

BETWEEN:

GUY ROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

and

LINDA MORIN,

Joined party.

Appeals heard on June 23, 2010, at Montreal, Quebec.

Before: The Honourable Gerald J. Rip, Chief Justice

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Simon Petit
For the Joined Party:	Ms. Morin herself

JUDGMENT

The appeals from the assessments of Mr. Guy Roy made under the *Income Tax Act* for the 2006 and 2007 taxation years are dismissed.

Mr. Roy may not deduct any amount claimed in computing income for 2006 and 2007 with respect to support payments to Ms. Morin and the Minister of National Revenue shall not include any of these amounts in computing Ms. Linda Morin's income for 2006 and 2007.

Signed at Ottawa, Canada, this 5th day of August 2010.

"Gerald J. Rip"

Rip C.J.

Citation: 2010 TCC 412
Date: 20100805
Docket: 2009-938(IT)I

BETWEEN:

GUY ROY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

and

LINDA MORIN,

Joined party.

REASONS FOR JUDGMENT

Rip, C.J.

[1] Guy Roy has appealed his income tax assessments (Informal Procedure) claiming that he is entitled to deduct child support payments he made to his former spouse, Linda Morin, in 2006 and 2007.

[2] Ms. Morin was added as a party to Mr. Roy's appeals by Court Order of November 12, 2009. The following questions were set forth for determination in the course of the hearing of the appeals:

- (a) Whether Guy Roy may deduct the following amounts in the computation of his income for the 2006 and 2007 taxation years, with respect to support payments paid to Linda Morin:
- | | |
|-------|----------|
| 2006: | \$10,413 |
| 2007: | \$ 9,286 |
- (b) Whether Linda Morin must include the following amounts in the computation of her income for the 2006 and 2007 taxation years, with respect to support amounts received from Guy Roy:
- | | |
|-------|----------|
| 2006: | \$10,413 |
| 2007: | \$ 9,286 |

[3] In his Notice of Appeal Mr. Roy stated that he "did not deduct a lump sum payment of child support after ... [February] 11, 2005. I just [stopped] the child support and [paid] the back child support."

[4] Mr. Roy and Ms. Morin were married on July 14, 1984. A child was born in April 1985. Following a breakdown in the marriage, Mr. Roy and Ms. Morin executed a Consent to Judgment dated June 29, 1987, in the Superior Court of Quebec providing, among other things, that Mr. Roy would make payments of \$50 per week for child support. Mr. Roy and Ms. Morin were divorced effective February 6, 1988.

[5] Mr. Roy worked in the United States from sometime in 1999 until July 2003. He was unable to recall how much or how often he paid his former wife for child support during that period. Ms. Morin said he paid nothing. The only amount she received from him was a money order of \$3,091.86 in 2000. During most of the time Mr. Roy ought to have paid child support Ms. Morin was unemployed and on welfare. Any amount she received in excess of \$3,091.86 was from welfare. The Ministère de l'Emploi, de la Solidarité sociale et de la famille (the "Ministère") was subrogated into Ms. Morin's rights to collect arrears from Mr. Roy.

[6] When the child reached the age of majority Mr. Roy petitioned the Superior Court to amend certain provisions of the Agreement to annul any payment arrears and to annul any support payments. Mr. Roy and Ms. Morin agreed on October 15, 2004 to cancel the child support payments as of October 15, 2004 and Mr. Roy agreed to pay Ms. Morin \$85 per week for payments in arrears. Mr. Roy's view of the matter is that he did not sign a "new" agreement on October 15, 2004 but that he had simply "stopped payment" and was paying arrears pursuant to the original agreement of 1987.

[7] Also on October 15, 2004 Mr. Roy obtained the consent of the Ministère for the Ministère to stop collecting arrears of support until November 12, 2004. As of January 1, 2005, Mr. Roy's current charges and arrears for support payments aggregated \$51,491.02.

[8] On February 11, 2005 Mr. Roy, Ms. Morin and the Attorney General of Quebec, acting for the Ministère, agreed to settle amounts of arrears as follows:

- a) Mr. Roy would pay an amount of \$11,800 for arrears of child support payable to the Ministère; and

- b) Mr. Roy would pay an amount of \$18,500 to Ms. Morin to settle the arrears for support payment to February 11, 2005.

[9] Mr. Roy agreed to pay the total of \$30,300 by monthly payments of \$500 per month from February 11, 2005 to May 31, 2005 and \$700 per month commencing June 1, 2005 until payment of the \$30,300 was made in full.

[10] As of February 11, 2005, the arrears due on the support payments were \$50,641.02.

[11] In 2005 Mr. Roy made payments of \$10,413 and in 2006 he made payments of \$9,286 as arrears. Mr. Roy insists that the payments he made in 2005 and 2006 were for arrears of payments he was obliged to make under the original agreement of 1987. The Crown's position is that these payments were made pursuant to the February 11, 2005 agreement. The agreement made in 1987 predated the amendments to the *Income Tax Act* (the "Act"), namely paragraphs 60(b), 56(1)(b) and section 56.1,¹ which took effect in 1997.

[12] Before May 1997, amounts paid on a periodic basis pursuant to a written agreement or order for child support were deductible by the payor in computing income for tax purposes but the recipient of the funds had to include the amount for child support in computing income. The *Act* was amended so that amounts paid for child support after April 1997 are neither deductible nor included in income. Generally, however, if a child support payment was made pursuant to an agreement or order made before May 1997, the amounts paid are deductible from, and the amounts received are included in, computing income.

[13] Under the legislation that became effective in 1997, the key date of an agreement or order is its "commencement day", as defined in subsection 56.1(4) of the *Act*, which applies to subsection 60.1 for the purpose of paragraph 60(b). The "commencement day" is the day an agreement comes into effect for purposes of sections 60 and 60.1². Where the order or agreement is made after April 1997, the commencement day is the day it is made, but where an order or agreement is made before May 1997 and is varied and no election is made — and Mr. Roy and Ms. Morin made no election — the commencement day, or effective day, is the day

¹ See Appendix to these reasons.

² See s.s. 60.1(4). See the reasons of my colleague Boyle J. in *Pooran v. Canada*, 2007 TCC 584, [2007] T.C.J. No. 397, for a considered analysis of "commencement day" and deductibility of child support payments.

on which the first payment of the varied amount is required to be made. Where a subsequent or new agreement or order is made after April 1997 which changes the total support amounts payable to the recipient by the payer, the commencement day is the day of the subsequent or new order or agreement.

[14] It is clear from the material provided to me that Mr. Roy's obligation to pay arrears in 2006 and 2007 was pursuant to, and in accordance with, the agreement of February 11, 2005. Before that agreement was executed Mr. Roy was under no obligation to pay the Ministère \$11,800 and Ms. Morin \$18,500. Before the agreement of 2005, Mr. Roy was liable to Ms. Morin under the agreement of 2004. And before the agreement of 2004, he was liable to her under the agreement of 1987. The agreement of February 11, 2005 released Mr. Roy from his obligations from previous agreements. It was because he was in default of the 1987 agreement that he had to agree to make arrangements in 2005 for payment of monies he owed. The agreement of February 11, 2005 was a new agreement.

[15] In my view the obligation of Mr. Roy to pay the arrears originated in the agreement of 2005 and the date of that agreement is the "commencement day" for purposes of these appeals. Hence, Mr. Roy may not deduct any amount claimed in computing income for 2006 and 2007 with respect to support payments to Ms. Morin and the Minister of National Revenue shall not include any of these amounts in computing her income for 2006 and 2007.

[16] The appeals are dismissed.

Signed at Ottawa, Canada, this 5th day of August 2010.

"Gerald J. Rip"

Rip C.J.

APPENDIX

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

[...]

(b) [spousal or child] support -- 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;

56(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

[...]

b) [spousal or child] support -- the total of all amounts each of which is an amount

60. Peuvent être déduites dans le calcul du revenu d'un contribuable pour une année d'imposition les sommes suivantes qui sont appropriées :

...

b) Pensions alimentaires [époux/conjoint de fait et enfant] -- le total des montants représentant chacun le résultat du calcul suivant :

$A - (B + C)$
où :

A représente le total des montants représentant chacun une pension alimentaire que le contribuable a payée après 1996 et avant la fin de l'année à une personne donnée dont il vivait séparé au moment du paiement,

B le total des montants représentant chacun une pension alimentaire pour enfants qui est devenue payable par le contribuable à la personne donnée aux termes d'un accord ou d'une ordonnance à la date d'exécution ou postérieurement et avant la fin de l'année relativement à une période ayant commencé à cette date ou postérieurement,

C le total des montants représentant chacun une pension alimentaire que le contribuable a payée à la personne donnée après 1996 et qui est déductible dans le calcul de son revenu pour une année d'imposition antérieure;

56(1) Sans préjudice de la portée générale de l'article 3, sont à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition :

...

b) Pension alimentaire [époux ou enfant] -- le total des montants représentant chacun le

determined by the formula

$A - (B + C)$

where

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

B is the total of all amounts each of which is a child support amount that became receivable by the taxpayer from 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 received after 1996 by the taxpayer from the particular person and included in the taxpayer's income for a preceding taxation year;

56.1(1) For the purposes of paragraph 56(1)(b) and subsection 118(5), where an order or agreement, or any variation thereof, provides for the payment of an amount to a taxpayer or for the benefit of the taxpayer, children in the taxpayer's custody or both the taxpayer and those children, the amount or any part thereof

(a) when payable, is deemed to be payable to and receivable by the taxpayer; and

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(b) when paid, is deemed to have been paid to and received by the taxpayer.

résultat du calcul suivant :

$A - (B + C)$

où :

A représente le total des montants représentant chacun une pension alimentaire que le contribuable a reçue après 1996 et avant la fin de l'année d'une personne donnée dont il vivait séparé au moment de la réception de la pension,

B le total des montants représentant chacun une pension alimentaire pour enfants que la personne donnée était tenue de verser au contribuable aux termes d'un accord ou d'une ordonnance à la date d'exécution ou postérieurement et avant la fin de l'année relativement à une période ayant commencé à cette date ou postérieurement,

C le total des montants représentant chacun une pension alimentaire que le contribuable a reçue de la personne donnée après 1996 et qu'il a incluse dans son revenu pour une année d'imposition antérieure;

56.1(1) Pour l'application de l'alinéa 56(1)b) et du paragraphe 118(5), dans le cas où une ordonnance ou un accord, ou une modification s'y rapportant, prévoit le paiement d'un montant à un contribuable ou à son profit, au profit d'enfants confiés à sa garde ou à la fois au profit du contribuable et de ces enfants, le montant ou une partie de celui-ci est réputé :

a) une fois payable, être payable au contribuable et à recevoir par lui;

b) une fois payé, avoir été payé au contribuable et reçu par lui.

CITATION: 2010 TCC 412

COURT FILE NO.: 2009-938(IT)I

STYLE OF CAUSE: GUY ROY
v. HER MAJESTY THE QUEEN
and LINDA MORIN

PLACE OF HEARING: Montreal, Québec

DATE OF HEARING: June 23, 2010

REASONS FOR JUDGMENT BY: The Honourable Gerald J. Rip, Chief Justice

DATE OF JUDGMENT: August 5, 2010

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Simon Petit
For the Joined Party:	Ms. Morin herself

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada