed that all of Mr. Yon's addresses were connected to those of the appellant and that Mr. Yon never lived anywhere other than with the appellant.

[38] The appellant maintains that she and Mr. Dany Yon were not common-law partners even though they lived under the same roof. In this regard, the case law of the Tax Court of Canada has clearly established that the fact of living under the same roof does not, in itself, indicate a conjugal relationship and that this is just one of the criteria that must be considered. See, among others, the cases of *Perron v. The Queen*, 2010 TCC 547 and *Aukstinaitis v. The Queen*, 2008 TCC 104 and a contrario: *Bellavance v. The Queen*, 2004 TCC 5, *Sykes v. Canada*, [2005] 3 C.T.C. 2054

[39] Even if we assume that the appellant and Mr. Dany Yon lived under the same roof, it is appropriate to consider the other criteria that would permit the conclusion that they had a conjugal relationship.

[40] The appellant had everything in her name and had an agreement with Mr. Yon under which he had to pay the household bills, including the electricity and the groceries. They shared expenses, but Mr. Yon did not pay rent in the legal sense of the term.

[41] The appellant testified that she took care of meals, of the housework, the grocery shopping, the laundry, and that Mr. Yon cut the grass and did the barbecuing. The appellant also mentioned the fact that there wasn't much communication or interaction between them, that they sometimes ate meals together, that they gave each other gifts, that they went camping together and that they had sexual relations. The appellant also lent him money to live on, on a few occasions. These loans were interest-free. However, from 2004 to 2011, the appellant did not date other people.

[42] In my opinion, the appellant's comment regarding the absence of interaction seems contradictory, since the appellant rendered numerous services to Mr. Yon, whereas he only paid a small portion of the household expenses.

[43] It is appropriate to recall here that the appellant mentioned that, at the time the money was transferred, she was dating Mr. Dany Yon, but that she was not aware of his tax debts; here, the appellant herself acknowledged that she was in a relationship with Mr. Dany Yon at the time that the $27,000 was transferred.

[44] The appellant's father testified that he knew Mr. Dany Yon personally and that he had met him on several occasions, among other times, on moving days and at each of the three residences. He also indicated that Mr. Dany Yon was sometimes present at family parties. He also said that his daughter's relationship with Mr. Dany Yon was stormy and that they had highs and lows; however, he mentioned not knowing the details of his daughter's relationship with Mr. Dany Yon.

[45] Based on the evidence in the file and following an analysis of all of the criteria, it appears to me that the appellant and Mr. Dany Yon were indeed in a conjugal relationship. The couple gave each other gifts and took vacations together. The appellant gave her partner interest-free loans to live on. The couple lived under the same roof and had sexual relations.

[46] It is important to remember that the burden of proof rests with the appellant to prove that she is at arm's length from Mr. Dany Yon. To this effect, the Federal Court of Appeal concluded in *Downey v. Canada*, 2006 FCA 353 that despite the fact that the judge did not determine whether the parties were at arm's length from one another, the taxpayer did not discharge his burden of proof to show that no non-arm's length relationship existed.

[47] In this case, the appellant has not discharged her burden of proof to substantiate the case that she had an arm's length relationship with Mr. Dany Yon.

<u>Issue 2: Repayment of the amount of $27,000</u>

[48] In this case, there was a transfer of $27,000 to the appellant, made on July 23, 2010, by bank draft, and the issue is whether this amount was repaid. The principle is that if the loan amount was repaid, the repayment would constitute a legitimate consideration and section 325 of the *ETA* could not be applied.

