

Docket: 2010-379(IT)I

BETWEEN:

NORMAND HAMEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 27, 2010, at Montréal, Quebec.

Before: The Honourable Alain Tardif

Appearances:

Agent for the appellant: Carmen Baron

Counsel for the respondent: Simon Vincent

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* on July 30, 2009, for the 2008 taxation year, is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 14th day of October 2010.

“Alain Tardif”

Tardif J.

Translation certified true
on this 6th day of December 2010.
Daniela Possamai, Translator

Citation: 2010 TCC 514
Date: 20101014
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BETWEEN:

NORMAND HAMEL,

Appellant,

and

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REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal involving a deduction of \$50,000 claimed as support payments for the 2008 taxation year and disallowed by the Minister of National Revenue (the **Minister**).

[2] The issue is whether the Minister was justified in disallowing the appellant's deduction of \$50,000 claimed as support payments.

[3] The appellant, who was present at the hearing, was represented by his wife, Carmen Baron, who testified. She explained that the couple had to pay the sum of \$92,000 divided into two components. The first amount of \$42,000, which is not the subject of the appeal, represented support payments, whereas the other portion of \$50,000, paid in two instalments, one of \$10,000 and another of \$40,000, was a provision for costs, while the appellant submits that they were periodical payments that should be considered support payments.

[4] Ms. Baron explained that the Canada Revenue Agency (**the Agency**) had indicated to her that the first amount was paid as support and was not deductible because it was payable to the benefit and profit of the children.

[5] On the basis of that interpretation, she submitted that the amount of \$50,000 in issue represented the paid to the father of the children as support payments or deductible benefit.

[6] To support her claims, she also stated that the father could use the monies for any purpose and that the amount had been paid periodically, namely by way of payments.

[7] She also provided details about the numerous legal confrontations between them and them and the father of the children, born of his union with their daughter. At first glance, the explanations provided appeared to be not only very particular and sympathetic, but also very sad for grandparents who are denied permission to see and take their grandchildren.

[8] For her part, the respondent argued that the amount in issue did not at all present the essential characteristics to conclude that it was deductible support. She also noted the title and type of the motion to institute proceedings from which the payments in issue resulted.

[9] She also insisted on the content of both the consent to judgment indicating very specifically the nature of the two payments and the judgment that followed.

[10] The respondent also produced the extensive documentary evidence fully relating and describing among other things the procedures before the Superior Court; she drew the court's attention to certain relevant entries in the extensive minutes or court ledger.

[11] In the light of the documentary evidence adduced by the respondent, there is no doubt that the amounts in issue here were not support payments, but rather provision for costs, also regarded as such not only in the initiating proceedings, but also in the judgment on the motion. An amount paid as provision for costs clearly cannot represent support payments.

[12] However, the explanations advanced by the appellant's wife, corroborated, under oath, by the appellant, essentially confirmed the true nature of the payments.

[13] Their arguments that the amount represented support payments are essentially based on the lure of tax advantage resulting from the payment of support in certain situations. The appeal is therefore dismissed from the bench.

[14] At the time of the oral judgment, I expressed certain sentiments regarding the gravity of an undoubtedly very sad situation where the grandparents are denied the right to see and take their grandchildren. Sentiments I would have refrained from expressing had I read the entire content of Exhibit I-2.

Signed at Ottawa, Canada, this 14th day of October 2010.

“Alain Tardif”

Tardif J.

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on this 6th day of December 2010.
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PLACE OF HEARING: Montréal, Quebec
DATE OF HEARING: August 27, 2010
REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif
DATE OF JUDGMENT: October 14, 2010

APPEARANCES:

Agent for the appellant: Carmen Baron

Counsel for the Respondent: Simon Vincent

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the Respondent:

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