

BETWEEN:

JEAN-GUY LEBLANC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 12, 2005, at Nicolet, Quebec

Before: The Honourable Justice Alain Tardif

Appearances:

Agent of the Appellant: Réjean LeBlanc

Counsel for the Respondent: Michel Lamarre

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act* is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 8th day of November 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 5th day of May 2008.

Brian McCordick, Translator

Citation: 2005TCC732
Date: 20051108
Docket: 2005-1278(IT)I

BETWEEN:

JEAN-GUY LEBLANC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal from an assessment made on December 3, 2003 and confirmed on February 9, 2004. The assessment under appeal is numbered 31312.

[2] The assessment was made under section 160 of the *Income Tax Act* ("the Act").

[3] In making and confirming the assessment bearing number 31312, the Minister of National Revenue ("the Minister") made the assumptions of fact set out in paragraph 5 of the Reply to the Notice of Appeal ("the Reply"); they read as follows:

[TRANSLATION]

- (a) The Appellant is the brother of Réjean LeBlanc. **(admitted)**
- (b) Réjean LeBlanc made an assignment in bankruptcy on September 6, 2001. **(admitted)**

- (c) At the time he made the assignment in bankruptcy, Réjean LeBlanc owed the Canada Revenue Agency \$10,858.40 for the 1996 to 1998 taxation years. **(disputed)**
- (d) On January 10, 1996, Réjean LeBlanc sold the Appellant an immovable located at 8100 des Forges Boulevard in the municipality of Trois-Rivières for \$250,000. **(admitted)**
- (e) At the time of the transaction, the Appellant paid Réjean LeBlanc \$160,000. **(admitted)**
- (f) According to the contract, a balance of sale of \$90,000 had to be paid to Réjean LeBlanc three years after the sale of the immovable. **(admitted)**
- (g) On May 22, 2002, Réjean LeBlanc issued an acquittance to the Appellant for the balance of sale even though the Appellant still owed him \$37,596.37. **(denied)**

[4] Under a duly signed power of attorney, Réjean LeBlanc acted as the agent of his brother, Jean-Guy LeBlanc, who was not present. Réjean LeBlanc admitted all of the assumed facts except those set out in subparagraphs 5(c) and (g) of the Reply, which it is appropriate to reproduce again:

- (c) At the time he made the assignment in bankruptcy, Réjean LeBlanc owed the Canada Revenue Agency \$10,858.40 for the 1996 to 1998 taxation years. **(disputed)**
- (g) On May 22, 2002, Réjean LeBlanc issued an acquittance to the Appellant for the balance of sale even though the Appellant still owed him \$37,596.37. **(denied)**

[5] The issue is whether the Appellant is required to pay \$10,858.40, the amount of the assessment made under section 160 of the Act.

[6] The Court explained to the agent of the Appellant Jean-Guy LeBlanc that the burden of proof was on him even though the Appellant had chosen not to attend.

[7] The agent, Réjean LeBlanc, the person whose tax liability led to the assessment, became a creditor of the Appellant after selling him an immovable. The assessment under section 160 of the Act, which is under appeal here, is based on the renunciation of a substantial part of the Appellant's debt to his brother Réjean, his agent.

[8] Réjean LeBlanc explained that his brother had asked him to be his agent because he was fully aware of all the relevant facts.

[9] After denying the content of subparagraph 5(c) of the Reply, Réjean LeBlanc attempted to provide some vague, perfunctory explanations to challenge the correctness of the original assessment as a result of which the assessment under section 160 of the Act was made.

[10] The Court pointed out to him that he had not exhausted all remedies following the making of that assessment. The Court thus wondered how and why he was now able to challenge the correctness of the assessment as the Appellant's agent.

[11] In theory, the Appellant, as a completely different person assessed on the basis of that assessment, was entitled to raise the issue of the assessment's correctness. However, this implied challenging the assessment through evidence that was reasonable, plausible and reliable.

[12] The agent of the Appellant did not provide such evidence. His vague, incomplete and inadequate explanations were obviously not sufficient to challenge or invalidate the first assessment made against the agent prior to his bankruptcy.

[13] The few general assertions made by the agent of the Appellant were obviously not sufficient to call into question the correctness of the assessment.

[14] With regard to subparagraph 5(g) of the Reply, the agent of the Appellant explained that the acquittance referred to in that paragraph was, so to speak, the formal reproduction of an acquittance made a few years earlier on September 27, 1999, which he filed as Exhibit A-1. The acquittance in question was worded as follows:

[TRANSLATION]

...

IN THE YEAR NINETEEN HUNDRED NINETY-NINE, the twenty-seventh day of the month of September 1999.

DECLARATION

Réjean LeBlanc, residing at 8100 des Forges Boulevard in Trois-Rivières G8Y 4W2, declares as follows:

Upon receipt of several amounts totalling forty-five thousand dollars (\$45,000.00) and other consideration, the declarant gives the debtor, Jean-Guy LeBlanc, a full and final acquittance:

(a) deed of second hypothec from Jean-Guy LeBlanc to Réjean LeBlanc executed before Jean Trépanier, notary, on December 13, 1995, a copy of which was published at the registry office of the registration division of Trois-Rivières on December 13, 1995 as number 435688.

ACCORDINGLY, the declarant consents to the cancellation of the registration of any hypothec granted to him by that deed, without any other consideration.

Signed at Trois-Rivières this 27th day of September 1999

Réjean LeBlanc, declarant

Jean Guy Lethiecq, witness

[15] When asked to elaborate on the words "other consideration", given the sizeable amount of money encompassed by those words, he talked about rent, notes, advances, bank branch withdrawals, all sorts of small papers, various things and so on.

