

Docket: 2011-1256(IT)I

BETWEEN:

WALTER YOURKIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 29, 2011, at Toronto, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Rita Araujo

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the assessment under the *Income Tax Act* of the Appellant's 2009 taxation year is dismissed.

Signed at Ottawa, Canada, this 6th day of December 2011.

“G. A. Sheridan”

Sheridan J.

Citation: 2011TCC557
Date: 20111206
Docket: 2011-1256(IT)I

BETWEEN:

WALTER YOURKIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan J.

[1] The Appellant Walter Yourkin, is an 80-year-old former factory worker who retired from Lever Brothers Limited (“Unilever”) in 1997. Around that time, his marriage of nearly 40 years was ending. Litigation resulted in, among other things, his having to pay spousal support and the division of his Unilever pension benefits between Mr. Yourkin and his ex-wife. The issue is whether amounts paid from the Unilever pension plan directly to his ex-wife are a “support amount” within the meaning of subsection 56.1(4) so as to be deductible under the *Income Tax Act*.

[2] As far as Mr. Yourkin is concerned, no distinction can be drawn between the support payments he made out of his employment income while employed by Uniliver and his ex-wife’s share of the Uniliver pension benefits paid upon his retirement. Mr. Yourkin has made this argument, without success, before the Tax Court of Canada in respect of other taxation years [*Yourkin v. R.*, 2003 TCC 958 (McArthur, J.); 2006 TCC 178 (Paris, J.); 2008 TCC 686 (Margeson, J.)] each appeal involved the same facts as the present matter. These were succinctly set out by McArthur, J. in the appeal of the assessment from the 2001 taxation year:

2 ... The Appellant and his former spouse Phyllis Yourkin, were separated in August 1994. From May 1995, the Appellant's employer, Lever Brothers Limited, deducted \$1,500 per month from the Appellant's pay checks for spousal support. An

equalization of net family property was implemented by Judgment of the Ontario Court (General Division) on January 13, 1997. In the Judgment, the family property included the Appellant's entitlement to a Unilever Canada Pension. Phyllis Yourkin was awarded 42.5% of the Appellant's pension. The Judgment relieved the Appellant from payment of spousal support after his retirement in January 1997. His former spouse received \$13,191 annually directly from the Unilever Canada Pension, which was part of her division of the family property. The Appellant and Phyllis Yourkin were taxable on their respective amount. The Appellant did not pay tax on the \$13,587 he was attempting to deduct.

3 Justice Walsh in his Judgment relied on Minutes of Settlement and ordered:

3. THIS COURT ORDERS pursuant to the *Family Law Act* that spousal support shall be paid or payable on the following terms:

a. Subject to what is set out below, the obligation of the defendant to pay to the plaintiff spousal support shall terminate as of January 1, 1997.

b. The defendant is to provide forthwith to the plaintiff reasonable particulars of any further employment income to be received by him thereafter, and immediately on such notification, the plaintiff is to advise the defendant of all income being then received by her.

...

4. THIS COURT ORDERS pursuant to the Family Law Act that the directions set out below are to be followed with respect to defendant's pension with Unilever Canada Pension Plan:

a. The plaintiff shall be entitled to receive a share of all retirement benefits payable to the defendant under the Unilever Canada Pension Plan ("the pension plan") which is registered under the Ontario Pension Benefits Act registration No. C000322. Her share of the benefits, calculated as set out below, amounts to 42.5% of \$29,362.58 per annum, or \$1,039.92 per month.

...

h. The plaintiff shall indemnify the defendant and save him harmless from the tax liability attributable to her share of the pension and the benefits thereunder (or for the payment of the compensation equivalent to her share of the pension) and there shall at the request of either party be an accounting

annually to determine the amount of tax paid by the defendant with respect to the plaintiff's share of the pension (or compensation payments) which amount shall be payable by the plaintiff to the defendant forthwith upon determination and notice to the plaintiff.

[3] Mr. Yourkin's argument is that he never signed the Minutes of Settlement¹ upon which Justice Walsh based his Judgment² ("Walsh Judgment") and it is, therefore, not binding on him. In essence, he seeks to refute the Minutes of Settlement upon which the Walsh Judgment was based in the hope of rendering deductible the Unilever pension benefits paid directly to his ex-wife. Mr. Yourkin directed the Court to the signature which appears on page 5 of the Minutes of Settlement, insisting that it was neither his nor made on his behalf. However, Mr. Yourkin admitted on cross-examination that he was represented by counsel during the time leading up to the Walsh Judgment. He provided no evidence to substantiate his bare claim that he had not authorized his lawyer to execute the Minutes of Settlement.

[4] Even if I could accept that Mr. Yourkin had not agreed to the Minutes of Settlement, this Court has no jurisdiction to overturn the judgment of another court³.

[5] The Walsh Judgment treats the payment of spousal support and the division pension benefits separately in paragraphs 3 and 4, respectively (as quoted by McArthur, J., above). Turning first to the pension benefits, it is clear from the terms of the Minutes of Settlement and the Walsh Judgment that they formed part of the property eligible for division following the breakdown of the Yourkins' marriage. The effect of the Walsh Judgment was to sever the pension so that when payable, the proportionate share of each spouse would be paid directly to Mr. Yourkin and his ex-wife, respectively. Each received it as income in his or her own hands. In 2009, Mr. Yourkin duly reported the approximately \$19,000 he had received during that taxation year; it can be inferred from his testimony, Exhibit A-7 and his claim of \$13,587 in spousal support deductions that, in all probability, his ex-wife received that amount in 2009 in respect of her share of the pension benefits. Each was responsible for the payment of tax on the income received.

¹ Exhibit R-1, Tab 4.

² Exhibit R-1, Tab 3.

³ *R. v. Wilson*, [1983] 2 S.C.R. 594.

[6] As for spousal support, the Walsh Judgment provided for the termination of Mr. Yourkin's obligation to pay such amounts as of January 1, 1997. He admitted there were no further court orders or written agreements requiring him to pay spousal support. Thus, even leaving aside the pension benefits analysis the \$13,587 claimed in 2009 does not fall within the definition of "support amount" under subsection 56.1(4) of the *Act* because it was not paid "under an order of a competent tribunal or under a written agreement".

[7] In all the circumstances, the \$13,587 amount is not deductible as spousal support under subsection 60(b) of the *Act*. The appeal is dismissed.

Signed at Ottawa, Canada, this 6th day of December 2011.

"G. A. Sheridan"

Sheridan J.

CITATION: 2011TCC557

COURT FILE NO.: 2011-1256(IT)I

STYLE OF CAUSE: WALTER YOURKIN AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 29, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: December 6, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rita Araujo

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
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