

Citation: 2005TCC454  
Date: 20050825  
Docket: 2003-3304(IT)I

BETWEEN:

DOMENICO LASALANDRA,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

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Agent for the Appellant: Linda Fragola  
Counsel for the Respondent: Jeremy Streeter

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### **REASONS FOR JUDGMENT**

**(Delivered orally from the Bench at  
Toronto, Ontario, on October 8, 2004,  
and subsequently revised on August 25, 2005)**

#### **Sarchuk J.**

[1] In computing income for the 2000 taxation year, the Appellant sought a deduction as support payments in the amount of \$9,600 reported by him as having been paid to his former spouse, Lidia Lasalandra (Lidia). In assessing the Appellant, the Minister of National Revenue (Minister) disallowed the deduction of this amount.

[2] Most of the facts before this Court are not in dispute. The Appellant and Lidia have been living separate and apart from each other since October 1992. By Court Order, the Appellant was required to make support payments to her in the amount of \$300 per month for the support of their daughter Rosemaria. This was further confirmed by a Child Support Agreement dated October 3, 1998, executed by the

Appellant and Lidia by virtue of which the Appellant was to make child support payments in the amount of \$300 per month for the child's support (Exhibit A-2).

[3] Pursuant to a Divorce Judgment dated February 8, 1999, the Appellant and Lidia were divorced, effective on March 11, 1999, and the Appellant was ordered, as per the child support agreement, to continue making payments to Lidia in the amount of \$300 per month for the support of Rosemaria, (Exhibit A-1). Neither the child support agreement, nor the Divorce Judgment make any reference to spousal support.

[4] In December 2000, a further agreement was signed by the Appellant and Lidia (Exhibit R-1). It provides that:

WHEREAS:

- (1) The parties hereto were divorced on March 11, 1999.
- (2) The parties entered into an agreement respecting child support on October 3, 1998 and neither party sought spousal support at the time of separation or subsequently.
- (3) Notwithstanding that there was no agreement for spousal support, in recognition of Lidia's illness and inability to work, since January 2000, Domenico has been providing spousal support to Lidia in the amount of \$800 per month.

THE PARTIES AGREE AS FOLLOWS:

1. The said support payments by Domenico are not made as part of a spousal agreement or Order, and are made solely in an effort to assist Lidia for the period during which she is unable to work. **The payments are not meant to be permanent, nor do they imply a requirement on the part of Domenico to provide spousal support for Lidia.**  
(Emphasis added)

[5] The Appellant was represented by Linda Fargola, a mediation counsellor with Ital Canadian Counsellors Inc. In the course of her opening remarks, Ms. Fargola observed that shortly after the execution of the Separation Agreement in 1999, Mrs. Lasalandra became extremely ill, to the point where she became unemployable. She was insulin-dependent and on a waiting list for dialysis. As well, Mrs. Lasalandra had applied for an Ontario Disability Support Pension, but did not qualify. Ms. Fargola further noted that although the Appellant had married and had two other children, in order to be able to continue to support Rosemaria,

he “felt that he had no choice but to take on the responsibility of paying support, being spousal support, plus continuing to pay the child support”. Ms. Fargola also advised the Court that he is continuing to pay the amount and in order to do so, “works full-time as a paramedic with Metro Ambulance, and part-time 3:00 p.m. to 11:00 p.m. with UPS as a shipping and receiver/handler. He’s been doing this now for about four years”. This coupled with the second marriage and another child with severe autism problems, have created an extremely difficult situation for him and has directly affected his health. Ms. Fargola also conceded that because of the existence of the original Family Court Order, it would be difficult for the Tax Court to accept the argument that the amount of \$800 was paid as spousal support, but seeks on the Appellant’s behalf, to have the Court seriously consider it.

[6] The Appellant was initially assessed for the 2000 taxation year on September 11, 2001. Counsel for the Respondent tendered as an exhibit a Statutory Declaration dated February 26, 2002, signed by both Lidia and the Appellant which was intended to confirm to Revenue Canada that spousal support payments were in fact made during the relevant period of time (Exhibit R-2). The relevant paragraph in that Declaration reads:

Pursuant to agreement between us, since January 1<sup>st</sup>, 1999, Domenico Lasalandra has been paying spousal support to me, Lidia Cartolano Lasalandra on a regular monthly basis, at the rate of \$800 per month and for my said child Rosemaria at the rate of \$300 per month.

This document appears to have been prepared and forwarded to Revenue Canada during the assessment period. Counsel for the Respondent submits that the agreement in issue is merely an acknowledgement that the amount was paid to her and, in any event, if it could be considered to be an agreement, it is of no help to the Appellant for the 2000 taxation year because of the operation of subsection 60.1(3). This section allows agreements to cover prior payments, but only payments for the year the agreement is made and the preceding taxation year. With specific reference to Exhibit A-3, counsel noted that it was not an agreement, rather it was a unilateral document reflecting an acknowledgement by Lidia that the amounts were paid. While that document establishes that amounts were paid, it is not an agreement to pay support.

[7] Although the introductory comments by the Appellant’s agent do not constitute sworn testimony, counsel for the Respondent indicated that there was no challenge to their veracity, and I have taken them into consideration in my conclusion.

[8] At the conclusion of the hearing, I made the following comments. I must admit that I was intrigued by the facts before me because in 20 years, I had never heard anything similar to this case. As well, I was unable to find any decisions that were even remotely relevant. I have a great deal of sympathy for the taxpayer because his conduct was most honourable and deserving of substantial consideration. However, the simple fact is that Exhibit R-1, an agreement between the Appellant and Lidia dated December 2000, is a complete and unequivocal acknowledgment that the amounts were not intended to be a support payment and that they were made solely in an effort to help her through a difficult period. Furthermore, this Court does not have the jurisdiction to provide equitable relief even if such a remedy was appropriate in the circumstances. As well, in order to do so, it would be necessary to interpret the relevant provisions of the *Income Tax Act* in a manner not intended by the clear and unambiguous language used by the legislators.

[9] There is not much more that can be said. A case such as this is difficult to deal with because the Appellant appears to be an honest, caring person and was not attempting to cheat on his income tax, which is all too often the case. But as previously stated, this Court does not have the authority to grant the relief sought. Thus, the appeal will have to be dismissed.

Signed at Ottawa, Canada, this 25<sup>th</sup> day of August, 2005.

“A.A. Sarchuk”

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Sarchuk J.

CITATION: 2005TCC454

COURT FILE NO.: 2003-3304(IT)I

STYLE OF CAUSE: Domenico Lasalandra and  
Her Majesty the Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 8, 2004

REASONS FOR JUDGMENT BY: The Honourable Justice A.A. Sarchuk

DATE OF JUDGMENT: October 20, 2004

APPEARANCES:

Agent for the Appellant: Linda Fragola

Counsel for the Respondent: Jeremy Streeter

COUNSEL OF RECORD:

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Firm: N/A

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