[16] When asked to be more specific, he basically stated that he had no vouchers or specific details and that his evidence was circumstantial and, as he readily admitted, incomplete.

[17] In substance, the explanations were perfunctory, incomplete, very vague and, above all, highly unreliable.

[18] When the agent of the Appellant had to explain why all he had in his possession was a single photocopy of the cheque for \$27,000, he stated that this was the only document he had kept. Yet the evidence showed that he had obtained the copy of that cheque a few days before the hearing.

[19] Another rather peculiar detail is that the objection was signed on February 3, 2004 by Réjean LeBlanc, not the Appellant. The notice of objection reads as follows:

[TRANSLATION]

...

Reference: Notice of assessment dated December 3, 2003 (31212)

...

OBJECTION

This statement is further to the above-mentioned notice of assessment, which claims that funds were transferred to the assessed person, Jean LeBlanc, on May 22, 2002. The notice is based in part on an analysis that is biased because the transaction was between two members of the same family.

To rectify these allegations and re-establish the true facts, the following is the history of the circumstances related to this assessment.

It is true that, when the immovable referred to in the notice of assessment was sold on December 19, 1995, the \$90,000.00 balance of the sale price, secured by a second hypothec, was repayable within three years after the contract was signed. In 1998, the assessed person, Jean Guy LeBlanc, therefore gave the vendor several amounts totalling \$45,000.00. As for the balance of \$45,000.00, on January 19, 1999, at the request of the vendor, who was going to inquire about a new immovable, the purchaser increased the hypothec on the immovable at 8100 des Forges by \$50,000.00 to repay the vendor, who gave him a full and final acquittance on September 19, 1999. Needless to say, the vendor first had to sign a release at the notary's office before registering that hypothec. A second, more explicit acquittance signed on May 22, 2002 corroborated that of September 19.

On May 3 of this year, the immovable at 8100 des Forges will be sold for \$235,000.00, and all the hypothecs will be cancelled.

We therefore ask that these circumstantial facts be considered as evidence of our good faith in these transactions, which, in our opinion, were carried out according to the rules. We do not wish to rely on any case law for the moment. We have all the documents referred to herein except the holograph receipts, which were not kept after the final acquittance was signed. This is unfortunate, but we never imagined that we would inherit the burden of proof.

At no time was there any question of transferring any amount whatsoever for any reason whatsoever.

This request is an integral part of Form T400A (99).

Réjean LeBlanc

[20] In light of the evidence submitted by Réjean LeBlanc, the Court notes the following:

- the notice of appeal was drafted by Réjean LeBlanc;
- Réjean LeBlanc was alone during the hearing and acted as the agent of the Appellant;
- the Appellant was not present;
- the explanations were vague, imprecise and circumstantial, as the agent of the Appellant himself said, in terms of reliably explaining the presumption that an acquittance was given in consideration of an amount substantially lower than the amount of the claim;
- the explanations provided to show that the acquittance was given in consideration of equal value were incomplete, vague and totally insufficient;
- the arguments and explanations used to justify the fact that an acquittance was given for the Appellant's substantial debt to his agent were so weak that it must be concluded that there was no good and valuable consideration or simply that the Appellant was unjustly enriched.

[21] The perception that emerges from the evidence is that the Appellant was used basically as a dummy in the various transactions for and on behalf of his brother, who is his agent in this case.

[22] First, there was a transfer with a \$90,000 balance to be paid. That claim was no doubt one component of the estate in bankruptcy, and an acquittance was given for it so that it would not be part of that estate.

[23] When the Respondent expressed some scepticism about the value of the acquittance, a new acquittance was prepared in May 2002.

[24] The explanations provided concerning both the first acquittance in 1999 and the one in May 2002 were certainly not clear, consistent or reliable enough for the Court to conclude that no claim existed at the time the Minister made the first assessment on which the assessment under section 160 of the Act was based.

[25] I believe that the Appellant in this case was involved basically as a dummy and that all the transactions were initiated by his brother with the Appellant's help. This is why the Appellant's brother was obviously in the best position to serve as the agent of the Appellant, who was conspicuous by his absence.

[26] In the belief that the assignment in bankruptcy would put an end to the assessment, an acquittance was prepared to avoid enriching the estate in bankruptcy.

[27] Things were going well until the Respondent found out about the claim.

[28] In the belief that everything was resolved, a second acquittance was prepared in the hope that it would end the matter. The same explanations were given to justify the two acquittances; they are absolutely not sufficient to prove on a balance of probabilities that Réjean LeBlanc did in fact receive adequate consideration for his \$90,000.00 claim.

[29] For these reasons, the appeal is dismissed and the assessment is confirmed.

Signed at Ottawa, Canada, this 8th day of November 2005.

"Alain Tardif"

Tardif J.

Translation certified true
on this 5th day of May 2008.

Brian McCordick, Translator

CITATION: 2005TCC732

COURT FILE NO.: 2005-1278(IT)I

STYLE OF CAUSE: Jean-Guy LeBlanc and Her Majesty the Queen

PLACE OF HEARING: Nicolet, Quebec

DATE OF HEARING: October 12, 2005

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: November 8, 2005

APPEARANCES:

Agent of the Appellant: Réjean LeBlanc

Counsel for the Respondent: Michel Lamarre

COUNSEL OF RECORD:

Agent of the Appellant:

For the Respondent: John H. Sims, Q.C.
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