

Docket: 2008-3628(GST)G

BETWEEN:

EVA BANKS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on common evidence with the appeal of  
*Eva Banks (2008-3627(IT)G)*  
on June 24, 2010, at Vancouver, British Columbia.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Craig C. Sturrock  
Counsel for the Respondent: Victor Caux

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**JUDGMENT**

The appeal from the assessment made under the *Excise Tax Act* dated February 20, 2008 in respect of the Appellant's 2004 taxation year is dismissed with costs in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 23rd day of September 2011.

« Réal Favreau »

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Favreau J.

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Favreau J.

Citation: 2011 TCC 415  
Date: 20110923  
Dockets: 2008-3627(IT)G  
2008-3628(GST)G

BETWEEN:

EVA BANKS,

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and

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Respondent.

### **REASONS FOR JUDGMENT**

Favreau J.

[1] These appeals under the General Procedure were heard on common evidence as the assessments made under the *Income Tax Act* and the *Excise Tax Act* resulted from the same transaction.

[2] On February 20, 2008, the Minister of National Revenue (the “Minister”) assessed the appellant:

- a) for \$91,961.86 in respect of the transfer of property to her within the meaning of section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) as amended (the “*ITA*”) and accordingly issued on that date a notice of assessment bearing number 45367; and
- b) for \$117,943.67 in respect of the transfer of property to her within the meaning of subsection 325(1) of Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the “*ETA*”), and accordingly issued on that date a notice of assessment bearing number A116569.

[3] The transfer of property referred to above was made on or about July 16, 2004, from James Alexander Mitchell (“Mr. J. Mitchell”) in the form of a cheque for \$224,631.08 from Richard Mayhue, General Trust, made payable to the Mr. J. Mitchell and deposited to the appellant’s account.

### The Issue

[4] The issue in these appeals is whether the tax debtor, Mr. J. Mitchell, transferred property to the appellant when he endorsed a cheque in the amount of \$224,631.08 and gave it to her and if so, what was its value.

[5] At the hearing, the allegation that the appellant was acting only as a trustee has been abandoned and the parties agreed that the appellant was not dealing at arm’s length with Mr. J. Mitchell, and that the appellant was not living in a common law relationship with Mr. J. Mitchell.

### The Facts

[6] Mr. J. Mitchell is an accountant and businessman who resides in Sooke, British Columbia. Over the years, his business ventures have not been successful and he had to borrow money from his family and friends, including from Ms. Banks, to meet his financial obligations.

[7] According to the witness for the respondent, Mr. Monroe, a collection agent for the Canada Revenue Agency, (“CRA”), many companies owned or controlled by Mr. J. Mitchell have been delinquent in filing their income tax returns and their Goods and Services Tax (“GST”) returns, and failed to make payroll deductions and GST remittances, but CRA has been entirely unsuccessful in collecting any money directly from Mr. J. Mitchell.

[8] As stated in the appellant's trial brief, the following facts were established through the testimony of the appellant and that of Mr. J. Mitchell:

#### 549471 B.C. Ltd. (“549”)

- (a) In 1997, Mr. Mitchell and three of his business partners and a third party, Gary Brooks, planned to purchase a certain parcel of real estate in Port Renfrew (the “Port Renfrew Property”), for an approximate price of \$150,000.

- (b) Around 1998, Mr. Mitchell and his three partners agreed to pay approximately 1/3 of the land purchase price by way of cash and Gary Brooks agreed to pay the remaining 2/3. Mr. Mitchell and his three partners were to hold an approximate 1/3 interest in the venture and Gary Brooks was to hold an approximate 2/3 interest. The Port Renfrew Property was to be held by a corporation named 549471 B.C. Ltd. ("549"), the shares of which were to be held in proportions commensurate with each parties respective financial interest in the venture.
- (c) Gary Brooks required a loan to fund his 2/3 portion of the purchase price, which he could not get without security. Mr. Mitchell and his three partners permitted Mr. Brooks to mortgage the Port Renfrew Property in order to secure his loan to purchase the Port Renfrew Property.
- (d) In order to obtain this mortgage (the "1<sup>st</sup> Mortgage"), the lender, Coast Capital Savings Credit Union, required title to the Port Renfrew Property to be put into Mr. Brooks' name. Mr. Mitchell and his partners agreed to allow that on the condition that Mr. Brooks' hold the Port Renfrew Property in trust for 549, and not encumber it or otherwise deal with it except in accordance with 549's instructions.
- (e) In the succeeding years, Mr. Brooks failed to make some of the payments on the 1<sup>st</sup> Mortgage and, in fact, further encumbered the Port Renfrew Property with a second mortgage.

#### Jim Mitchell's Early Inheritance

- (f) Jim Mitchell has one brother, Ross Mitchell, and prior to 1998 expected to share equally in his parents' estate.
- (g) By 1998, Jim Mitchell had received a significant amount of money from his parents to help him fund his various business expenses. In 1998, his father having already died, Mr. Mitchell's mother arranged for his brother, Ross, to inherit the bulk of her estate.
- (h) Accordingly, in 1998 Mrs. Mitchell transferred her personal residence and her investment portfolio to joint ownership between herself and Ross Mitchell.
- (i) The one material asset that was excluded from this arrangement was a vacant lot, (the "Mitchlu Property"), owned by Mrs. Mitchell that was located across the street from her residence. In 1998 Mrs. Mitchell transferred this lot to a newly formed corporation, Mitchlu Enterprises Inc., the shares of which were owned 50% by Jim Mitchell and 50% by Ross Mitchell.

- (j) In the result, Jim Mitchell would no longer inherit the bulk of his mother's estate, but would still have an interest in the vacant lot.
- (k) Jim Mitchell accepted this arrangement as fair given the amount of money that he had already received.
- (l) In other words, by 1998 Jim Mitchell had already used up his fair share of any expected inheritance, so his brother was to receive the bulk of his mother's property of material value when she died, save a 50% interest in the Mitchlu Property, which he held through the ownership of 50% of the shares of Mitchlu.

#### Foreclosure on Port Renfrew Property

- (m) In 2001, Coast Capital Savings Credit Union intended to foreclose on the 1<sup>st</sup> Mortgage.
- (n) In order to prevent the proposed foreclosure, 549 would have to raise the funds to pay out the 1<sup>st</sup> Mortgage.
- (o) With his brother's permission, Jim Mitchell arranged to borrow against the Mitchlu Property and have Mitchlu use the proceeds to fund a loan to 549 which, in turn, would use the proceeds to pay out the 1<sup>st</sup> Mortgage.
- (p) Mitchlu's proposed lender, the Royal Bank of Canada, would not grant a mortgage on a property owned by Mitchlu and required that the Mitchlu property be put into an individual's name before the mortgage would be granted. In March of 2002, Mitchlu transferred legal title to the Mitchlu Property to Jim Mitchell to hold in trust for Mitchlu in order to obtain the mortgage. Jim Mitchell executed a declaration of trust in this regard.
- (q) 549's real estate lawyer, Michael B. Ellis, advised that it would be best for 549 to assume the 1<sup>st</sup> Mortgage from Coast Capital Savings Credit Union rather than paying it out. The rationale was that by assuming the 1<sup>st</sup> Mortgage, 549 would retain its equity in the Port Renfrew Property owned by 549 up to the value of the 1<sup>st</sup> Mortgage in priority to the lender who held the second mortgage on the 549 Property.
- (r) Mr. Ellis further advised that 549 could not own the 1<sup>st</sup> Mortgage in its own name without collapsing the 1<sup>st</sup> Mortgage. Accordingly, 549 used Jim Mitchell as its nominee to assume the 1<sup>st</sup> Mortgage. Mr. Mitchell thus held the 1<sup>st</sup> Mortgage as trustee for 549. Mr. Mitchell executed a declaration of trust in this regard.

Eva Banks Helps Her Friend

- (s) Ms. Banks is a close personal friend of Jim Mitchell and was a long time friend of his mother's.
- (t) Ms. Banks used approximately \$100,000 of her own funds to support Mr. Mitchell's business ventures up to 2003.
- (u) In 2003, Ms. Banks agreed to further help Jim Mitchell by assuming ownership of his various business ventures. Since then they have worked together to try to make the business ventures profitable.
- (v) Ross Mitchell lent to Ms. Banks approximately \$230,000 in March 2004 and approximately \$230,000 in June 2004. Ms Banks used the proceeds from these loans chiefly to fund the business ventures that they were now both involved in. Ms. Banks also used some of the funds to cover her personal expenses.
- (w) Ross Mitchell acquired the funds for these loans from his disposition of his mother's personal residence and investments that he acquired by right of survivorship (joint tenancy) on his mother's death. At that time these assets belonged to Ross Mitchell and his loan to Ms. Banks was made of his own accord and not pursuant to any legal obligation to Ms. Banks or Jim Mitchell.

Eva Banks Seeks Security For Her Loans

- (x) Certain of the funds that Ms. Banks had forwarded to the various business enterprises were through her wholly-owned corporation, Future Finishing Ltd.
- (y) Ms. Banks was aware of the mortgages that 549 had granted in respect of the Port Renfrew Property and wanted 549 to transfer the 1<sup>st</sup> Mortgage to Future Finishing Ltd. to secure the loans that Future Finishing Ltd. was making to 549.
- (z) Jim Mitchell retained Richard Mayhue, a real-estate lawyer in Sooke, British Columbia to assist in transferring the 1<sup>st</sup> Mortgage to Future Finishing Ltd.
- (aa) Future Finishing Ltd. transferred \$225,137.28 to Mr. Mayhue, who wrote a cheque from his trust account to Jim Mitchell in the amount of \$224,631.08. The difference between these amounts being retained by Mr. Mayhue to cover his fees and disbursements.

- (bb) The amount of the cheque was based upon a calculation of the precise amount of the 1<sup>st</sup> Mortgage outstanding at that time.
- (cc) Jim Mitchell accepted the cheque, transferred the 1<sup>st</sup> Mortgage to Future Finishing Ltd. and then endorsed the cheque and delivered it to Ms. Banks, all on behalf of 549.
- (dd) Ms. Banks cashed the cheque and used the proceeds to pay out various accounts on behalf of Future Finishing Ltd.

### Position of the Appellant

[9] The appellant alleged that Mr. J. Mitchell did not transfer any property to her and that the aforesaid cheque in the amount of \$224,631.08 from Richard Mayhue related to the balance owing on a mortgage assignment held by Mr. J. Mitchell in trust for 549 and that Mr. J. Mitchell had no interest whatsoever in the said funds. The said cheque was issued as consideration for the transfer of the said mortgage from 549 to Future Finishing Ltd. The appellant further alleged that Mr. J. Mitchell did not divest himself of any funds whatsoever in endorsing the said cheque.

[10] The appellant further alleged that even if this Court was to determine that a legal interest in the property has been transferred, this Court has to make a determination of the value of this legal interest. In the situation, where only the legal title is transferred, the full value of the beneficial interest remains with the beneficiary, and thus the value of the legal interest is nil.

### Position of the Respondent

[11] The respondent contends that there was a transfer of \$224,631.08 from Mr. J. Mitchell to Ms. Banks and alleged the fact that:

- (i) no documentary evidence has been submitted confirming the two loans of \$230,000 each made by Ross Mitchell to Ms. Eva Banks or to Sooke Office Services Ltd., a company in which Ms. Eva Banks acts as nominee;
- (ii) no documentary or oral evidence has been submitted confirming the source of the funds used by Ross Mitchell to make the loans to Ms. Eva Banks. The two cheques represent approximately 50% of the residue of the estate of Mr. J. Mitchell's mother; and
- (iii) the transfer of the mortgage from 549 to Future Finishing Ltd. has not been supported or confirmed by any assignment agreement, corporate



resolutions or accounting records, except for the cheque made to Mr. Mayhue and the cheque made to Mr. J. Mitchell and the testimonies of Ms. Eva Banks and Mr. J. Mitchell.

[12] According to the respondent, the purpose of the series of transactions was to defraud CRA and to allow Mr. J. Mitchell to avoid paying the income tax and the GST that were due.

#### Review of the Documentary Evidence

[13] The appellant submitted a copy of the following documents:

- (i) a letter dated January 11, 2002, from Michael B. Ellis which confirms the intention of 549 to pay out the 1<sup>st</sup> Mortgage held by Coast Capital Savings Credit Union;
- (ii) a General Form of Assignment dated March 6, 2002 executed by Coast Capital Savings Credit Union by virtue of which all of its right, title and interest in and to claims arising out from British Columbia Court action number 01-2469, in the Victoria Registry, have been assigned to Mr. J. Mitchell in consideration of the sum of \$114,800 paid to it;
- (iii) a Land Title Act Form 27 respecting the transfer of the 1<sup>st</sup> Mortgage to Mr. J. Mitchell executed on March 3, 2002;
- (iv) a declaration of trust dated March 28, 2002, in respect of the 1<sup>st</sup> Mortgage beneficially owned by 549 and held by Mr. J. Mitchell as trustee;
- (v) a Land Title Act Form A dated March 28, 2002, respecting a transfer of the Mitchlu Property having a market value of \$134,000 from Mitchlu to Mr. J. Mitchell;
- (vi) a declaration of trust dated March 28, 2002, in respect of the Mitchlu Property beneficially owned by Mitchlu and held by Mr. J. Mitchell as trustee;
- (vii) a Land Transfer Act Form A dated May 30, 2003 respecting a transfer of the Mitchlu Property from Mr. J. Mitchell back to Mitchlu;
- (viii) a handwritten loan account regarding a loan bearing an interest rate of 12% from Ms. Banks to 549 showing a balance of nil on April 14, 2004, with an annotation that the loan has been paid by Future Finishing Ltd.;
- (ix) a bank statement of Future Finishing Ltd. for the period from April 8, 2004 to May 10, 2004, showing, among other things, a loan payment of \$95,099.22 on April 13, 2004, and a cheque in the amount of \$19,453.59;

- (x) a payment slip dated April 13, 2004, from the Royal Bank respecting the payment by Future Finishing Ltd. in the amount of \$95,099.22 against a mortgage registered against the Mitchlu Property;
- (xi) a cheque dated April 14, 2004, made to the order of Ms. Eva Banks in the amount of \$19,453.19 respecting a loan that she made to 549;
- (xii) a handwritten calculation of the outstanding amount (\$224,336.88) of the 549 Mortgage as at July 9, 2004;
- (xiii) a bank statement of Sooke Office Services Ltd. for the period from June 30, 2004 to July 30, 2004, showing, among other things, a bank draft in the amount of \$225,137.28 dated July 12, 2004;
- (xiv) a bank draft dated July 12, 2004, of Sooke Office Services Ltd. made payable to the order of "Richard Mayhue in trust";
- (xv) a handwritten accounting of Ms. Eva Banks' use of proceeds of funds received from "Richard Mayhue in trust";
- (xvi) a statement of Investment Account of Ross Mitchell and Janet Helen Mitchell as joint tenants for 1998;
- (xvii) the Form A Freehold Transfer in respect of Janet Helen Mitchell's vacant lot dated March 28, 2002;
- (xviii) the Form A Freehold Transfer in respect of Janet Helen Mitchell's residence dated April 18, 2002;
- (xix) a statement of Investment Account of Ross Mitchell and Janet Helen Mitchell as joint tenants for the period ending February 28, 2004; and
- (xx) an Electronic Land Title Search in respect of the 549 Property dated November 18, 2009, showing, among other things, the registration of a mortgage by Future Finishing Ltd. on September 23, 1998.

### Legislative Provisions

[14] Subsection 160(1) of the *ITA* reads as follows:

**Tax Liability re property transferred not at arm's length** — 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 was 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 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 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.

[15] Subsection 325(1) of the *ETA* reads as follows:

**Tax liability re transfers not at arm's length** — Where at any time a person transfers property, either directly or indirectly, by means of a trust or by any other means, to

- (a) the transferor's spouse or common-law partner or an individual who has since become the transferor's spouse or common-law partner,
- (b) an individual who was under eighteen years of age, or
- (c) another person with whom the transferor was not dealing at arm's length,
- (d) the amount determined by the formula

$$A - B$$

where

A is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property, and

B is the amount, if any, by which the amount assessed the transferee under subsection 160(2) of the *Income Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

- (e) the total of all amounts each of which is
  - (i) an amount that the transferor is liable to pay or remit under this Part for the reporting period of the transferor that includes that time or any preceding reporting period of the transferor, or
  - (ii) interest or penalty for which the transferor is liable as of that time,

but nothing in this subsection limits the liability of the transferor under any provision of this Part.

[16] For the purpose of these appeals, the relevant language and law is the same between subsections 160(1) of the *ITA* and 325(1) of the *ETA*. The following four conditions must be met for subsections 160(1) of the *ITA* and 325(1) of the *ETA* to apply:

- (i) there must be a transfer of property;
- (ii) the transferor and the transferee are not dealing at arm's length;
- (iii) there must be no consideration (or inadequate consideration) flowing from the transferee to the transferor; and
- (iv) the transferor must be liable to pay an amount under the *ITA* or the *ETA* (as the case may be) in or in respect of the year when the property was transferred or any preceding year.

Only the first and third conditions are in issue in these appeals.

[17] The purpose of subsections 160(1) of the *ITA* and 325(1) of the *ETA* is to provide the CRA with a collection mechanism when tax debtors transfer assets to non-arm's length parties where the fair market value of the assets transferred exceed the fair market value of the consideration given by the transferee for the transfer of the assets.

### Analysis

#### Was there a transfer of property?

[18] There is no doubt in my mind that the \$224,631.08 cheque endorsed by Mr. J. Mitchell and delivered to the appellant constituted a transfer of property for the purposes of subsections 160(1) of the *ITA* and 325(1) of the *ETA*.

[19] The meaning of the word "transfer" under the *ITA* has been examined by the federal courts on many occasions. The following definition in *David Fasken Estate v. Minister of National Revenue*, [1948] Ex. C.R. 580, is generally accepted:

The word "transfer" is not a term of art and has not a technical meaning. It is not necessary to a transfer of property from a husband to his wife that it should be made in any particular form or that it should be made directly. All that is required is that the husband should so deal with the property as to divest himself of it and vest it in

his wife, that is to say, pass the property from himself to her. The means by which he accomplishes this result, whether direct or circuitous, may properly be called a transfer. ...

[20] The \$224,631.08 cheque was drawn from Richard Mayhue's trust account and was made payable to the order of James Alexander Mitchell without any indication that the cheque was not to be received in his personal capacity and without any indication concerning the purpose or the reasons why the cheque was made. Mr. J. Mitchell dealt with the cheque as if it was his own property. He endorsed it and delivered it to Ms. Banks. Mr. J. Mitchell knew very well why the cheque had been made to his order, for what purpose and where the money was coming from.

[21] In his testimony, Mr. J. Mitchell did not give any plausible explanation as to why he did not endorse the cheque in favour of 549 instead of endorsing it and delivering it to Ms. Banks and as to why he did not comply with the terms and conditions of the declaration of trust dated March 28, 2002. He was the only signatory of that declaration of trust; he should have remembered its existence.

[22] Mr. Richard Mayhue, the real estate lawyer retained by Mr. J. Mitchell to carry on the transfer of the 1<sup>st</sup> mortgage from 549 to Future Finishing Ltd. has suggested, according to Ms. Banks' testimony, to use separate cheques instead of only book entries. Mr. Mayhue, who knew all the facts surrounding the said transaction, did not testify at the hearing. He could have explained why the \$224,631.08 cheque had been issued and why it had been made to the order of Mr. J. Mitchell personally. More importantly, he could have confirmed if the transfer of the 1<sup>st</sup> Mortgage from 549 to Future Finishing Ltd. had been executed as originally planned.

[23] The only evidence filed in Court concerning the transfer of the 1<sup>st</sup> Mortgage from 549 to Future Finishing Ltd. are:

- (i) the \$225,137.28 cheque from Sooke Office Services Ltd. (the cheque was not from Future Finishing Ltd.) to Richard Mayhue in trust;
- (ii) the \$224,631.08 cheque referred to above;
- (iii) a bank statement of Sooke Office Services Ltd.; and
- (iv) a handwritten calculation of the outstanding amount of the 1<sup>st</sup> Mortgage as at July 9, 2004.

This shows a clear lack of evidence. No corporate resolutions, no accounting records, no general form of assignment and no transfer of mortgage Form 27 have been filed. No witness confirmed the actual date of the transfer. In these circumstances, I have a

great difficulty accepting the testimony of the witnesses, Mr. J. Mitchell and Ms. Eva Banks, that the \$224,631.08 cheque made payable to Mr. J. Mitchell was to achieve a transfer of the 1<sup>st</sup> Mortgage from 549 to Future Finishing Ltd. Furthermore, I do not see any connection between that cheque and the declaration of trust.

Was there adequate consideration flowing from the transferee to the transferor?

[24] It has been admitted by the parties that Ms. Banks deposited in her own bank account the \$224,631.08 cheque and that she used the proceeds to pay out personal expenses and expenses of various companies in the group. She had full enjoyment of all the proceeds. At the time of hearing, there was no evidence of any claims or actions taken by 549 or any creditor of 549 against Ms. Eva Banks or Mr. J. Mitchell for the recovery of funds transferred to Ms. Banks.

[25] The alleged purpose of the endorsement and delivery of the \$224,631.08 cheque to Ms. Banks was to repay funds that she had advanced. Here again, the evidence is not clear as to what were the precise amounts advanced by Ms. Banks and to whom, to 549 or to Mr. J. Mitchell directly? The evidence revealed that Ms. Banks had, in the past, advanced funds to 549, namely \$22,000 on March 28, 2002, to avoid the foreclosure of the Port Renfrew Property. The outstanding balance of that loan as of April 14, 2004 (\$19,453.59) has been repaid in full by Future Finishing Ltd., together with the balance of the Royal Bank mortgage on the Mitchlu Property (\$95,099.22). The funds used to make these payments came from a loan of \$120,000 from Sooke Office Services Ltd.

[26] Even if I were to accept the fact that Ms. Banks has advanced funds of her own and funds coming from Ross Mitchell through Sooke Office Services Ltd. to support Mr. J. Mitchell's business ventures, there is no evidence how much money was owed to Ms. Banks by 549 or by Mr. J. Mitchell when the \$224,631.08 cheque was endorsed by Mr. J. Mitchell and delivered to her. Moreover, if funds were owed by 549 or by Mr. J. Mitchell, there is no evidence to whom they were owed; whether it be to Ms. Banks, Future Finishing Ltd. or to Sooke Office Services Ltd.?

[27] Considering the foregoing, I conclude that there was effectively a transfer from Mr. J. Mitchell to the appellant and that there was no consideration flowing from the appellant to Mr. J. Mitchell.

[28] The appeals are dismissed with costs.

Signed at Ottawa, Canada, this 23rd day of September 2011.

« Réal Favreau »

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Favreau J.

CITATION: 2011 TCC 415  
COURT FILE Nos.: 2008-3627(IT)G and 2008-3628(GST)G  
STYLE OF CAUSE: Eva Banks v. Her Majesty the Queen  
PLACE OF HEARING: Vancouver, British Columbia  
DATE OF HEARING: June 24, 2010  
REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau  
DATE OF JUDGMENT: September 23, 2011

APPEARANCES:

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