

Docket: 2007-2299(GST)I

BETWEEN:

JONATHAN WOOD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on May 7, 8, and 9, 2008 at Fredericton, New Brunswick  
and Reasons for Judgment rendered orally by telephone conference  
on May 20, 2008 at Ottawa, Canada

Before: The Honourable Justice E. P. Rossiter

Appearances:

Counsel for the Appellant: David H. Dunsmuir

Counsel for the Respondent: Lindsay Holland  
Martin Hickey

---

**JUDGMENT**

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated September 27, 2005 and bears number A106077, is allowed and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment with and for the reasons set out in the attached Reasons for Judgment.

The Respondent shall have their costs of the appeal fixed at \$2,685; costs, disbursements and taxes all included.

Signed at Ottawa, Canada, this 26th day of May, 2008.

"E. P. Rossiter"

---

Rossiter, J.

Citation: 2008TCC311  
Date: 20080526  
Docket: 2007-2299(GST)I

BETWEEN:

JONATHAN WOOD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Rossiter, J.

#### Facts

[1] The Appellant is the son of Andrew Wood and Marguerite Wood who were married on August 31, 1979. The Appellant was born March 18, 1984 and as such was a minor in May 2002, age 19 years being the age of majority in New Brunswick.

[2] Andrew is a lawyer practicing law as a solicitor for many years in Fredericton, New Brunswick.

[3] Piper's Lane Heritage Development Inc. (Piper's Lane) (and its named predecessor corporate) is a body corporate, its shares being owned by Marguerite Wood since at least 1993.

[4] Andrew and Marguerite Wood entered into a Domestic Contract on March 15, 1995. This contract specifically identified the shares of Piper's Lane as being the property of Marguerite Wood (see Exhibit A-23, article 22).

[5] Marguerite Wood owned Piper's Lane shares until they were transferred to Andrew Wood in Trust for Jonathan Wood pursuant to a Separation Agreement between Andrew Wood and Marguerite Wood, (Exhibit A-24, paragraph 7F) dated April 8, 2003. The document for the share transfer was completed in September 2003.

[6] While a lawyer, Andrew Wood was also involved in real estate which lead to his personal bankruptcy in July 1995 (Exhibit A-12) and from which he received a personal discharge on July 12, 2001 (Exhibit A-19).

[7] When Andrew Wood went bankrupt, the receivables in his practice were taken by the Receiver in Bankruptcy, KPMG. They were subsequently sold to Piper's Lane for \$15,000. Included in the receivables were receivables from Harry Green [or his companies] a client and personal friend of Andrew Wood. Before Andrew Wood went into bankruptcy, Andrew Wood asserts that, in order to secure the receivables of Harry Green and his companies, he took a deed on November 22, 1991 from Harry Green for property that Harry Green owned in Blackville, New Brunswick (Exhibit A-1 – November 22, 1991). There was also an Agreement (Exhibit A-7, Tab 2) entered into on the same date by Andrew Wood and Harry Green setting out the terms of what Andrew Wood says is a Trust, but what the Respondent says, in relation to the Blackville Property, is a time limited right of redemption in Harry Green – 5 years.

[8] Notwithstanding Article 3 of this Agreement (Exhibit A-7, Tab 2), which prohibited Andrew Wood from conveying the property without the consent of Harry Green, Andrew Wood on January 11, 1993, purported to convey the Blackville lands to Andrew Wood in Trust even while Harry Green still had right of redemption.

[9] The Agreement between Andrew Wood and Harry Green of November 22, 1991, specifically stated that the receivables owing by Harry Green to Andrew Wood and Gilbert, McGloan, Gillis, was \$9,500 and the conveyance of the property to Andrew Wood was in satisfaction of the debts due to Andrew Wood.

[10] Andrew Wood had practiced law as Andrew F. Wood Associates, 1988 – 1990, and with Gilbert, McGloan, Gillis, 1990 – 1991, and as Yeamans Wood 1991 – 1993.

[11] In the acquisition of the receivables of Andrew Wood by Piper's Lane, Marguerite Wood, gave instructions on the terms of the negotiations on the purchase (Exhibit A-14, Tab 6).

[12] Harry Green died on March 28, 1998; Andrew Wood was the executor in Harry Green's last will and testament. Andrew Wood approached the heirs of Harry Green to settle the receivables – that is pay the receivables and the Blackville Property would go to the estate. The heirs declined, so Andrew Wood asserts that the Blackville Property then became the property of Piper's Lane by virtue of its purchase of the receivables of Andrew Wood from his Trustee in Bankruptcy, KPMG.

[13] When Andrew Wood transferred the Blackville Property from himself to himself as Trustee, he purported to hold the property as security for the debt of Harry Green with a right of redemption but the redemption never occurred.

[14] The Harry Green personal and corporate receivables purchased by Piper's Lane from the Trustee in Bankruptcy of Andrew Wood, KPMG, only include the following receivables:

Northern Timber, \$1,191.35;  
Northern Timber, \$1,819.44.

Both of these receivables were from Andrew Wood's practice with Gilbert, McGloan, Gillis, 1990 – 1991. The other receivables purchased by Piper's Lane from the Trustee in Bankruptcy of Andrew Wood, KPMG, included a receivable from Harry Green of \$5,713.80 which was a receivable from Andrew Wood's practice with Yeamans Wood, 1991 – 1993. There was no receivable of \$9,500, nor any collection of receivables totalling \$9,500 to Andrew Wood from Harry Green or any of his companies, that was part of the receivables acquired by Piper's Lane.

[15] After Harry Green died the estate/heirs did not redeem the Blackville Property and pay the debt. The property was sold at arm's length to a Mr. Hallihan for (a) \$20,000 and (b) property in Quarryville, New Brunswick.

[16] When this transaction was completed, Michael Noel acted as the Solicitor for both the vendor and purchaser. His instructions were to convey the Quarryville Property to Andrew Wood in Trust but he did not do so and mistakenly registered the property to Andrew Wood (Exhibit A-1, Tab 28). When the mistake was

noticed by Andrew Wood he wanted the title corrected *ab initio* and this could not be done by re-conveyance but could only be done by a Certificate of Registered Ownership (Exhibit A-3, Tab 30), which had the effect of showing Andrew Wood as Trustee of the Property on May 28, 2002.

[17] Andrew Wood and his wife Marguerite were separated in 2001 and in January/February 2002 they agreed that the shares that she held in Piper's Lane would be transferred to Andrew Wood in Trust for Jonathan Wood. The documented transfer did not formally take place until September 2003. Andrew Wood had no involvement with the governance of Piper's Lane previous to the execution of the Separation Agreement between he and Marguerite Wood.

[18] The Quarryville conveyance was completed on May 28, 2002. Andrew Wood and his son, the Appellant, did a Trust Agreement as of May 1, 2002 but purportedly signed on July 9, 2003, (Exhibit A-4, Tab 24). This Agreement obviously contemplates the Blackville/Quarryville property exchange and speaks of the Trust in the future. The original deal was to be closed on April 2002 but did not close until late May 2002.

[19] At the time the deed for the Quarryville Property to Andrew Wood was rectified to read Andrew Wood in Trust, July 9, 2003, Andrew Wood and Jonathan Wood, as Trustee and Settlor respectively, signed a Trust Agreement as of May 1, 2002, in relation to the Quarryville Property. A Solicitor took the signatures of Andrew Wood and Jonathan Wood as evidenced by the Notarial Certificates of July 9, 2003, but the Solicitor could not verify that the certificates were attached to the Trust Agreement. He did, however, have an appointment scheduled with Andrew Wood for July 9, 2003 and on the same date, Andrew Wood executed a Power of Attorney before the same Solicitor.

[20] An ink aging expert for the Respondent testified that upon analysis of the signature of Andrew Wood in the Trust Agreement there was conclusive evidence for the hypothesis that it was not signed on the date of the document, May 1, 2002 or July 9, 2003, and that it was probable that the signature of Jonathan Wood was not placed on the document on July 9, 2003 but more likely signed no earlier than November 2004.

[21] Some adjusting journal entries were completed on September 3, 2002, for Piper's Lane in relation to the property exchange (Blackville for Quarryville) but these entries appear to be in the wrong year – February 1, 2001 to January 31, 2002. The transaction did not take place until May 2002. These entries disclose the

financial aspect of the deal – the Blackville Property had a cost base of \$8,725.59. Cash was received of \$20,000 and a cabin on the Quarryville Property was designated as \$7,500, total deal \$27,500; that is \$20,000 in cash, \$7,500 for the Quarryville Property, all for the Blackville Property which had a cost base of \$8,725.59 and a gain of \$18,775.41. At the same time, Jonathan Wood, the Appellant, paid \$7,500 in a receivable for the Quarryville Property.

[22] Post May 2002 to early January 2004, renovations to the Quarryville Property were carried out by the Appellant with the father, Andrew Wood, paying for the materials.

[23] The Appellant received \$85,111 from Piper's Lane on March 29, 2004, as payment for a shareholder's loan outstanding to him as beneficial owner of Piper's Lane shares. It had nothing to do with the Quarryville Property or its ownership. The financial statements of Piper's Lane for the year ending January 31, 2003, show as outstanding a shareholder loan of \$85,111 – the amount paid to Jonathan Wood on March 29, 2004.

[24] There were no corporate documents for Piper's Lane Minutes, Share Certificates, nothing in relation to the share transfer, share ownership or share transfer in Trust for Jonathan Wood.

### Issues

[25] The parties initially agreed that the issues could be described as follows:

1. Was the legal effect of the registration of the filed rectification (Quarryville) recorded on January 21, 2004, that the May 28, 2002 transfer to Andrew F. Wood of the property was in a valid Trust as of May 28, 2002?
2. If Andrew Wood held legal title to the property at all material times at or after May 28, 2002, has a transfer pursuant to section 325 of the *Excise Tax Act* of the Quarryville Property occurred from Andrew Wood to the Appellant?
3. If so, on what date did such transfer occur and by what means?

4. If a transfer of the property was made to the Appellant after May 28, 2002, did the transferor have a beneficial interest, i.e. hold beneficial title to the property on the date of such transfer to the Appellant?
5. If the Court is of the view that Andrew Wood had a beneficial ownership interest in the property and made a transfer of the property to the Appellant on the date when Andrew Wood was liable to pay excise tax (and if that was on or after May 28, 2002, the Appellant does not dispute there is liability in Andrew Wood's transfer), then did the Minister correctly ascertain the value of the property on the date of the transfer so as to correctly calculate the amount of tax the Appellant is vicariously liable for?

[26] Having gone through the trial and after review of the above issues, there is really a single issue and that is who owned the Blackville Property when it was conveyed to Hallihan in an arm's length transaction for the sum of \$20,000 and the Quarryville Property? Was it Piper's Lane, was it Andrew Wood or was it Andrew Wood in Trust? The answer to this question will lead to the result of this appeal.

#### Law and Analysis

[27] The Appellant asserts there was some sort of Trust which came into existence in favour of the Appellant when the Quarryville Property was allegedly held in Trust by Andrew Wood.

[28] I will not review the law as it relates to implied, express, resulting or constructive trusts.

[29] There were numerous aspects of conflicting evidence in the presentation of the Appellant's case, some examples of which were as follows:

1. The Appellant asserts that receivables sold by Andrew Wood's Trustee in Bankruptcy, KPMG, to Piper's Lane included the Blackville Property receivable because the Blackville Property was taken as security for receivables owed by Harry Green. In contrast to this, are the documents adduced by the Appellant via Andrew Wood which show that Andrew Wood had in fact been paid in full the \$9,500 owed to him at the time by Harry Green and the security of the Blackville Property was not in relation to this particular \$9,500 debt. Also, this particular debt, was not assigned to Piper's Lane nor were any debts which collectively add up to \$9,500



assigned to Piper's Lane. Andrew Wood's version of the facts is contradicted by the documentation, he and the Appellant produced, that is Andrew Wood's own Agreements between he and Harry Green. Andrew Wood contradicted his own Trust Agreement with Harry Green whereby Harry Green could redeem the property within five years of the execution of the Agreement and Andrew Wood was precluded from conveying of the property without Harry Green's consent during the same period. Andrew Wood conveyed the property from Andrew Wood to Andrew Wood in Trust without any indication in the Trust deed to whom he held the property in Trust for or anything else.

2. When Andrew Wood caused the Certificate of Registered Ownership for the Quarryville Property to be executed on July 9, 2003 as of May 28, 2002, which would have effect as of May 28, 2002, he and Jonathan Wood were also purported to have executed, as Trustees and Settlor respectively, a Trust Agreement as of May 1, 2002 in relation to the same property (Quarryville). The Trust Agreement related to property which had not even come into the ownership of Andrew Wood as of May 1, 2002, because the property transaction for the exchange of the Blackville Property for \$20,000 and the Quarryville Property did not close until May 28, 2002.
3. Journal entries were prepared for Piper's Lane on September 3, 2002 dated for the year ending January 31, 2002 which related to the exchange of the Blackville Property for the Quarryville Property, when the transaction had not even taken place during that financial year but rather took place in May 2002.
4. Andrew Wood on April 4, 1998 forwarded correspondence to David Green (as the representative of the heirs of Harry Green) to the effect that the Blackville Property referred to in the Trust Agreement between Harry Green and he, was held in Trust on the terms in the Trust Agreement by him and the debt due was assigned to a holding company and technically, the beneficiary of the sums due from the Estate, was not him personally, but a company owned by his wife to whom the receivables had been assigned. Two months later, on June 12, 1998, Andrew Wood did a Memorandum to his own file in which he stated in part as follows:

I also advised David that the Blackville properties which were formally held in Trust by me had concluded under the terms of the Trust. I indicated that what I would do is to give them an option to

purchase them for the cost to David or his designates and David indicated that he was happy with this.

[30] These two notes are in contradiction to each other, one in which Mr. Wood asserts that the properties were in Trust pursuant to the terms therein and that the indebtedness had been assigned to a holding company and the sum is really due to a company not personally owned by him but by his wife, yet, two months later he says that the properties were formally held in Trust by him and that the Trust terms had been concluded but he was willing to offer the estate an option to purchase the property.

[31] These are but four examples of the conflicting evidence which arose through the Appellant's case. There are numerous others which I will not review but they naturally give the Court considerable difficulty in trying to accept the submissions of the Appellant with respect to who did or did not own the Blackville Property at the key time, that is, when it was transferred for the Quarryville Property and the \$20,000. It would appear that Andrew Wood in his rush to prepare documentation to attempt to establish the Trust became mixed up and confused as to who owned what, when and how.

[32] I believe a detailed review of the exhibits before the Court, reveal answers to the question as to who owned the Blackville Property when it was conveyed for the Quarryville Property that is Piper's Lane or Andrew Wood or Andrew Wood in Trust.

[33] I conclude from a review of the evidence that the Blackville Property was always owned by Andrew Wood as beneficial owner and was never transferred to Piper's Lane. Andrew Wood owned this property as beneficial owner when it was transferred for \$20,000 and the Quarryville Property on May 28, 2002. I reach this conclusion after review of all of the evidence but most particularly:

1. Exhibit A-7 is an Agreement between Andrew Wood and Harry Green which purportedly, according to Andrew Wood was a Trust Agreement. In the preamble it notes that the Settlor or Harry Green, is indebted to the Creditor that is Andrew Wood and Gilbert, McGloan, Gillis for the sum of \$9,500 and then goes on in the preamble to say "And whereas the Settlor conveyed the property to the Creditor in satisfaction of the debts due to the Creditor." The property in question was the Blackville Property. This statement would certainly lead one to believe that a conveyance had been completed and in fact had been completed on the same date. If the recitals are correct it had been

completed to Andrew Wood in his own right in satisfaction of the debts due to him by Harry Green.

There were however, other debts outstanding and Andrew Wood had agreed that he would hold property in Trust for Andrew Wood for all accounts due from Harry Green to Andrew Wood and/or Gilbert, McGloan, Gillis. Also, Andrew Wood agreed not to deed the property in favour of any person except as directed by the Settlor, Harry Green. The Settlor could at any time within 5 years of the date (November 22, 1991) require the Creditor to re-convey the property to Settlor by giving notice of such intent to the Creditor and upon payment of all sums due then to the Creditor. It is noted that this right of redemption had never been exercised and that the Creditor, Andrew Wood, within a short period of time of the entire conveyance to him, conveyed the property from himself to himself as Trustee.

2. Exhibit A-21 was a Memorandum from Andrew Wood to his file of June 12, 1998 wherein he noted that he had advised David (presumably Green as he was dealing with David Green as representative of Harry Green's heirs) that the Blackville Property which was formally held in Trust by him had concluded under the terms of the Trust but he was willing to offer the heirs of Harry Green an Option to Purchase the property for the cost. This document would certainly indicate that any Trust which may have included the Blackville Property had been completed and Andrew Wood was still willing to provide an Option to Purchase to the Green Estate.
3. Andrew Wood conveyed the property in question to himself, in Trust, by Deed dated January 22, 1993 contrary to the express Trust Agreement between he and Harry Green whereby Harry Green had the right of the redemption.
4. In Exhibit A-13 the Statement of Assets of the affairs of Andrew Wood when he declared bankruptcy showed the receivables of Andrew Wood and the various law firms he worked over a period of time. The receivables which were assigned from the Trustee in Bankruptcy, KPMG, to Piper's Lane could not have included the \$9,500 referred to in the Trust Agreement between Andrew Wood and Harry Green because it is not specified in the receivables assigned to Piper's Lane and as a result Piper's Lane did not receive title to the receivable and could not receive title to the security held for the receivable.
5. When one refers to Exhibit 9 as the Agreement of Purchase and Sale between KPMG and Wood Melanson Filliter in Trust, of January 31, 1997 and one

reviews the receivables, some of which were purportedly owned by Harry Green, the receivable which was the subject matter of security, the Blackville Property, \$9,500 was not included therein nor was any combination of the receivables that would add up to \$9,500 and as a result it can only be concluded that the receivable in question was not assigned to Piper's Lane.

6. From a review of Exhibit A-20, the indebtedness of Harry Green to Andrew Wood, there is no reference to the receivables therein which are the subject matter of the Blackville Property or any combination thereof that add up to \$9,500 or indeed anywhere close to \$9,500.

[34] The Respondent, in summation, meticulously reviewed the receivables and how they did not fit within the evidence presented by Andrew Wood and I accept the submissions of the Respondent in this regard. As a result of the evidence presented I conclude that the account receivable (\$9,500), which was related to the Blackville Property was never transferred to Piper's Lane because this debt of \$9,500 had already been paid in full by the acknowledgment of Andrew Wood in his own documents.

[35] Andrew Wood received the Blackville Property conveyance from Harry Green and then he had purported to convey the property from himself to himself as Trustee. It is trite law that you cannot hold property in Trust for yourself and the two interests merge so that he was the beneficial owner of the property in question. I conclude that the Blackville Property was always owned by Andrew Wood as the beneficial owner after it was deeded to him by Harry Green by deed dated November 22, 1991.

