

Docket: 2012-1998(IT)I

BETWEEN:

VICTORIA DAIMSIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on December 9 and 10, 2013, at Montreal, Quebec

By: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Agent for the Appellant: Anthony Daimsis  
Counsel for the Respondent: Stéphanie Côté

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**JUDGMENT**

The Appeals from the reassessments made under the *Income Tax Act* (the “Act”) with respect to the 2003 and 2004 taxation years are allowed and the reassessments are referred back to the Minister for reconsideration and reassessment on the basis that:

- a) The Appellant was living with Mr. Garfield in a common law relationship.
- b) Mr. Garfield was paying all of her living expenses.
- c) The Appellant earned no more income other than what was reported.

- d) No argument was presented to me regarding the late filing penalty pursuant to subsection 162(1) of the *Act* and, therefore, I make no ruling as to those penalties.

Signed at Kingston, Ontario, this 28th day of April 2014.

"Rommel G. Masse"

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Masse D.J.

Citation: 2014 TCC 118  
Date: 20140428  
Docket: 2012-1998(IT)I

BETWEEN:

VICTORIA DAIMSIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Masse D.J.

[1] These Appeals are from Notices of Reassessment with respect to the Appellant's 2003 and 2004 taxation years.

[2] The Appellant filed income tax returns for the taxation years wherein she reported the following income:

\$4,600.00 for the 2003 taxation year; and

\$24,410.00 for the 2004 taxation year.

[3] The Minister of National Revenue (the "Minister") initially accepted the income tax returns as filed and issued a notice that no tax was payable for the 2003 taxation year. As a result of information received from the Quebec Revenue Agency, on November 1, 2007, the Minister issued a Notice of Assessment for the 2003 taxation year and a Notice of Reassessment for the 2004 taxation year. As a result, the income of the Appellant was adjusted as follows:

<b><u>Taxation Year</u></b>	<b><u>Reported</u></b>	<b><u>Revised</u></b>	<b><u>Adjusted Revenue</u></b>
2003	\$4,600.00	\$24,412.00	\$29,012.00
2004	\$24,410.00	\$16,034.00	\$40,444.00

[4] On January 24, 2008 the Appellant served Notices of Objection with respect to the Notices of Assessment and Reassessment. On February 2, 2012, the assessments were varied to allow a reduction in the amount of \$4,568 for the 2003 taxation year and \$1,583 for the 2004 taxation year but the Notices of Assessment and Reassessment were otherwise confirmed. Hence, the Appeals to this Court.

### Factual Context

[5] The Appellant is a woman who presently works as a bill collector. During the relevant time period, she was engaged to be married. In fact, she claimed that she and her fiancé were cohabiting at the time. She claimed that she did not work for much of that period and hence she had little income to report. What income she did earn, she reported. Her fiancé wanted her to stay at home and he wanted to be the provider – he did not want her to work, according to her. She stated that her fiancé paid for all of her living expenses – he was going to marry her and he would take care of all of her needs – 100%. He was earning a good income and could easily afford to support her. She did not really know what he did for a living; she testified that he was a business owner and he had an internet advertising company or was involved in telemarketing.

[6] She testified that he wanted her to have a good life. In addition to rent, he paid for outings, groceries, hydro, Videotron, her clothes, her car payments, everything. They often went out for dinner to high end restaurants and he often took her on mini-vacations. He would pay cash and she does not even think he had a credit card. He would randomly leave her spending money on top of the television so she could take care of incidental expenses. She never went without. Whenever they needed furniture, they would use her Sears card and he would always pay the bill or reimburse her.

[7] Unfortunately, the relationship soured and they were no longer engaged as of the end of 2004. However, he was still helping her out. She stated she went back to work in 2005 but it was obvious that she did have some employment income that she reported in 2004 (see Ex. R-5). She has been working since.

[8] She was the subject of a random audit as a result of which the Minister alleges that she earned much more than she reported. She testified that she provided the Minister with credit card statements and advised that her bank account was in an overdraft position. She told the authorities that she had a fiancé who paid for all of her living expenses. The authorities wanted to know who he was. She objected to providing this information and did not want to provide his name. This was part of her

private life as well as his and she wanted it to remain private. In addition, her fiancé refused to give her permission to tell the authorities who he was. He would always tell her never to give out his name and she respected his wishes. Had she provided his name, it would not have gone well with the relationship which she hoped might be salvaged.

[9] She is now willing to provide the contact information for her former fiancé but she still hesitated to do so while on the witness stand. It was clear that she still would rather not do so. It is difficult to resist the conclusion that she still has a great deal of attachment to her former fiancé even though he has since married and had a child.

[10] In cross-examination, she stated that she began to live with her fiancé in 2003 at 283 Hurteau, Dollard-des-Ormeaux. They lived as a common law couple for about a year but when their relationship ended, they continued to live under the same roof and he continued to pay her expenses. He was providing her money throughout 2004 but not in 2005. She cannot say when in 2004 he stopped paying for her expenses but she estimates that it may have been for about a half year that he continued to support her. She left there in 2007.

[11] Darrell Garfield is the Appellant's former fiancé. He was an unwilling witness and not very forthcoming. In fact, he had to be arrested pursuant to a warrant which I issued when he failed to respond to a subpoena. In his testimony, he admitted that he and the Appellant lived together for some time about 10 years ago. It was in the West Island, he believes on Hurteau. He does not remember the exact time frame. They were supposed to be married and he did buy her a ring but it did not work out. He testified that he does not recall if she was working while they lived together. He was clear, however, that he did pay the majority of the bills including the rent and groceries. He stated that he was working at the time. He stated that she continued to live there even when he was not. He would not pay the bills when he was not living there since he believed that she was working at the time. They did buy furniture and he allows that it is possible that he gave her money. He does not think that he helped out with any car payments, contrary to what she stated. He paid for living expenses. The relationship ended abruptly, he stated that she threw him out with the dog.

[12] Odette Mathieu is employed by Revenue Quebec. She performed the Appellant's audit because there was a significant difference between her expenses and her reported income such that it would lead one to conclude that the Appellant was not reporting all of her income. Her first contact with the Appellant was August 19, 2005 when she sent the Appellant a questionnaire to fill out. This questionnaire was for the purpose of verifying non taxable revenues. The questionnaire was

returned having been duly completed but it is not available today since it has been destroyed. Ms. Mathieu sent a demand for supplementary information to the Appellant on September 7, 2005 (Ex. R-7). She wanted information regarding the following:

- a) a lease contract for a 1999 Pontiac Sunfire for the period from January 1, 2002 to April 31, 2002;
- b) a 2002 Mazda MX for the period from March 28 to December 31, 2002;
- c) details of a loan agreement with City Financial showing amount borrowed and payments made;
- d) all bank statements for the two year period under review; and
- e) Statement of Personal Expenses.

[13] On September 19, 2005 the Appellant provided documentary information regarding the two vehicles; the loan agreement and the Statement of Personal Expenses (see Ex. R-8, R-9 and R-10). However, the information was not complete. In her Statement of Personal Expenses, the Appellant indicated that she had been with Mr. Garfield since 1999 and that he helped her pay her personal expenses. This additional information certainly gave rise to more questions than answers. No bank statements were provided.

[14] At this point, it became difficult to contact the Appellant or to get further information from her. Ms. Mathieu wanted contact information for Mr. Garfield; none was forthcoming. On November 17, 2005, the Appellant faxed bank statements to Ms. Mathieu but these statements only showed the end of year balances for the two years being reviewed rather than all the monthly statements (see Ex. R-11). However, in fairness to the Appellant, the demand letter dated September 7, 2005 (Ex. R-7) was ambiguous since it asked for “your bank statements showing the balance on your personal bank accounts as of December 31, 2001, 2002, 2003 and 2004”. It is to be noted that the account number on these bank statements was blanked out. The Appellant was resistant to providing any additional information and particularly did not want to provide any contact information for Mr. Garfield. It was only in March of 2007 that she provided a copy of the first page of the lease agreement for a one year term beginning April 1, 2003, in relation to 283 Hurteau. The name and address of Mr. Garfield was blanked out except for his first name, “Darrell”.

[15] Ms. Mathieu had only limited information. However, using the information available, Ms. Mathieu explained that she used a cash flow method in order to determine the income that was necessary for the Appellant to maintain her lifestyle during the years under review as a single person. All of the information used in her analysis came from the Appellant, from information on file or from Statistics Canada, including the fact that she had always declared her marital status as single in her returns. Ms. Mathieu's calculations are set out in Exhibit R-13.

[16] On December 14, 2005, Ms. Mathieu sent the Appellant a letter indicating the results of her analysis as well as the proposed assessment (Ex. R-12). In this letter, Ms. Mathieu invited the Appellant to supply any further information which might change the assessment. None was forthcoming and formal Notices of Assessment for the 2003 taxation year and Reassessment for the 2004 taxation year were issued on November 1, 2007 revising the Appellant's income upwards by \$24,412 and by \$16,034 for 2003 and 2004 respectively and also subjecting the amounts to penalties as provided by subsection 163(2) of the *Income Tax Act* (the "Act").

#### Theory of the Appellant

[17] The Appellant maintains that she reported all the income that she earned during the taxation years and that the amounts reported represented her true income. She simply was not working during most of the 2003 and 2004 taxation years. She maintains that Mr. Garfield paid all of her living expenses during the relevant time frame and that is how she was able to get by.

[18] She reported all of her income, she never hid any income and she paid all of her taxes. These Appeals should, therefore, be allowed and the Notice of Assessment for the 2003 taxation year and the Notice of Reassessment for the 2004 taxation year should be set aside.

#### Theory of the Respondent

[19] The Respondent submits that the Appellant has been less than cooperative during this saga. The Appellant provided so little information that the Ministry had to use the alternative method of cash flow analysis in order to come up with an estimate of the Appellant's income during the taxation years. The assessments based on this analysis are presumed valid and it is up to the Appellant to demonstrate that they are not valid. This whole case depends on credibility and the credibility of both the Appellant and Mr. Garfield is very suspect. The Appellant's bald assertions that Mr.

Garfield paid all of her living expenses are in and of themselves insufficient to refute or demolish the basis upon which the Minister made its assessments. These Appeals should therefore be dismissed.

### Analysis

[20] It is clear that Ms. Mathieu used a cash flow analysis in order to estimate the undeclared income of the Appellant for the taxation years. This is an indirect method which is necessary when the taxpayer does not provide information regarding total income and expenses. This is a method of last resort. It showed a significant disparity between the amount that the Appellant declared as revenue and the amount necessary to pay for her lifestyle. In *Hsu v. The Queen*, 2001 FCA 240, Justice Desjardins of the Federal Court of Appeal had the following to say about net worth assessments which is an indirect method similar to the cash flow method of assessment:

Net worth assessments are a method of last resort, commonly utilized in cases where the taxpayer refuses to file a tax return, has filed a return which is grossly inaccurate or refuses to furnish documentation which would enable Revenue Canada to verify the return (V. Krishna, *The Fundamentals of Canadian Income Tax Law*, 5<sup>th</sup> ed. (Toronto: Carswell, 1995) at 1089). The net worth method is premised on the assumption that an appreciation of a taxpayer's wealth over a period of time can be imputed as income for that period unless the taxpayer demonstrates otherwise (*Bigayan, supra*, at 1619). Its purpose is to relieve the Minister of his ordinary burden of proving a taxable source of income. The Minister is only required to show that the taxpayer's net worth has increased between two points in time. In other words, a net worth assessment is not concerned with identifying the source or nature of the taxpayer's appreciation in wealth. Once an increase is demonstrated, the onus lay entirely with the taxpayer to separate his or her taxable income from gains resulting from non-taxable sources (*Gentile v. The Queen*, [1988] 1 C.T.C. 253 at 256 (F.C.T.D.)).

By its very nature, a net worth assessment is an arbitrary and imprecise approximation of a taxpayer's income. Any perceived unfairness relating to this type of assessment is resolved by recognizing that the taxpayer is in the best position to know his or her own taxable income. Where the factual basis of the Minister's estimation is inaccurate, it should be a simple matter for the taxpayer to correct the Minister's error to the satisfaction of the Court.

[21] In the case at bar, the Appellant was not forthcoming in providing information to the Minister other than maintaining that Mr. Garfield was paying all of her expenses. Yet, she would not, until just very recently, disclose any contact information for Mr. Garfield other than his first name. Hence, the Respondent could not verify the exactitude of the information provided to it by the Appellant and it had

to resort to an alternative method of analysis in order to estimate the Appellant's income. I find that Ms. Mathieu was fair and reasonable and restrained in her use of the cash flow method. Ms. Mathieu was quite justified in assessing the Appellant on the basis of the limited information provided to her by the Appellant and on information obtained by Statistics Canada. She was justified in assessing the Appellant on the basis of a single person who shared rental expenses and whose fiancé paid for vacations, trips, holidays and outings such as restaurants.

[22] It is up to the Appellant to refute or demolish the presumptions upon which the assessment is based: see *Hickman Motors Ltd. v. Canada*, [1999] 2 S.C.R. 336. This can only be done by adducing credible testimonial or documentary evidence.

[23] The Appellant has not adduced any documentary evidence. She is relying solely on her *viva voce* testimony and that of Mr. Garfield. Hence, the critical issue in this trial is that of credibility of these two witnesses.

[24] It is trite law that I can accept all of the evidence of a witness, none of evidence of the witness or I can accept some of the witness' evidence and reject other portions of the witness' evidence. The oft quoted dictum of Justice O'Halloran of the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 344 (B.C.C.A.), at pages 356 and 357 also comes to mind:

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, and cf. *Raymond v. Bosanquet* (1919), [50 D.L.R. 560](#) at p. 566, [59 S.C.R. 452](#) at p. 460, [17 O.W.N. 295](#). A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of

the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial Judge with a divine insight into the hearts and minds of the witnesses. And a Court of Appeal must be satisfied that the trial Judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.

It is through this jurisprudential lens that I assess the credibility of the two principal witnesses. In addition, I assess the credibility of the witnesses making use of human experience, the knowledge of the human condition, the knowledge that memories fade with time and the fact that human beings are most imperfect creatures.

[25] Dealing firstly with the evidence of Mr. Garfield, the documents that are before the Court in relation to Mr. Garfield (Exhibits R-1, R-2 and R-3), show that up until 2009, he reported living at 32 Crois Aldred, Hampstead, and he at no time ever reported living at 238 Hurteau in Dollard-des-Ormeaux. He only reported a change of address to 54 Place Heath, Hampstead in 2009. He at no time reported his marital status as other than single up until 2008 when he changed his status to married and at no time prior to that did he claim an equivalent to married deduction. What is most curious indeed is the fact that he never filed any income tax returns from 2002 up to 2005, which time period includes the taxation years under review. He says he worked while in a relationship with the Appellant but he does not say what kind of work he was doing – nor was he asked. If he worked, one has to wonder why he never filed any income tax returns. In my view, Mr. Garfield is a man who has something to hide and this is certainly consistent with his warning to the Appellant that she never disclose anything about him to anybody. I would have difficulty accepting anything Mr. Garfield has to say in a situation where his own pecuniary or other interests are under scrutiny.

[26] On the other hand, it is clear that he came to Court under arrest. He simply did not want to be there and he was not at all sympathetic to the cause of the Appellant. He was at worst hostile to the interests of the Appellant and at best totally disinterested and indifferent to her situation. The relationship he had with her ended rather dramatically when she “threw him out with the dog” but he has moved on and has made a new life of his own. It is clear that he did not have a chance to discuss his testimony with the Appellant or her representative and so he did not know what was required of him. He has no interest whatsoever in the outcome of this litigation and he has no reason to favour either the Appellant nor the Respondent. He admits having paid many of the Appellant’s expenses and having supported her while she was living with him at 283 Hurteau and while she was not working. Although it is true that his evidence is somewhat vague and imprecise, it must be remembered that this all took place approximately 10 years ago and memories do fade; especially regarding things that were not important to him.

[27] In relation to the credibility of the Appellant, her evidence is not without some difficulties. From the end of 2005 right up to the present time, she has been difficult to contact. She has declared her marital status to be single during the taxation years even though she tells us that she was living with Mr. Garfield. She is not a very well organized person and she filed her income tax returns late for the two years under consideration; June 2004 for the 2003 return and May 2005 for the 2004 return. She was not very cooperative with the Minister when requests were made for further information and documentation. When she did provide information, it was not timely and it was incomplete. I get the impression, however, that this was not so much a matter of a deliberate attempt to be obstructive but rather she simply preferred to put her head in the sand hoping the problem would go away. It is true that she protected the identity of Mr. Garfield, even before the Cour du Québec at her trial held September 27, 2010. She seems to have done this out of some misguided sense of loyalty to Mr. Garfield and also some notion of protection of privacy. I get the impression that she was quite subservient to the wishes of Mr. Garfield and that he was quite controlling in the relationship. She was stubbornly wrong and badly advised in this regard since it was up to her to satisfy the Minister that Mr. Garfield was in fact paying her expenses. She was very emotional when testifying about her relationship with Mr. Garfield and she still was hesitant to disclose his identity. It is very clear that she finds it very difficult to let go even though he has moved on.

[28] It is clear that she and Mr. Garfield would not have had any time to collaborate and discuss their evidence. In spite of this, it is clear that both she and Mr. Garfield agree that he paid her living expenses. I find that the Appellant was credible when she testified that he paid her living expenses and she is corroborated in her testimony

by the evidence of Mr. Garfield in that regard. Even though I have some difficulty in accepting the evidence of Mr. Garfield, since he does have something to hide, he was independent as between the Appellant and the Respondent regarding the issues before the Court. The issue of credibility is therefore resolved in favour of the Appellant.

[29] In spite of the lack of documentary evidence, I find that it is more likely than not that:

- a) Mr. Garfield and the Appellant cohabited together throughout most of 2003 and part of 2004,
- b) Mr. Garfield paid all of the Appellant's living expenses when she could not afford to do so.

Conclusion

[30] For all of the foregoing reasons, these Appeals are allowed and the reassessments are referred back to the Minister for reconsideration and reassessment on the basis that:

- a) The Appellant was living with Mr. Garfield in a common law relationship.
- b) Mr. Garfield was paying all of her living expenses.
- c) The Appellant earned no more income other than what was reported.
- d) No argument was presented to me regarding the late filing penalty pursuant to subsection 162(1) of the *Act* and, therefore, I make no ruling as to those penalties.

Signed at Kingston, Ontario, this 28th day of April 2014.

"Rommel G. Masse"

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Masse D.J.

CITATION: 2014 TCC 118

COURT FILE NO.: 2012-1998(IT)I

STYLE OF CAUSE: VICTORIA DAIMSIS AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: December 9 and 10, 2013

REASONS FOR JUDGMENT BY: The Honourable Rommel G. Masse, Deputy  
Judge

DATE OF JUDGMENT: April 28, 2014

APPEARANCES:

Agent for the Appellant:	Anthony Daimsis
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COUNSEL OF RECORD:

For the Appellant:

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