Docket: 2001-996(IT)G

BETWEEN:

GILLES DUBOIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on September 12, 2002, at Ottawa, Ontario

Before: The Honourable Judge Lucie Lamarre

Appearances:

Counsel for the Appellant: Serge Laurin

Counsel for the Respondent: Gatien Fournier

JUDGMENT

The appeal from the assessment made under section 160 of the *Income Tax Act*, notice of which is dated May 17, 2000, and bears the number 19410, is allowed, with costs, and the said assessment is accordingly vacated.

Signed at Ottawa, Canada, this 11th day of February 2003.

"Lucie Lamarre"

T.C.C.J.

Translation certified true
on this 13th day of May 2009.

François Brunet, Reviser

Citation: 2003TCC16
Date: 20030211
Docket: 2001-996(IT)G

BETWEEN:

GILLES DUBOIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre, T.C.C.J.

[1] This is an appeal from an assessment by which the Minister of National Revenue ("the Minister") claimed $13,952.98 from the Appellant under section 160 of the *Income Tax Act* ("the Act").

[2] In making this assessment, the Minister relied on the facts set out in paragraph 9 of the Reply to the Notice of Appeal, which reads as follows:

> [TRANSLATION]
>
> (a) On about December 16, 1998, Michel Dubois and Louise Beauchamp transferred an immovable property located at 15 Maniwaki Street in the municipality of Cantley, province of Quebec, J8V 3J3 (hereinafter "the Property") to the Appellant.
>
> (b) Michel Dubois and Louise Beauchamp were undivided co-owners of the Property at the time of the transfer; each of them owned 50% of the Property.
>
> (c) Michel Dubois is the Appellant's brother.

(d) At the time of the transfer, the fair market value of the Property was $82,500.

(e) At the time of the transfer, the fair market value of the consideration that the Appellant gave in respect of the Property was $54,594.03.

(f) The total of all the amounts that Michel Dubois was required to pay under the ITA, in the course or in respect of the taxation year during which the Property was transferred or any prior taxation year, was $18,316.25.

(g) The amount by which the fair market value of the Property at the time of the transfer exceeded the fair market value of the consideration given for the Property by the Appellant at that time was $27,905.97.

(h) the share of this difference attributable to Michel Dubois was 50% (his undivided half), that is to say, $13,952.98.

[3] In his Notice of Appeal, the Appellant contests this assessment on the basis that there was never any transfer of ownership, since he was always the Property's true owner. He submits that his brother Michel Dubois, and his brother's wife Louise Beauchamp, were merely frontmen acting on his behalf for the acquisition and financing of the said Property. The Appellant also argues that if there was truly a transfer of ownership to him, it was for "valuable consideration" because he assumed all expenses related to the purchase of the land, as well as the hypothec payments, the property tax, and the other expenses related to the Property.

[4] At the hearing of the appeal, counsel for the Appellant stated that he was no longer disputing that there was a transfer of ownership on December 16, 1998. He is now simply submitting that the Appellant gave consideration equal to the fair market value of the Property on that date. In addition, he challenges the fair market value amount of $82,500 determined by the Minister, who relied on the municipal assessment. The Appellant submits that the Property was transferred twice in the past and that the fair market value is closer to approximately $55,000. There was no expert testimony on fair market value.

[5] The facts can be summarized as follows. The Appellant says that he built a two-unit house for his sister Lucie Dubois, and that he lived in one of the two units. When the residence was sold in 1994, Lucie Dubois and her husband Michel Marinier attributed a $10,375 portion of the proceeds of the sale to the Appellant in payment of his services. This is corroborated by the testimony of Lucie Dubois, who also signed a sworn statement to this effect (Exhibit A-1, tab 12), and by a sworn statement by Michel Marinier (Exhibit A-1, tab 13).

[6] The Appellant allegedly used this amount to pay for the land in issue in May 1994. Since the Appellant was receiving social assistance at the time, he was unable to obtain financing for the construction of a house on the land. He therefore asked his brother Michel Dubois and his sister-in-law Louise Beauchamp to purchase the land on his behalf. The land was accordingly purchased on May 20, 1994, for the sum of $10,375 (Exhibit A-1, tab 5), paid for entirely by the Appellant.

[7] On May 3, 1995, with a view to obtaining bank financing, Michel Dubois requested a professional valuation of the future structure based on the building plans. The amount of the valuation was $85,000 (Exhibit I-1, tab 2). On May 18, 1995, Michel Dubois and Louise Beauchamp obtained a $55,000 hypothec from the Caisse populaire de St-Jean-Bosco ("the Caisse populaire") (Exhibit I-1, tab 3). Michel Dubois testified that he put up two parcels of land that he owned in Gatineau as security. Under an oral agreement, the Appellant took responsibility for having the house built, and agreed to make all hypothec payments of roughly $480 per month. The hypothecary loan was allegedly used to pay a few subcontractors hired by the Appellant for certain work (electrical, plumbing, joints, artesian well digging and cabinetmaking) and to pay for the materials. The Appellant built the remainder of the house with some friends. Based on my understanding of the Appellant's testimony, he estimates that the value of his services was $18,000 to $20,000 (this estimate is based on the cost savings that he realized by building the structure himself as opposed to paying a general contractor to do the work).

[8] The Appellant moved into the house at the end of July 1995, even though it was not completely finished. His brother Michel never lived in the house, and it is alleged that he did not pay any money in connection with it. However, Michel Dubois controlled the amounts disbursed by the Appellant because it was he, Michel Dubois, who took the money from the hypothec account to make the various payments. Indeed, he is the one who purchased materials out of the hypothec account.

[9] On December 4, 1995, Michel Dubois went bankrupt (Exhibit I-1, tab 4). The Appellant says that he had received no advance notice of this. In the statement of affairs of the bankruptcy, Michel Dubois included his undivided share of the Property in his assets. On September 27, 1996, the trustee in bankruptcy, who had seized the Property, transferred it to the Caisse populaire for the value of the hypothec, and the hypothec was then written off (Exhibit A-1, tabs 29 and 32).

[10] In November 1996, the Caisse populaire offered to resell the Property to Michel Dubois and Louise Beauchamp for $63,500 plus all the expenses that the Caisse populaire had had to assume in the interim. These additional expenses consisted of: (1) the value of the rent ($4,400) calculated by the Caisse populaire during the eight-month period in which the Property was in the possession of the trustee but was still being occupied by the Appellant; (2) legal fees of $1,000; and (3) a personal loan of $3,000 to Michel Dubois (Exhibit A-1, tab 31). On November 18, 1996, the Caisse populaire finally sold the Property to Michel Dubois and his wife for the sum of $67,900, and they obtained new financing from the Caisse populaire for $56,500. According to the documents issued by the Caisse populaire, it had agreed to sell the Property for this amount based on its assessment that the value of the Property on a quick sale was $62,000 (Exhibit A-1, tabs 31 and 32).

[11] During that time, the Appellant never left the Property. If my understanding is correct, at all times other than the period in which the Property was seized by the trustee in bankruptcy, the Appellant always made the hypothec payments. He apparently made the payments into a new bank account opened by his brother after the bankruptcy. The Appellant explained that the work was not finished at the time of the bankruptcy. According to a document found at Exhibit A-1, tab 31, the work was 88% completed on April 3, 1996. The Appellant says that he finished the floor-coverings last year, but that the rest is still not finished.

[12] The Appellant's girlfriend moved in with him in the spring of 1997 when she was pregnant. This is apparently when the Appellant began discussions with his brother to have the Property transferred to his name. It appears that there were no discussions between the Appellant and his brother in this regard before that time.

[13] In December 1998, Michel Dubois, who saw a second bankruptcy coming, finally transferred the Property to the Appellant in order to avoid the problems experienced with the first bankruptcy. Hence, on December 16, 1998, the Appellant purchased the Property for $1 and assumed the balance of the hypothec, which was determined to be $54,593.03 (Exhibit I-1, tab 8). In order to do this, the Appellant obtained a suretyship from his sister Micheline Dubois and his brother-in-law Kevin Cardamore (Exhibit I-1, tabs 9 and 10). Michel Dubois and his wife Louise Beauchamp went bankrupt again on March 9, 1999 (Exhibit I-1, tab 11).

[14] The Appellant and his brother explained that they set the consideration in the contract in this manner because the Appellant had assumed the hypothec payments from the outset (with the exception of the supplement borrowed by Michel Dubois following his first bankruptcy in December 1995). However, the Appellant claims that he also assumed all other expenses related to the Property.

[15] In the Appellant's submission, then, the amount of the consideration that he gave is the total of the following amounts: (1) the balance of the $54,593 hypothec; (2) the $10,375 price of the land; (3) the principal that he repaid through his hypothec payments (roughly $400, which is the difference between the initial $55,000 loan and $54,593 hypothec balance as at December 16, 1998; in this regard, see his lawyer's letter, at tab 17 of Exhibit I-1); and (4) the value of the time that he spent building the house, which, according to the figures that he gave during his testimony, is in the range of $18,000 to $20,000. This results in a total of roughly $82,000 to $85,000, which is equivalent to the fair market value of the Property as determined by the Minister. He submits that his valuation of his services is reasonable, considering that the value of the labour, as stated in the professional valuation report adduced by the Respondent (Exhibit I-1, tab 2), appears to be $23,000. Indeed, if one takes the cost-based total value of $88,500 given in the report, and one subtracts from that amount the value of the land ($10,000) and the amount of the hypothec ($55,000), the balance remaining is $23,500, which, according to the Appellant, is what the labour was worth. If one follows the same process with the municipal assessment of $82,500, subtracting $10,000 for the land and $55,000 for the hypothec, the value of the labour is $17,500.

[16] Counsel for the Respondent submits as follows. The consideration set by the parties to the instrument of sale totals $54,593.The Appellant cannot now use testimonial evidence in an attempt to alter the terms of a notarial contract. Moreover, if it is wished to determine the value of the labour, the calculations should start with 88% of the determined value, since the Appellant stated that only 88% of the work had been completed when the Property was transferred on December 16, 1998.

[17] The Appellant replies that, under articles 2863 and 2865 of the *Civil Code of Québec* (C.C.Q), a valid writing may be contradicted by "commencement of proof", which includes an admission or testimony by the adverse party (and, according to the Appellant, this is a reference to the adverse party to the written contract). In this instance, the other party to the contract, namely Michel Dubois and his spouse, acknowledged that the Appellant paid more than the consideration set out in the contract. Thus, the Appellant submits that the consideration that he gave at the time of the transfer of the Property is higher than the consideration set out in the contract of sale.

[18] With respect to the fair market value of the Property, the Appellant submits as follows: the amount of $82,500 used by the Minister, which is the amount of the municipal assessment, is much too high considering the transactions involving the Property in 1996. Specifically, the trustee in bankruptcy agreed to assign the property to the Caisse populaire for the value of the hypothec ($55,000). This gives rise to a $27,500 discrepancy in relation to the Minister's value estimate. In addition, the Caisse populaire agreed to resell the Property to Michel Dubois and his spouse for $67,900. This selling price includes the taking over of rent for eight months by the Caisse populaire, for a value of $4,400, plus $1,000 in legal fees and a $3,000 personal loan to Michel Dubois. This reduces the selling price of the actual Property to $59,500. Accepting a fair market value of $82,500 is tantamount to saying that the Caisse populaire agreed to take a $23,000 loss. Such a discrepancy is not acceptable in the Appellant's view. Furthermore, counsel for the Appellant submits that since the real estate market did not change from 1996 to 1998, it is possible to argue that the fair market value did not change from 1996 to 1998.

[19] To this the Respondent replies that in a bankruptcy, the trustee or the creditor financial institution is willing to take a loss because it is not in its interest to hold the seized property for long. Thus, in the submission of counsel for the Respondent, the trustee and the Caisse populaire determined that the quick realization value of the property was $62,000, and they based their selling prices on that value. The Respondent submits that this quick realization value is not equal to fair market value.

[20] Counsel for the Respondent further submits that counsel for the Appellant is not a valuation expert and is not in a position to determine the value of the property and the extent to which it might have changed from 1996 to 1998. He submits that counsel has not provided sufficient evidence to reverse the presumptions of fact established by the allegations in the Reply to the Notice of Appeal in relation to the fair market value of the Property.

[21] Moreover, counsel for the Respondent submits that it was Michel Dubois who asked for a valuation report in 1995 for the purpose of obtaining financing from the Caisse populaire. According to that valuation, the fair market value of the Property, based on the plans, was $85,000. And even though the construction was not completely finished in 1998, an assessor from the municipality went to the premises and valued the property at $82,500. The Appellant did not contest this valuation. No opposing expert report was tendered in evidence to impugn this value.

[22] For his part, the Appellant, citing *Agostino v. Outremont (Ville D')*, [1999] R.J.Q. 2773 (C.Q.) in this regard, submits that an additional expert report is not necessary where there have been sales of the same property. In his submission, there have been two sales in the instant case: one sale by the trustee, and another sale by the Caisse populaire.

Analysis

[23] The Appellant is no longer disputing that the Property in issue was transferred from Michel Dubois and Louise Beauchamp to the Appellant on December 15, 1998. However, he submits that section 160 does not apply. The provision reads:

> **SECTION 160: Tax liability re property transferred not at arm's length**
>
> (1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to
>
> (*a*) the person's spouse or common-law partner or a person who has since become the person's spouse or common-law partner,
>
> (*b*) a person who is under 18 years of age, or
>
> (*c*) a person with whom the person was not dealing at arm's length,
>
> the following rules apply:
>
> (*d*) the transferee and transferor are jointly and severally liable to pay a part of the transferor's tax under this Part for each taxation year it equal to the amount by which the tax for the year is greater than it would have been if it were not for the operation of sections 74 to 75.1 of this Act and section 74 of the *Income Tax Act*, Chapter 148 of the Revised Statutes of Canada, 1952, in respect of any income from, or gain from the disposition of, the property so transferred or property substituted therefor, and
>
> (*e*) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of
>
> (i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and
>
> (ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act or in respect of the taxation year in which the property was transferred or any preceding taxation year,
>
> but nothing in this subsection shall be deemed to limit the liability of the transferor under any other provision of this Act.

[24] The Appellant submits that the fair market value of the Property at the time of the transfer did not exceed the fair market value, at that time, of the consideration that he gave for the Property.

[25] Indeed, the Appellant is saying that if one accepts the hypothesis made by the Respondent, that the Property's fair market value was $82,500 at the time of the transfer, then that value corresponds to the fair market value of the consideration that he gave for the Property. In the Appellant's submission, the consideration that he gave for the Property is not limited solely to the taking over of the hypothec balance ($54,593) as set out in the contract of sale dated December 16, 1998 (Exhibit I-1, tab 8) because it also includes the cost of the land, which he himself paid ($10,375); the amount of principal that he paid through the hypothec instalments (roughly $400); and the value of his services, which he estimates to be roughly $18,000 to $20,000, since he built the house himself.

[26] For her part, the Respondent acknowledges that the Appellant made hypothec payments on the initial $55,000 loan and on the second loan of $56,500 following Michel Dubois' first bankruptcy (according to the documents adduced by the Appellant and admitted at the beginning of the hearing). However, in her submission, the Appellant cannot argue that he gave greater consideration than what is set forth in the written contract of December 16, 1998, that is to say, $54,593. The argument of counsel for the Respondent is based mainly on the principle that a party to a written contract cannot contradict such a contract by means of testimonial evidence. He submits that the Minister, being a "third person" in relation to the contract of December 16, 1998, is entitled to rely on the written instrument, and to use the amount of the consideration stated in the contract and assess accordingly. In support of her argument, her counsel cites articles 1451 and 1452 C.C.Q., which read as follows:

> **1451.** Simulation exists where the parties agree to express their true intent, not in an apparent contract, but in a secret contract, also called a counter letter.
>
> Between the parties, a counter letter prevails over an apparent contract.
>
> **1452.** Third persons in good faith may, according to their interest, avail themselves of the apparent contract or the counter letter; however, where conflicts of interest arise between them, preference is given to the person who avails himself of the apparent contract.

[27] Counsel for the Respondent also cited cases in which this Court held that there had been a transfer of ownership based on the apparent contract (see *Martel v. Canada*, [1998] T.C.J. No. 595 (QL), *Vigneault v. Canada*, [2001] T.C.J. No. 880 (QL), and *Jennewein v. M.N.R.*, [1990] T.C.J. No. 810 (QL)).

[28] Moreover, articles 2863, 2864, 2865 and 2868 C.C.Q. read as follows:

> **2863.** The parties to a juridical act set forth in a writing may not contradict or vary the terms of the writing by testimony unless there is a commencement of proof.
>
> **2864.** Proof by testimony is admissible to interpret a writing, to complete a clearly incomplete writing or to impugn the validity of the juridical act which the writing sets forth.
>
> **2865.** A commencement of proof may arise where an admission or writing of the adverse party, his testimony or the production of a material thing gives an indication that the alleged fact may have occurred.
>
> . . .
>
> **2868.** Proof by the production of a material thing is admissible in accordance with the relevant rules on admissibility as proof of the object, the fact or the place represented by it.

[29] In my view, it is true that the Minister, being a third person, is entitled, under articles 1451 and 1452 C.C.Q., to rely on the written contract to establish, first, that there was a transfer of ownership, and second, that there was consideration. At first sight, it would also seem logical for the Minister to assess on the basis of the consideration set out in the written contract. However, I am also of the view that the parties to the contract may, to some extent, adduce evidence to demonstrate, as against third persons, that the terms of that contract do not necessarily reflect the entire consideration given in exchange for the property that was transferred. The rule in article 2863 C.C.Q., concerning the inadmissibility of testimony to contradict a valid writing, applies only as between the parties, as shown by the Minister of Justice's comments on the provision, which replaces the former article 1234 of the *Civil Code of Lower Canada* (C.C.L.C.). The Minister of Justice's comments are set out in Baudouin and Renaud, *Code civil du Québec annoté* (Montréal: Wilson & Lafleur, 1996) and read as follows:

BOOK SEVEN
EVIDENCE
TITLE THREE
ADMISSIBILITY OF EVIDENCE AND PROOF
CHAPTER II
PROOF

Art. 2863. The parties to a juridical act set forth in a writing may not contradict or vary the terms of the writing by testimony unless there is a commencement of proof.

1991, c. 64, s. 2863 (1994-01-01)

SOURCES:

- C.C.L.C.: 1234

> **Art. 1234.** Testimony cannot in any case, be received to contradict or vary the terms of a valid written instrument.

. . .

[TRANSLATION]

COMMENTS BY THE MINISTER OF JUSTICE:

In order to liberalize the rules governing evidence, article 2863 makes a significant change to article 1234 C.C.L.C., concerning the prohibition against the use of testimony to contradict a valid writing.

The previous rule has been relaxed in two ways: first, testimony is permitted if there is commencement of proof; and second, testimony is inadmissible only as between the parties.

[30] In addition, Léo Ducharme, in *Précis de la preuve*, 5th ed. (Montréal: Wilson & Lafleur, 1996) (excerpts) (at page 330, paragraph 1107), appears to follow a different approach when he writes that the parties to a juridical act cannot, under the terms of article 2863 C.C.Q., resort to testimony to contradict their own writing in their dealings with third persons. This theory appears to be based on prior case law relating to the former article 1234 C.C.L.C., and in which it was held that the parties to a counter-letter are not permitted, either between themselves or in relation to third persons, to establish simulation by testimonial evidence unless an admission has been made (see *Moreau v. Landry*, [1961] C.S. 337; see also Baudouin and Renaud, *Code Civil du Québec annoté* (Montréal: Wilson & Lafleur, 1995), volume 5, page 86, under article 1451 C.C.Q.).

[31] However, it should be noted that it had been held that in tax matters, under article 1234 C.C.L.C., if the Minister was to be entitled to rely on testimony to contradict or vary the terms of a writing, the same rule would have to apply to the taxpayer. In other words, the same rules of evidence must apply both to the taxpayer and to the tax authorities, in order to ensure the mutuality of the rights of the parties to the trial (see *M.N.R. v. Ouellette and Brett*, [1971] C.T.C. 121 (Exch. Ct.), case comment by M. Régnier & G. Coulombe, "L'art. 1234 en matières fiscales" (1971) 31 R. du B. 472, cited in *Tanguay v. Canada*, [1997] T.C.J. No. 16 (QL)).

[32] In my view, this last rule is especially applicable in this case: this Court is called to ascertain the fair market value of the consideration given by the Appellant for the transferred property. Indeed, subparagraph 160(1)(*e*)(i) of the Act clearly provides that the transferee and transferor are "jointly and severally" (solidarily) liable to pay the amount by which the fair market value of the property at the time it was transferred exceeds the fair market value, at that time, of the consideration given for the property. Thus, what must be determined is the fair market value, at the time of the transfer, of the consideration given. In my view, if the amount of the consideration set out in the written contract does not reflect the fair market value, at the time of the transfer, of the consideration given, the Act would be applied incorrectly if the consideration set out in the contract were used in order to make an assessment under section 160. Although a third person, such as the Minister, is entitled to rely on the written contract under the terms of articles 1451 and 1452 C.C.Q., it is section 160 of the Act that is being raised here and that is the basis for the assessment. Section 160 refers to the fair market value of the consideration given at the time of the transfer, and the Appellant can certainly attempt, using the evidence at his disposal, to show the true amount of the consideration that he gave. In addition, it is my view that the fair market value, at the time of the transfer, of the consideration given, also includes anything that may have been given in consideration for the property up until the date of the transfer.

[33] Thus, while the general rule is that the parties to a juridical act in Quebec cannot use testimony to contradict or vary the terms of the writing that evidences the act, it appears that they may rely on testimony as against third parties, at least in tax matters, or in any case where there is a commencement of proof. Such a commencement of proof can be an admission by the adverse party to the written contract or by that party's mandatary, or the submission of tangible evidence that demonstrates that it is plausible that the statements made in the writing are inaccurate. (See Léo Ducharme, *Précis de la preuve*, *supra*, at page 270, paragraph 915 and at page 331, paragraph 1109.) Thus, if the adverse party's admission, or the tangible evidence make it is plausible that the statements set forth in the writing are inaccurate, there is a commencement of proof. This commencement of proof makes it possible to adduce testimony with a view to proving this.

[34] In the instant case, Michel Dubois and his spouse Louise Beauchamp, the other party to the written contract, each acknowledged in their oral or written testimony that the consideration set out in the contract was not the only consideration. They acknowledged that the Appellant had paid the price of the land, that the Appellant had himself built the house on that land, and that the amount of the hypothecary loan, the payments on which were entirely taken over by the Appellant, had served to purchase the materials and to pay the few subcontractors who had been hired. They also acknowledged that they never occupied the house once it was built, and that the Appellant had always occupied it (this is corroborated by Michel Dubois' income tax returns for the years 1997 and 1998 (Exhibit I-1, tabs 6 and 12), in which he indicated an address other than that of the Property).

[35] In addition, counsel for the Respondent admitted, at the very beginning of the hearing, that the Appellant was the one who always made the hypothec payments on the loan taken out by Michel Dubois and Louise Beauchamp. The Appellant did not have to get the Canada Revenue Agency auditor to testify on this point because the Respondent made an admission on the subject following the documentary evidence adduced by the Appellant. Counsel for the Respondent also acknowledged that Michel Dubois and his spouse had acted as nominees for the Appellant so that he could obtain the financing needed for his house to be built.

[36] It seems to me that, in a sense, these acknowledgments amount to an admission as well as tangible evidence demonstrating the plausibility of the Appellant's claims that the consideration indicated in the written contract does not reflect the total consideration given by the Appellant for the transferred property. Indeed, it is quite implausible that the Appellant would have personally made payments on a hypothecary loan that was used to build a house in which he had no interest and for which he made no other expenditures. In my view, such an admission by the parties in question, combined with some other tangible evidence – specifically, the fact that Michel Dubois and his spouse never lived in the Property, and that the Appellant was the one who occupied it at all times (see also the address of the property in question given by the Appellant in Exhibit I-2, his 1997 income tax return) – opens the door to testimonial evidence by which the Appellant can attempt to prove that the fair market value of the consideration was greater than the value referred to in the contract of December 16, 1998.

[37] The testimony of Lucie Dubois, the Appellant's sister, clearly showed that she had paid the sum of $10,375, which she owed the Appellant, to Michel Dubois in order to enable him to acquire the land in question on the Appellant's behalf. Indeed, the Appellant had helped Lucie Dubois build her house. At the time of the resale, she promised to give him $10,375. The sworn statement of Michel Marinier (Exhibit A-1, tab 13), Lucie Dubois' spouse, shows this as well. The sworn statement of Louise Beauchamp and the testimony of Michel Dubois also clearly show that it is the Appellant who paid for the land, which was worth $10,375. In addition, the sworn statement of Huguette Gaudet (Exhibit A-1, tab 3) includes the fact that she received a first instalment of $100 directly from the Appellant for the purchase of the land that she owned. The statement of the notary Mr. Guindon also shows that he initially opened the file under the Appellant's name (Exhibit A-1, tab 4).

[38] Since the Appellant did not have the credit necessary to borrow funds, he asked his brother and his brother's spouse to purchase the land in order to secure the necessary financing. This is also confirmed by a letter from the Caisse populaire, which approved the financing and which acknowledged that Michel Dubois acted as a frontman for the Appellant in relation to the purchase and financing of the Property in September 1996 (Exhibit A-1, tab 9).

[39] Furthermore, the Respondent has not challenged the contention that, by and large, the Appellant built his house himself. This is confirmed by Michel Dubois, by his spouse Louise Beauchamp, and by Jan Kapsa, the Appellant's neighbour (Exhibit A-1, tab 24).

[40] The Appellant estimated the value of his services at roughly $18,000 to $20,000. He explained that the $55,000 loan served to pay for the materials and the few subcontractors that were hired. He explained that without his involvement in the construction, he would never have been able to build a house with a mere $55,000. I have a hard time seeing how one could disagree with the Appellant when the municipal assessment of the Property, upon which the Respondent relies, was $82,500 at the time of the transfer. If this value is reduced by $10,375, which is the cost of the land, the result is a house value of $72,125, which is $17,125 more than the amount of the initial construction loan. In my view, it is not unreasonable to attribute this difference to the value of the services personally rendered by the Appellant for the construction of the house.

[41] Assuming that the fair market value of the Property at the time of the transfer was the municipal assessment value of $82,500 used by the Minister, I am of the view that the Appellant has shown, on a balance of probabilities, by commencement of proof and solid testimony, that the fair market value of the consideration given for that Property was at least equal to the fair market value of the Property at the time of the transfer.

[42] This finding disposes of the appeal in the Appellant's favour. Consequently, I need not address the second question raised by the Appellant, regarding whether the Minister's determination as to the fair market value of the Property at the time of the transfer was accurate.

[43] For these reasons, I would allow the appeal with costs and vacate the assessment under appeal.

Signed at Ottawa, Canada, this 11th day of February 2003.

"Lucie Lamarre"

T.C.C.J.

Translation certified true
on this 13th day of May 2009.

François Brunet, Reviser

CITATION:	2003TCC16
COURT FILE NO.:	2001-996(IT)G
STYLE OF CAUSE:	Gilles Dubois v. The Queen
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	September 12, 2002
REASONS FOR JUDGMENT BY:	The Honourable Judge Lucie Lamarre
DATE OF JUDGMENT:	February 11, 2003
APPEARANCES:	
For the Appellant:	Serge Laurin
For the Respondent:	Gatien Fournier
COUNSEL OF RECORD:	
For the Appellant:	
Name:	
Firm:	
For the Respondent:	Morris Rosenberg Deputy Attorney General of Canada Ottawa, Canada