[49] The appellant claims to have fully repaid Mr. Dany Yon in cash on January 30, 2011. The appellant could not repay Service d'urgence by cheque since the company's bank account had been frozen since its seizure in October 2010. To make the repayment, the appellant claims that she made the following withdrawals from her BMO bank account:

- January 18, 2011: withdrawal of $20,000
- January 21, 2011: withdrawal of $15,000

[50] The appellant testified that she had withdrawn an amount totalling $35,000 in two transactions in order to repay the amount of $27,000 on January 30. The appellant gave no explanation for the difference between these two amounts and the appellant did not recall the denominations of bills in which the cash was withdrawn, but she said she believed it was probably $100 bills. However, the appellant mentioned, that for the period of time between the withdrawals and the repayment, she had kept the money at her house in her closet.

[51] The appellant also did not recall where she made the repayment to Mr. Dany Yon—whether it was at the Bank of Montreal or at her residence on Rue Le Baron. In January 2011, Mr. Dany Yon was living with the appellant on Rue Le Baron. According to Mr. Dany Yon's testimony, he was allegedly repaid in

cash, by hand, at the bank branch. In addition, the appellant mentioned that no one else had been present at the repayment.

[52] According to Mr. Dany Yon, the Acknowledgement of Receipt dated January 30, 2011, was signed and remitted on the same day that the repayment was made.

[53] According to the evidence in the file, the appellant allegedly made withdrawals from her bank account to repay the loan amount; she allegedly stored the money at her home and then, more than a week after the last withdrawal, she allegedly went to the bank, already having the cash in hand, with the goal of repaying Mr. Dany Yon, who, let it be recalled, was living with her at that time.

[54] We are currently faced with a version of the facts that appears to include inconsistencies or weaknesses. To this effect, Madam Justice Miller, in *Nichols v. The Queen*, 2009 TCC 334, clearly explains the elements that a judge can consider when assessing a witness' credibility:

> In assessing credibility I can consider inconsistencies or weaknesses in the evidence of witnesses, including internal inconsistencies (that is, whether the testimony changed while on the stand or from that given at discovery), prior inconsistent statements, and external inconsistencies (that is, whether the evidence of the witness is inconsistent with independent evidence which has been accepted by me). Second, I can assess the attitude and demeanour of the witness. Third, I can assess whether the witness has a motive to fabricate evidence or to mislead the court. Finally, I can consider the overall sense of the evidence. That is, when common sense is applied to the testimony, does it suggest that the evidence is impossible or highly improbable.

[My emphasis.]

[55] Considering the testimonies of the appellant and of Mr. Dany Yon, I do not believe that, in this case, the loaned amount of $27,000 was repaid. In any event, I strongly doubt that the loan was legally repaid, since the money was not remitted to the lending company, namely Service d'urgence. No documentary evidence was submitted showing that Mr. Dany Yon was acting as an agent of Service d'urgence. No resolution of the board of directors nor any resolution by the shareholders of Service d'urgence authorizing Mr. Dany Yon to grant the appellant a loan or to release her from her debt was entered into evidence. The way in which the Acknowledgement of Receipt was written by the appellant clearly shows the

dilemma the appellant was facing. The Acknowledgement of Receipt was signed by Mr. Dany Yon as an individual and as the president and principal shareholder of Service d'urgence, and not as a director.

[56] Moreover, it is important to remember that the appellant bears the burden of proof to show that the loan was repaid, as I stated in *Pelletier v. The Queen*, 2009 TCC 541.

[57] Based on the evidence in the file, I am not convinced that the amount of money transferred was indeed repaid. In this regard, I find that the appellant has not discharged her burden of proof.

Conclusion

[58] Since the evidence submitted by the appellant has not convinced me that she had an arm's length relationship with Mr. Dany Yon, or that the loan was repaid, the assessment must be maintained.

Signed at Ottawa, Canada, this 29th day of June 2016.

"Réal Favreau"

Favreau J.

CITATION:	2016 TCC 146
COURT FILE NO.:	2014-1965(GST)G
STYLE OF CAUSE:	ANNIE ST-PIERRE AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	November 30, 2015
REASONS FOR JUDGMENT BY:	The Honourable Justice Réal Favreau
DATED:	June 29, 2016

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