[36] Andrew Wood received \$20,000 and the Quarryville Property in exchange for the Blackville Property. The question then becomes, when did the transfer take place of the Quarryville Property from Andrew Wood to Jonathan Wood. The property had nothing to do with Piper's Lane. The transfer took place by the Trust Agreement entered into purportedly on July 9, 2003 as of May 1, 2002.

[37] I note that we have the adjusting journal entries of Piper's Lane of September 3, 2002, which purported to show an acquisition of the Quarryville Property by the Appellant for a \$7,500 receivable. Piper's Lane did not own the Quarryville Property and therefore had no right convey it for a cash or receivable or otherwise, at any time.

[38] We have a forensic expert, Marc Gaudreau, who gave evidence, that there is conclusive evidence for the hypothesis that the July 9, 2003 Trust Agreement was not

executed by Andrew Wood on that date and that it was probable that it was also not executed by Jonathan Wood on that date. According to his evidence, the earliest it could have been executed would be about November 2004. Contrary to this evidence, is the evidence of P. Larrie Yerxa, a lawyer who was called to the bar in 1972, having practiced real estate law for over 36 years. He was quite a convincing witness and seemed direct and down to earth and although he could not specifically recall executing the Notarial Certificate in July 9, 2003 which was attached to the Trust Agreement in question, he knows that it was his signature on the document and he knows it was his Notarial Seal. The Trust Agreement with the Notarial Certificates had been taken apart several times but he did testify that if the Notarial Certificates were attached to the Trust Agreement and it was signed by him on the date on the Certificates, he most certainly took the signatures on that particular date. He never notarized documents signed by a person who was not in his presence. They may not sign in his presence but that person would always have to appear before him and confirm who they were before he would notarize the document. He also noted that he checked his day timer for July 9, 2003 and it showed that he had an appointment with Andrew Wood at 12:30 p.m. but it should also be noted that Andrew Wood also executed a Power of Attorney before Mr. Yerxa on the same date. Normally a Notarial Certificate would identify the document to which it is attached but this Notarial Certificate did not, because on the day in question he likely ran off, what he called, a garden variety of a Notarial Certificate and used it at the time. Assuming that the Notarial Certificates were attached to the Trust Agreement then it could not be signed any later than July 9, 2003.

[39] The foregoing gives me three alternatives:

1. Accept the evidence of the forensic expert, Mr. Gaudreau, that the Trust Agreement probably was not signed before November 2004.
2. Accept the evidence of Mr. Yerxa that he took the Appellant's signature and the signature of Andrew Wood on July 9, 2003, or;
3. Conclude that a Notarial Certificate of Mr. Yerxa somehow became attached to the Trust Agreement but were not attached to these documents on July 9, 2003.

[40] I am unwilling to not believe Mr. Yerxa, as I found him to be a very credible, forthright and frank individual and his evidence was quite clear. The expert's evidence is somewhat less exacting than Mr. Yerxa, as he speaks in ranges of time – the longer the passage of time from when ink is put to the paper, the less exacting the

time range - 2 years being the absolute outside limit. I find the expert credible, forthright and again frank, the same as Mr. Yerxa but I do not believe that I can accept his assertion of the hypothesis he suggested over the evidence of Mr. Yerxa so I conclude the Trust Agreement was executed on July 9, 2003. I have no evidence of the other alternative. This case is not without its difficulties.

[41] Having reached the conclusion that Andrew Wood was the beneficial owner of the property, given the execution of the Trust Agreement on July 9, 2003, as I have found, was the legal effect of the Certificate of Registered Ownership that title was in the name of Andrew Wood in Trust as of May 28, 2002. I accept the evidence of Keith Allen, the Barrister and Solicitor, qualified as an Expert in Real Estate Law and Practice Standards of Practitioners. His evidence was that once the Certificate of Registered Ownership was issued, it had the effect of dating the transfer back to the original document and to the date of registration of that document – May 28, 2002.

[42] The Trust Agreement itself said it was as of May 1, 2002. This must have been a typo or in an event is in error because Andrew Wood never had beneficial ownership of the Quarryville Property until the conveyance was complete which at the earliest was May 28, 2002; therefore the transfer could only have the effect as of that date at the earliest – I hold the date of transfer was May 28, 2002. No consideration flowed from the Appellant to Andrew Wood at the time of the transfer of the Quarryville Property. The question becomes, what is the fair market value of the Quarryville Property on May 28, 2002?

[43] We have the evidence of Roger Evans Beckwith who was qualified as an expert in the fair market value of real estate and he explained in detail how he conducted an appraisal of the Quarryville Property and came to a conclusion that, in his expert opinion, the Quarryville Property in January 2004 had a fair market value of approximately \$52,000. We however are concerned with the fair market value of the property on May 28, 2002. The only evidence we have with respect to the fair market value of the property in that particular time is the following:

1. The assessed value of the property for property tax purposes as of May 28, 2002, according to the Notice of Appeal, paragraph 16 and Exhibit R-4, Tab 33, is \$38,100.
2. Andrew Wood listed the property for sale in July 2002 for the sum of \$97,500 according to Exhibit R-13, Tab 13.

3. Jonathan Wood signed and presented documents for a loan application to a financial institution on January 27, 2004, which asserts the property value is \$150,000.

I question the value put on by Jonathan Wood because he was quite frank in his evidence in that he really did not know what was going on with respect to the property in question. The property had been basically looked after by his father.

Appellant's Counsel stated that the assessed value of the property for property tax purposes was \$38,000 in 2002, and this is usually 15% to 20% less than the fair market value – this would make the fair market value about \$45,600. I do not believe the property is worth what it was listed for, nor what it was put down for as the fair market value in the Net Worth Statement of Jonathan Wood on his loan application. The expert evidence from the Respondent was \$52,000 in January 2004. For property tax purposes it was \$38,000. According to Appellant's counsel the assessed value for property tax purposes would have to be about 15% to 20% less than the real fair market value which would then turn out to be \$45,600. As unexacting as this may be, I find that the fair market value of the property in question on May 28, 2002 was \$45,600.

[44] The Minister had advised in his amended Reply that he did not want the assessment on the basis of a fair market value of \$150,000 and the fair market value should be reconsidered and reassessed by the Minister on the basis of \$52,000. I allow the appeal in part and I refer the matter back to the Minister for reconsideration and reassessment on the following basis:

1. Andrew F. Wood was the beneficial owner of the property in question, at the relevant time, that is the time of the transfer of the Blackville Property for the Quarryville Property, May 28, 2002.
2. The transfer date for the transfer of the Quarryville Property was May 28, 2002.
3. The fair market value of the Quarryville Property at the time of the transfer was \$45,600.
4. The Appellant and Andrew Wood are jointly and severally liable pursuant to section 325 of the *Act*.

[45] After considering the various factors applicable to awarding costs, the Respondent shall have their costs of the appeal fixed at \$2,685; costs, disbursements and taxes all included.

Signed at Ottawa, Canada, this 26th day of May, 2008.

"E. P. Rossiter"

---

Rossiter, J.



CITATION: 2008TCC311  
COURT FILE NO.: 2007-2299(GST)I  
STYLE OF CAUSE: JONATHAN WOOD AND HER MAJESTY  
THE QUEEN  
PLACE OF HEARING: Fredericton, New Brunswick  
DATE OF HEARING: May 7, 8 and 9, 2008  
REASONS FOR JUDGMENT BY: The Honourable Justice E.P. Rossiter  
DATE OF JUDGMENT: May 26, 2008

APPEARANCES:

Counsel for the Appellant: David H. Dunsmuir

Counsel for the Respondent: Lindsay Holland  
Martin Hickey

COUNSEL OF RECORD:

For the Appellant:

Name: David H. Dunsmuir

Firm: David H. Dunsmuir Professional  
Corporation

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada