

Docket: 2007-3977(IT)I

BETWEEN:

NICKOLAOS SIDERIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 15, 2008, at Toronto, Ontario.

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Sandra Tsui

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the Appellant's 2003 and 2004 taxation years are dismissed, without costs.

Signed at Ottawa, Canada this 23rd day of April 2008.

“Wyman W. Webb”

Webb J.

Citation: 2008TCC237
Date: 20080423
Docket: 2007-3977(IT)I

BETWEEN:

NICKOLAOS SIDERIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] The issue in this case is whether the Appellant is entitled to deduct the amount of \$6,167 paid in 2003 and \$4,421 paid in 2004 as support amounts for the purposes of the *Income Tax Act* ("Act").

[2] The Appellant and his former spouse were married on October 1, 1996. Commencing February 3, 2000 they started to live separate and apart. The Appellant and his former spouse did not have any children. There is a written Separation Agreement dated March 29, 2002 which deals with several matters arising as a result of their marriage. The applicable provision of this Agreement for the purposes of this appeal is paragraph 6.03. This paragraph provides that:

The parties shall also release any claim they have in any other property of the other, including, without limitation, Pensions, Stocks, Bonds, RRSP's, and the wife specifically releases any claim she may have to any interest in the husband's investment property municipally known as 3106 -- 3112 Lakeshore Blvd. West, Toronto, Ontario. In exchange for the aforesaid releases including the transfer of the matrimonial home to the husband, and the release of spousal support, the husband shall pay the wife the sum of \$42,500 in certified funds on or before April 1, 2002, and the wife shall vacate the matrimonial home on or before April 1, 2002.

[3] The Appellant paid the sum of \$42,500 to his former spouse in 2002 from funds that he borrowed from his RRSP by placing a mortgage on the home. The Appellant was required to make monthly payments to his RRSP in repayment of this mortgage amount. The amounts that he deducted in 2003 and 2004 were the annual totals of the monthly payments that he was making to his RRSP as repayment of the loan.

[4] In order for an amount paid to be deductible as a support amount by the Appellant, the payment of the amount must satisfy the conditions in paragraph 60(b) of the *Act*. This paragraph provides as follows:

60. **There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable:**

(b) **the total of all amounts each of which is an amount determined by the formula**

$$A - (B + C)$$

where

A **is the total of all amounts each of which is a support amount** paid after 1996 and before the end of the year by the taxpayer to a particular person, where the taxpayer and the particular person were living separate and apart at the time the amount was paid,

B is the total of all amounts each of which is a child support amount that became payable by the taxpayer to the particular person under an agreement or order on or after its commencement day and before the end of the year in respect of a period that began on or after its commencement day, and

C is the total of all amounts each of which is a support amount paid by the taxpayer to the particular person after 1996 and deductible in computing the taxpayer's income for a preceding taxation year;

(emphasis added)

[5] As a result of the provisions of subsection 60.1(4) of the *Act*, the definitions in subsection 56.1(4) of the *Act* apply in section 60. "Support amount" is defined in subsection 56.1(4) of the *Act* as follows:

"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.

(emphasis added)

[6] Since the amounts paid by the Appellant in 2003 and 2004 were payable to his RRSP and not to his former spouse, these amounts cannot be support amounts. They were not payable to his former spouse. These amounts were not an allowance payable on a periodic basis for the maintenance of his former spouse – they were repayments of the amount that the Appellant had borrowed from his RRSP. The provisions of subsection 60.1(2) of the *Act* would also not be applicable to the payments by the Appellant to his RRSP as these were not paid for the maintenance of his former spouse.

[7] The only amount payable under the Agreement by the Appellant to his former spouse is the lump sum payment of \$42,500 payable in 2002. The Appellant argued that the amount of \$42,500 was paid by him to obtain a release from his former spouse of his obligation to pay her spousal support. His argument was that if he had not paid this amount to her then he would have been obligated to make monthly payments to her under the *Family Law Act* of Ontario. There was, however, no Order or written agreement that provided for any periodic payments by the Appellant to his former spouse and therefore this argument cannot succeed.

[8] In *Trottier v. The Minister of National Revenue*, [1968] S.C.R. 728, Chief Justice Cartwright of the Supreme Court of Canada made the following comments in relation to a situation where a mortgage was granted by a husband to his wife and the husband claimed that the amounts payable under the mortgage were alimony:

I agree that these documents which were prepared contemporaneously and relate to the same transaction should be read together; but, so reading them, it appears that the agreement between the parties was not that the husband should pay his wife a periodic allowance for maintenance and that his agreement to do so should be collaterally

secured by a second mortgage; it was rather a release by her of all her claims for an allowance and the giving by her (in para. 4 of the agreement) of an irrevocable power of attorney to bar her dower in her husband's lands in exchange for a single consideration, the giving of the mortgage for \$45,000. The obligation to make the payments under the mortgage was not dependent on the wife continuing to live. She was free to assign it at any time.

The giving of the mortgage was analogous to the payment of a lump sum by which once and for all the husband was released from liability to support his wife. The mortgage was given because the husband was not in a position to pay the lump sum in cash. While the facts differ from those in *Minister of National Revenue v. Armstrong* [1956] S.C.R. 446, [1956] C.T.C. 93, 56 D.T.C. 1044], the case at bar appears to me to fall within the principle on which that case was decided.

[9] Since the payments under a mortgage granted in favour of a spouse to obtain a release from that spouse of the payer's obligation to make periodic payments for maintenance to that spouse do not qualify as an allowance payable on a periodic basis for the maintenance of that spouse, payments under a mortgage granted in favour of the Appellant's RRSP also do not qualify for the deduction as payments of a periodic allowance for the maintenance of his former spouse. As in *Trottier, supra*, the mortgage was given by the Appellant because he was not in a position to pay the lump sum in cash. Even if the mortgage would have been granted to his former spouse, this would not have been sufficient to allow the Appellant to claim the amounts paid under the mortgage as support amounts. Having the mortgage granted to his RRSP just adds another argument to support the position that the amounts payable under the mortgage are not support amounts.

[10] With respect to the lump sum payment of \$42,500 in 2002, the Supreme Court of Canada in *The Minister of National Revenue v. Armstrong*, [1956] S.C.R. 446 dealt with the issue of whether a payment of a lump sum amount to satisfy an individual's obligation to pay alimony was deductible to the payer. Justice Kellock made the following comments:

In this case the sum of \$4,000 was paid by the respondent "in full settlement" of all payments due or to become due under a decree nisi which obligated him to pay to his former wife the sum of \$100 a month for maintenance of the infant child of the parties until the latter should attain the age of sixteen years. In consideration of this payment the respondent was released by the wife "from any further liability" under the said judgment.

...

In my opinion, the payment here in question is not within the statute. It was not an

amount payable "pursuant to" or "conformément à" (to refer to the French text) the decree but rather an amount paid to obtain a release from the liability thereby imposed.

[11] Justice Locke also made the following comments in the *Armstrong* case:

It was for the purpose of obtaining what purported to be a release of the appellant's liability to maintain his infant child to the extent that it was imposed by the decree nisi that the \$4,000 was paid. It cannot, in my opinion be properly said that this lump sum was paid, in the words of the section, pursuant to the divorce decree. It was, it is true, paid in consequence of the liability imposed by the decree for the maintenance of the infant, but that does not fall within the terms of the section.

[12] Justice Bowman summarized these two Supreme Court of Canada cases in *Pelletier v. The Queen*, [1995] 1 C.T.C. 2327 as follows:

... These judgments set forth that a lump sum which replaces the obligation to make periodic payments is not deductible in computing the payer's income. ...

[13] Assuming that the \$42,500 was, as the Appellant submitted, just in relation to his obligation to pay spousal support (and not for her release of any interest that his former spouse may have had in the matrimonial home or the other assets), it still was a lump sum amount paid to obtain a release of his obligation to make support payments to her. As a result, no part of the \$42,500 paid by the Appellant to his former spouse in 2002 is deductible by the Appellant. The fact that there was no court order or written agreement that stipulated that any periodic payments were to be made by the Appellant to his former spouse, as noted above, is another reason why the amount paid in 2002 was not a support amount.

[14] The appeal is dismissed without costs.

Signed at Ottawa, Canada this 23rd day of April 2008.

“Wyman W. Webb”

Webb J.

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APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Sandra Tsui

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