

Docket: 2008-3359(IT)G

BETWEEN:

DIANA DE SANCTIS-PEDRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal
of *Adamo De Sanctis (2008-3360(IT)G)*
on February 16, 2010, at Toronto, Ontario
and teleconference held on March 1, 2010, at Ottawa, Ontario,

Before: The Honourable M.J. Bonner

Appearances:

Counsel for the Appellant: Ravinder Sawhney

Counsel for the Respondent: Thang Trieu

JUDGMENT

The appeal from the assessment made under subsection 160(1) of the *Income Tax Act*, notice of which is dated February 25, 2008, is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant's liability under subsection 160(1) of the *Act* is \$13,912.05.

Each party shall bear their own costs.

Signed at Toronto, Ontario, this 2nd day of March, 2010.

“M.J. Bonner”

Bonner J.

Docket: 2008-3360(IT)G

BETWEEN:

ADAMO DE SANCTIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal
of *Diana De Sanctis-Pedro (2008-3359(IT)G)*
on February 16, 2010, at Toronto, Ontario
and teleconference held on March 1, 2010, at Ottawa, Ontario,
Before: The Honourable M.J. Bonner

Appearances:

Counsel for the Appellant: Ravinder Sawhney
Counsel for the Respondent: Thang Trieu

JUDGMENT

The appeal from the assessment made under subsection 160(1) of the *Income Tax Act*, notice of which is dated February 25, 2008, is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant's liability under subsection 160(1) of the *Act* is \$13,912.05.

Each party shall bear their own costs.

Signed at Toronto, Ontario, this 2nd day of March, 2010.

“M.J. Bonner”

Bonner J.

Citation: 2010 TCC 118
Date: 20100302
Docket: 2008-3359(IT)G
2008-3360(IT)G

BETWEEN:

DIANA DE SANCTIS-PEDRO
and ADAMO DE SANCTIS,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bonner D.J.

[1] The Appellants appeal from assessments under section 160 of the *Income Tax Act* (the “Act”).

[2] The Appellants are, respectively, the daughter and son of Anthony De Sanctis. The three are therefore ‘related persons’ within the meaning of subsection 251(2) of the *Act* and are deemed by paragraph 251(1)(a) of the *Act* not to deal with each other at arm’s length.

[3] On May 31, 2001, a house which was owned by Anthony De Sanctis and in which he had lived with his son and daughter, was sold. The cash payable by the purchaser on closing was \$27,824.10.

[4] On the same day, a condominium residence was purchased using the \$27,824.10 cash proceeds from the sale of the house. Title to the condominium was conveyed not to Anthony De Sanctis but rather to the Appellants. It was used by Anthony De Sanctis and his children as a residence.

[5] At the time of the transactions, Anthony De Sanctis was liable to pay more than \$69,000.00 under the *Act*.

[6] On February 14, 2008, the Minister of National Revenue assessed the Appellants under section 160 of the *Act* in respect of the transfer of the cash. Each assessment was for \$27,824.10. It is those assessments which are under appeal. The appeals were heard together on common evidence.

[7] Counsel for the Respondent conceded at the commencement of the hearing that the liability of the Appellants under section 160 could not exceed \$13,912.05 each, and that judgment should issue accordingly.

[8] Section 160 of the *Act* provides in part:

160(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) ...

(c) a person with whom the person was not dealing at arm's length, the following rules apply:

(d) ...

(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* in 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*.

[9] The Appellants did not lead any evidence to prove that Anthony De Sanctis did not transfer the net proceeds from the sale of his house to them as had been found by the Minister on assessment. The essence of the position taken by the Appellants at the hearing was that they gave consideration to their father for the transfer of the money. Paragraphs 2 and 3 of the Notices of Appeal read:

2. The family income was low throughout the living arrangements in the house and the condominium. To keep the family afloat, the father and the children made a contractual arrangement such that the children would pay for their living expenses including mortgage payment contributions, hence providing consideration for their vital living arrangement.
3. The enforceable legal agreement enabling the father in part to pay the mortgage and vital expenses from the child's contribution and own expense, amounts to an arm's length relationship disengaging the potential for applying s. 160(1). That section applies only in relationships where there is a tax benefit intended to be obtained by passing the benefit on to a relative with no consideration for such transfer of benefit.

[10] The Appellants both testified that, during the years leading up to the transaction, the income of the family was low, the family was struggling financially and there was an oral arrangement made under which the Appellants contributed as much as possible to the cost of food, shelter and other living expenses of the household. Each stated that the contributions were made by reason of a moral obligation. The amount of the contribution was left to be determined from time to time by the contributor. The contributions were made by payments of cash to the father. No record was kept of the amounts paid. The arrangements could not, in my view, be characterized as enforceable, legal agreements as alleged in the Notices of Appeal. It is obvious that there was no intent to create a binding contractual agreement.

[11] It is not possible to estimate with any reasonable degree of accuracy the amounts paid to Anthony De Sanctis by his children pursuant to the arrangements. Some evidence was led with respect to the earnings of the children during the five years prior to the sale of the house in 2001. This was done in order to demonstrate

the ability of the children to make payments to their father. Diana De Sanctis-Pedros' annual earnings were modest. During 1997, 1998 and 1999, they did not exceed \$6,697. During 2000 and 2001, the annual figures did not exceed \$28,500. Adamo's annual income did not exceed \$8,000 during any of those years. There was no basis in the evidence for making a leap from what was earned by either Appellant to what he or she decided to pay to their father.

[12] Section 160 was enacted to assist in the collection of taxes owing by counteracting the attempts of reluctant taxpayers to put their assets beyond the reach of the Minister by means of a transfer of such assets into friendlier hands for nothing or for consideration less than the market value of the assets transferred.

[13] It is not necessary to consider whether the transfer of the cash from the sale of Anthony De Sanctis' house was a deliberate attempt to prevent the Minister from seizing the money. In *Wannan v. Canada*,¹ Sharlow J. noted that:

3 Section 160 of the *Income Tax Act* is an important tax collection tool, because it thwarts attempts to move money or other property beyond the tax collector's reach by placing it in presumably friendly hands. It is, however, a draconian provision. While not every use of section 160 is unwarranted or unfair, there is always some potential for an unjust result. There is no due diligence defence to the application of section 160. It may apply to a transferee of property who has no intention to assist the primary tax debtor to avoid the payment of tax. Indeed, it may apply to a transferee who has no knowledge of the tax affairs of the primary tax debtor. ...

[14] The arrangements between the Appellants and Anthony De Sanctis whereby they made voluntary payments from time to time to assist with the living expenses of the household can have no bearing upon the application of section 160 to the transfer now in question. Subparagraph 160(1)(e)(i) limits the liability of the transferee to the excess of the fair market value of the property transferred over the consideration given for that property. The evidence given by the Appellants makes it quite clear that the payments which they made were not "... consideration given for the property ..." within the meaning of the subparagraph. The payments made by the Appellants to their father were quite unrelated to the transfer of that

¹ [2003] F.C.J. No. 1693.

property. They were, as described by the witnesses, contributions to the shared cost of running the family household, nothing more.

[15] As already noted, the evidence fails to establish how much money was paid by either of the Appellants to their father. It was not suggested that any attempt was made to keep a record. No doubt this is due to the fact that the Appellants and their father did not intend to form an enforceable agreement requiring either of the Appellants to pay any particular amount at any particular time as consideration for a transfer of property.

[16] In my view, no consideration was given by the Appellants for the transfer by Anthony De Sanctis to them of the proceeds from the sale of his house. Section 160 therefore applies.

[17] The appeals will be dismissed. Success was divided. The parties shall bear their own costs.

Signed at Toronto, Ontario, this 2nd day of March, 2010.

“M.J. Bonner”

Bonner D.J.

CITATION: 2010 TCC 118

COURT FILE NO.: 2008-3359(IT)G and 2008-3360(IT)G

STYLE OF CAUSE: DIANA DE SANCTIS-PEDRO and
ADAMO DE SANCTIS and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 16, 2010

REASONS FOR JUDGMENT BY: The Honourable M.J. Bonner

DATE OF JUDGMENT: March 2, 2010

APPEARANCES:

Counsel for the Appellant: Ravinder Sawhney
Counsel for the Respondent: Thang Trieu

COUNSEL OF RECORD:

For the Appellant:

Name: Ravinder Sawhney

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada