

Docket: 2004-125(GST)I

BETWEEN:

ELAINE B. ARSENEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 10, 2004, at Toronto, Ontario,
By: The Honourable Justice A.A. Sarchuk

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Jenna Clark

AMENDED JUDGMENT

The appeal from the assessment of tax made under the *Excise Tax Act*, notice of which is dated April 24, 2003 and bears number 21670 is **allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the value of 50 Greyhound Drive, Willowdale, Ontario as of November 19, 1998 was \$221,000 and the Appellant's equity in the property was at that time \$18,174.**

Signed at Ottawa, Canada, this **23rd day of November, 2004.**

"A.A. Sarchuk"

Sarchuk J.

Citation: 2004TCC739
Date: 20041123
Docket: 2004-125(GST)I

BETWEEN:

ELAINE B. ARSENEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

For the Appellant: The Appellant herself
Counsel for the Respondent: Jenna Clark

REASONS FOR JUDGMENT

**(Delivered orally from the Bench at
Toronto, Ontario, on June 10, 2004)**

Sarchuk J.

[1] This is an appeal by Elaine B. Arseneau from an assessment of goods and services tax in the amount of \$22,175.19 which was due and owing by her husband as of November 19, 1998. The following facts relating to this assessment are not in dispute. The Appellant and her husband, Michael Joseph Arseneau, owned property at 50 Greyhound Drive, Willowdale, Ontario, as joint tenants, since registering as

such in June 1997. On or about November 19, 1998, the property was transferred from her husband and herself, as joint tenants, to her for consideration of "natural love and affection". At all relevant times, her husband was registered for the purposes of the *Excise Tax Act* and operated a sole proprietorship, the major activity being the provision of computer systems, design and related services. At the time of the transfer, the Appellant's husband was indebted for goods and services tax liability in the amount of \$22,175.19. The Minister of National Revenue assessed on the basis that the husband transferred equity in the property in the amount of \$20,174 to the Appellant and that the Appellant was properly assessed and is liable to pay that amount in accordance with sections 123 and 325 of the *Excise Tax Act*.

[2] The amount assessed against the Appellant reflected her half of the equity in the residence. This was based on the Minister's determination that the property value as of November 19, 1998 was \$225,000 and deducting from that value the amount of the mortgage of \$184,652, resulting in a total equity in the property of \$40,348, half of which was the amount which was assessed as against the Appellant.

[3] The sole issue before me is the value of the property on which the Minister's assessment was based. The difficulty that the Appellant finds herself in is that an appraisal of property is conducted, generally speaking, by individuals who are accredited to do so. Their methods follow certain accepted practices and principles with respect to the manner in which fair market value is determined and which have been accepted by the Courts for a number of years. Fair market value as defined and accepted in appraisal theory is, quite simply, the probable price estimated in terms of money which the property would bring if exposed for sale in an open market by a willing seller allowing a reasonable time to find a willing buyer, neither acting under compulsion, both having full knowledge of the uses and purposes to which the property is adapted and for which it is capable of being used, and both exercising reasonable judgment. In so doing, appraisers take into account the length of time it might take to sell the property and a number of other factors such as, if necessary, an analysis of market events and/or of market trends and ultimately, factor all of these items into their conclusion as to the fair market value of the property. It is not a precise science, it is not like adding two and two and getting four, but the basis for such an analysis is sound and has been accepted by the Courts. As a general rule, the only reasonable method of challenging an appraiser's report is to demonstrate by way of other evidence, preferably that of another appraiser, whose testimony would provide the Court with his estimate of fair market value and the rationale upon which it was based.

[4] In the appeal before this Court, however, the Appellant relied on municipal assessments which were tendered as exhibits. These assessments are generally not acceptable as appropriate for the purpose of determining what the property would be worth on the open market. Aside from the fact that they are not made annually, I am not sure this one was done in the year in question or not – they are, according to the testimony of Mr. Eustace, conducted on a completely different basis than appraisals and are not as a rule prepared by qualified appraisers. Furthermore, as was observed by Mr. Eustace, the formula that is used in municipal assessments is substantially different and not at all comparable to the detail and precise steps which must be taken in the preparation of an appraisal report.

[5] In this particular appeal, the Court has before it only one fair market valuation from a qualified appraiser. On the other hand, there was no cogent evidence to rebut that appraisal and no evidence that could reasonably be relied upon to provide a different valuation of the property. Thus, the Court is in reality being asked to reject the evidence of the expert witness called on behalf of the Respondent solely on the basis of what appears to be an uninformed "guesstimate" as to what the property's value was as at November 19, 1998. The evidence provides no sound basis to permit the Court to do so. The Court appreciates that the cost of retaining an appraiser to determine the market value of the property may well have precluded the Appellant from following that route, particularly given the distinct possibility that any such estimate of value may not have been substantially different from that of the Minister's appraiser.

[6] In concluding I made the following comment:

... nonetheless, the only acceptable evidence as to the fair market value of the property at the relevant time that I have before me is that of the Minister's appraiser.

And for that reason, the appeal will have to be dismissed.

In so doing, I erred in that although the assessment was premised on the Minister's determination that the fair market value was \$225,000, counsel for the Respondent had stated that:

... We want to make it clear that the Minister takes the position that the proper valuation of the property is \$221,000, in accordance with Mr. Eustace's report.

The appeal should have been allowed to that limited extent. Accordingly the appeal will be allowed on the basis and referred back to the Minister on the basis that the

value of 50 Greyhound Drive, Willowdale, Ontario as of November 19, 1998 was \$221,000 and the Appellant's equity in the property was \$18,174.

Signed at Ottawa, Canada, this 23rd day of November, 2004.

"A.A. Sarchuk"

Sarchuk J.

CITATION: 2004TCC739

COURT FILE NO.: 2004-125(GST)I

STYLE OF CAUSE: Elaine B. Arseneau and Her Majesty the Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 10, 2004

REASONS FOR JUDGMENT BY: The Honourable Justice A.A. Sarchuk

DATE OF AMENDED JUDGMENT: November 23, 2004

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Jenna Clark

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada