

Docket: 2012-3313(IT)I

BETWEEN:

GUYLAINE MAHEU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

MARTIAL BEAUREGARD,

Added Party.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on July 10, 2013, at Sherbrooke, Quebec.

Before: The Honourable Justice R  al Favreau

Appearances:

Counsel for the appellant: Robert Jodoin

Counsel for the respondent: Simon-Nicolas Cr  pin

Counsel for the added party: Philippe Gaudet

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**AMENDED JUDGMENT**

The appeals from reassessments made under the *Income Tax Act* by the Minister of National Revenue on June 23, 2011, for the 2010 taxation year and on September 15, 2011, for the 2007, 2008 and 2009 taxation years are allowed and the

reassessments made in respect of the appellant are vacated, in accordance with the attached Amended Reasons for Judgment.

Accordingly, the reassessments made in respect of Martial Beauregard for the 2007, 2008 and 2009 taxation years and the original assessment for the 2010 taxation year are referred back to the Minister for reconsideration and reassessment in order to disallow the deduction of the amounts he paid to the appellant as support during these taxation years.

Signed at Ottawa, Canada, this 25th day of September 2013.

"Réal Favreau"

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Favreau J.

Translation certified true  
on this 23rd day of October 2013  
Margarita Gorbounova, Translator

Citation: 2013 TCC 279

Date: 20130925

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Appellant,

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[OFFICIAL ENGLISH TRANSLATION]

**AMENDED REASONS FOR JUDGMENT**

Favreau J.

[1] These are appeals, under the informal procedure, from the reassessments made by the Minister of National Revenue (the Minister) under the *Income Tax Act*, R.S.C. (1985) c. 1 (5th Supp.), as amended (the Act), in respect of the appellant's 2007, 2008, 2009 and 2010 taxation years.

[2] Martial Beauregard was joined to Guylaine Maheu's appeals following an order by the Tax Court of Canada under paragraph 174(3)(b) of the Act dated March 15, 2013, for the 2007, 2008, 2009 and 2010 taxation years. The issues regarding which a decision was requested by the respondent are as follows:

[TRANSLATION]

(a) Must Guylaine Maheu include in computing her income for the 2007 to 2010 taxation years the following amounts received from Martial Beauregard as support during each of these taxation years:

| 2007     | 2008     | 2009     | 2010     |
|----------|----------|----------|----------|
| \$16,000 | \$52,000 | \$52,000 | \$52,000 |

- (b) Could Martial Beauregard deduct in computing his income for the 2007 to 2010 taxation years the following amounts paid to Guylaine Maheu as support during each of the these taxation years?

| 2007     | 2008     | 2009     | 2010     |
|----------|----------|----------|----------|
| \$16,000 | \$52,000 | \$52,000 | \$52,000 |

[3] The facts relevant to this case are as follows:

- (a) Guylaine Maheu and Martial Beauregard were married on August 25, 1984, under the partnership of acquests regime and separated on December 30, 2006;
- (b) On February 21, 2007, Guylaine Maheu and Martial Beauregard signed a document entitled the [TRANSLATION] "agreement for corollary relief" (the Agreement), which was ratified by the Quebec Superior Court on February 28, 2007, in the judgement of divorce.
- (c) The Agreement deals, among other things, with (i) the custody of and access rights to the couple's youngest child, (ii) the parent having as a dependant the couple's eldest child, (iii) the lack of child support to take care of the needs of the couple's children and (iv) the partition of the family patrimony, the matrimonial regime and their financial interests, generally done equally.
- (d) The Agreement also contains a section entitled [TRANSLATION] "support for the female petitioner", which includes the following two paragraphs:

[TRANSLATION]

66. In consideration of the value of the companies of which the male petitioner is a shareholder and which the parties admit knowing exactly and having been informed of by their accountant, Bernard Gagné, the parties agree that the male petitioner will pay to the female petitioner, starting from the date of the judgment of divorce to be handed down and for the four years following the date of the judgment of divorce, a net sum of \$1,000.00 per week, thus representing, over the four years, the amount of \$208,000.00.
67. On that date, each party will irrevocably waive the right to claim from the other party any support for the present, past or future;
- (e) Martial Beauregard did not initially claim a deduction for support in his tax returns for the 2007 to 2009 taxation years;
- (f) Guylaine Maheu did not include any amounts in her tax returns filed for the 2007 to 2009 taxation years as support that she has or has allegedly received from Martial Beauregard for her benefit during those taxation years;

- (g) In his tax return for the 2010 taxation year, Martial Beauregard claimed a deduction of \$52,000 as support that he has or has allegedly paid to Guylaine Maheu for her benefit during that taxation year;
- (h) On April 29, 2011, Martial Beauregard requested an adjustment to his tax returns for each of the taxation years from 2007 to 2009 in order to claim a deduction for support paid to Guylaine Maheu for her benefit during those taxation years.
- (i) On September 15, 2011, the Minister made reassessments in respect of Martial Beauregard for the 2007, 2008 and 2009 taxation years following up on the request to adjust his tax returns and thus granting him the following deductions for support paid to Guylaine Maheu for her benefit during these taxation years;

| <b>2007</b> | <b>2008</b> | <b>2009</b> |
|-------------|-------------|-------------|
| \$16,000    | \$52,000    | \$52,000    |

- (j) On June 23, 2011, the Minister issued an original assessment in respect of Martial Beauregard for the 2010 taxation year, granting the deduction of \$52,000 as a support amount paid to Guylaine Maheu for her benefit during that taxation year.

[4] For the 2007 taxation year, the Minister determined that, when the appellant filed her tax return, she had made a misrepresentation that was attributable to neglect, carelessness or wilful default given that the appellant knew or ought to have known that the amounts received as support were taxable, and the Minister issued a reassessment outside of the normal reassessment period.

[5] The appellant testified at the hearing. She explained that she was an administrative technician and that, since 1990, she had managed her former spouse's businesses including, among others, the following businesses:

- 9129-3845 Québec Inc.;
- MBI Systèmes électroniques inc.;
- MBI Systèmes électroniques résidentiels inc.;
- MBI Sécurité inc.;
- MBI Sécurité S.E.N.C.;
- MBI Solutions technologiques; and
- Gestion MBI S.E.N.C.

[6] Her work duties included keeping accounting books, preparing tax reports, interacting with external accountants, making bank deposits, paying accounts and taking care of investments. This work took about 80% of her time; the other 20% of her time was spent on providing similar services to other clients.

[7] The appellant also explained that the partition of the family patrimony and the matrimonial regime was done equally between the parties and that the amounts owed to the appellant by her former spouse from the partition of the family patrimony and the matrimonial regime were paid to the appellant in weekly instalments of \$1,000 since the granting of divorce. The appellant filed as Exhibit A-1 a request for the authorization to enter alone into an act for which the consent of the other spouse would be required, which was filed with the Superior Court of Québec on June 23, 2008, by the appellant's former spouse, article 12 of which reads as follows:

[TRANSLATION]

12. The amounts owed by the male petitioner to the female petitioner for the partition of the family patrimony and the matrimonial regime are paid to the female petitioner in weekly instalments of \$1,000.00 since the granting of divorce.

[8] According to the appellant, the net amount of \$1,000 per week was established on the basis of a summary assessment of the shares of the companies belonging to the former spouse and on his ability to pay and not at all on her own needs. The appellant was not a shareholder or director of her former spouse's companies except for Gestion MBI S.E.N.C. in which the appellant was an equal shares partner with her former spouse.

[9] In support of the value of the shares of her former spouse's companies, the appellant referred to the fact that, in 2009, her former spouse sold the shares that he had held in 9129-3845 Québec Inc. to the appellant's brother for \$300,000. The appellant's share in the sale price of only these shares was therefore \$150,000.

[10] The appellant also stated that, as part of the negotiations surrounding the conclusion of the Agreement, there was never a question of paying support and the tax consequences of support were never discussed.

[11] The appellant indicated that the weekly amounts paid by her former spouse were not used for her maintenance but were rather used to pay the taxes claimed by the Canada Revenue Agency following reassessments. Finally, the appellant stated that she had not provided services to her former spouse's businesses during the period

from March to August 2007 and that the amounts received during that period could not be considered as a salary as her former spouse claimed at first.

[12] Martial Beauregard testified at the hearing and confirmed the duties performed by the appellant in his businesses and the fact that the amount of \$1,000 was determined based on his ability to pay. According to him, the net amount of \$1,000 per week represented \$1,000 after taxes.

[13] Martial Beauregard also acknowledged that the appellant did not provide services to his businesses from March to August 2007 as she was taking a one-year sabbatical outside the country, and that the appellant did not claim support as part of the negotiations surrounding the conclusion of the Agreement.

[14] Martial Beauregard stated that he was not familiar with the tax treatment of support and that, it was not until 2011, that is, after the end of payments to the appellant that he learned that support payments could be tax deductible. It was for that reason that he did not make his adjustment request until 2011.

### Applicable Law

[15] The term "support amount" for the purposes of sections 56 and 56.1 of the Act is defined as follows in subsection 56.1(4) of the Act:

“**support amount**” means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount, and

- (a) the recipient is the spouse or common-law partner or former spouse or common-law partner of the payer, the recipient and payer are living separate and apart because of the breakdown of their marriage or common-law partnership and the amount is receivable under an order of a competent tribunal or under a written agreement; or
- (b) the payer is a legal parent of a child of the recipient and the amount is receivable under an order made by a competent tribunal in accordance with the laws of a province.

### Analysis and conclusion

[16] The only issue to be decided is whether the amounts paid to the appellant by her former spouse during the 2007 to 2010 taxation years, totalling \$173,000, should have been included in computing the appellant's income and were deductible in

computing Martial Beauregard's income. Were the amounts in question paid as support or as a compensatory allowance as part of the partition of the family patrimony and the matrimonial regime (capital payment)?

[17] A support amount is an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient who must be able to use that amount at his or her discretion.

[18] Based on the evidence filed, the parties to the Agreement were represented by the same counsel and there are no allegations that the parties were ill-advised. The divorce was settled amicably, and the family patrimony and matrimonial regime were divided equally. There is some confusion as to the parties' intention at the time the Agreement was signed because the heading above paragraphs 66 and 67 of the Convention is [TRANSLATION] "Support for the female petitioner".

[19] In *Sebag v. R.*, 2005 TCC 699, Justice Lamarre Proulx specified at the end of paragraph 27 that "the terms of an agreement may be taken into consideration as showing the intent of the parties thereto when executing the agreement".

[20] In *Gagné v. R.*, 2001 FCA 310, the Federal Court of Appeal provided the following additional explanations concerning what a judge may do when the parties' common intent in an agreement is doubtful:

[10] It is settled law, in Quebec civil law, that if the common intention of the parties in an agreement is doubtful, the judge [TRANSLATION] "must try to find what the parties truly intended by their agreement" (Jean-Louis Baudouin, *Les Obligations*, 4th Ed., 1993, Les Éditions Yvon Blais, p. 255). The judge must [TRANSLATION] "place greater weight on the real intention of the contracting parties than on the apparent intention, objectively manifested by the formal expression" (p. 255), and he must ascertain the effect that the parties intended the contract to have (p. 256). To do so, the judge must have a overall picture of the parties' intention, which calls for an analysis of all of the clauses in the contract in relation to one another (p. 258). If there is any remaining doubt as to the parties' real intention, the judge may [TRANSLATION] "examine the manner in which the parties conducted themselves in relation to the contract, in their negotiations, and most importantly their attitude after entering into the contract, that is, the manner in which the parties have interpreted it in the past..." (pp. 258-259).

[21] Based on the evidence, the needs and the standard of living of the appellant were not discussed as part of negotiating the Agreement, and no support amount was requested by the appellant. In addition, no child support was determined for the appellant's former spouse to maintain their children.



[22] Regarding the parties' conduct following the conclusion of the Agreement, I note that Martial Beauregard, an experienced businessman, waited four years before claiming the deduction of the amounts paid to the appellant and that, in the request filed with the Superior Court by the added party on June 23, 2008, it was clearly specified that the weekly payments of \$1,000 were made for the partition of the family patrimony and the matrimonial regime. In other words, Martial Beauregard clearly acknowledged that the sharing of the value of the companies was done as part of the partition of the family patrimony and the matrimonial regime.

[23] Counsel for the respondent stated that paragraph 12 of said request was badly written and was absolutely false because the adjustments flowing from the partition of the family patrimony and the matrimonial regime were clearly specified at paragraphs 60 to 65 of the Agreement. Under paragraph 62, the added party had to pay the appellant as compensation the amount of \$88,044.49 and, under paragraph 64, the appellant obtained the right to take out a hypothec on the immovable located at 21 St-Jude Street in Granby to guarantee the payment of her debt.

[24] I cannot determine with certainty whether paragraph 12 of the request was badly written or not, but it appears to be quite clear that the sharing of the value of the companies in which Martial Beauregard was a shareholder was not done as part of the payment of support and that said sharing was rather done as consideration for each party's waiver of the right to claim support from the other party as specified at paragraph 67.

[25] The title [TRANSLATION] "support for the female petitioner" is discordant with the content of paragraphs 66 and 67 of the Agreement because paragraph 66 does not even refer to any support and paragraph 67 applies to both parties, not just the appellant.

[26] For these reasons, the appeals are allowed and the reassessments made in respect of the appellant are vacated.

[27] Accordingly, the reassessments made in respect of Martial Beauregard for the 2007, 2008 and 2009 taxation years and the original assessment for the 2010 taxation year are referred back to the Minister for reconsideration and reassessment in order to disallow the deduction of the amounts he paid to the appellant as support during these taxation years.

Signed at Ottawa, Canada, this 25th day of September 2013.

"Réal Favreau"

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Favreau J.

Translation certified true  
on this 23rd day of October 2013  
Margarita Gorbounova, Translator

CITATION: 2013 TCC 279

COURT FILE NO: 2012-3313(IT)I

STYLE OF CAUSE: Guylaine Maheu and Her Majesty the Queen  
and Martial Beauregard

PLACE OF HEARING: Sherbrooke, Quebec

DATE OF HEARING: July 10, 2013

AMENDED REASONS  
FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF AMENDED  
JUDGMENT: September 25, 2013

APPEARANCES:

Counsel for the appellant: Robert Jodoin  
Counsel for the respondent: Simon-Nicolas Crépin  
Counsel for the added party: Philippe Gaudet

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