

Docket: 2012-1652(GST)I

BETWEEN:

MAHMOOD AFLAKI ALIMORADI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on common evidence with the appeals of  
Seyfollah Sadeghi (2012-1653(GST)I) and  
Mostafa Sadeghi Marmari (2012-1654(GST)I)  
on May 17, 2013, at Toronto, Ontario.

Before: The Honourable Justice Paul Bédard

Appearances:

Agent for the Appellant:	Prakash Kkhanna
Counsel for the Respondent:	Alisa Apostle Louis L'Heureux

---

**JUDGMENT**

The appeal with respect to an assessment under Part IX of the *Excise Tax Act* dated April 20, 2010, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of June 2013.

“Paul Bédard”

---

Bédard J.

Docket: 2012-1653(GST)I

BETWEEN:

SEYFOLLAH SADEGHI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on common evidence with the appeals of  
Mahmood Aflaki Alimoradi (2012-1652(GST)I) and  
Mostafa Sadeghi Marmari (2012-1654(GST)I)  
on May 17, 2013, at Toronto, Ontario.

Before: The Honourable Justice Paul Bédard

Appearances:

Agent for the Appellant:	Prakash Kkhanna
Counsel for the Respondent:	Alisa Apostle Louis L'Heureux

---

**JUDGMENT**

The appeal with respect to an assessment under Part IX of the *Excise Tax Act* dated April 20, 2010, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of June 2013.

“Paul Bédard”

---

Bédard J.

Docket: 2012-1654(GST)I

BETWEEN:

MOSTAFA SADEGHI MARMARI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on common evidence with the appeals of  
Mahmood Aflaki Alimoradi (2012-1652(GST)I)  
and Seyfollah Sadeghi (2012-1653(GST)I)  
on May 17, 2013, at Toronto, Ontario.

Before: The Honourable Justice Paul Bédard

Appearances:

Agent for the Appellant:	Prakash Kkhanna
Counsel for the Respondent:	Alisa Apostle
	Louis L'Heureux

---

**JUDGMENT**

The appeal with respect to an assessment under Part IX of the *Excise Tax Act* dated April 20, 2010, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of June 2013.

“Paul Bédard”

---

Bédard J.

Citation: 2013 TCC 204  
Date: 20130625  
Dockets: 2012-1652(GST)I  
2012-1653(GST)I  
2012-1654(GST)I

BETWEEN:

MAHMOOD AFLAKI ALIMORADI,  
SEYFOLLAH SADEGHI,  
MOSTAFA SADEGHI MARMARI,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Bédard J.

[1] These three appeals were heard on common evidence. The appellants have appealed from assessments made against them under subsection 325(1) of the *Excise Tax Act* (the “Act”). It is admitted by the appellants that at all relevant times they were persons related to 900766 Ontario Inc. (the “Corporation”) within the meaning of the *Income Tax Act*.

[2] On or about January 16, 2007, each of the appellants received a cheque in the amount of \$29,767.25 from the Corporation. On February 19, 2007, an amount of \$10,199.42 was distributed to each of the three appellants. Finally, on March 25, 2008 a further \$1,474.07 was distributed to each of the three appellants, who were the three shareholders of the Corporation at all material times. At all material times, the Corporation was a goods and services tax (“GST”) registrant and was carrying on commercial activities. The time the above-mentioned transfers took place, the

Corporation was liable to remit under the Act GST amounting to not less than \$227,661 plus interest and penalties, as shown in Schedule A to the Reply to the Notice of Appeal. The Corporation did not remit this amount to the Receiver General. As of April 20, 2010, the date of the Notice of Assessment, the Corporation owed not less than \$383,082.54, which comprised:

- i) net tax of \$227,661.60,
- ii) penalties of \$56,089.08, and
- iii) interest of \$99,331.86,

as indicated in the Schedule A to the Reply to the Notice of Appeal.

[3] The conditions to be met for subsection 325(1) of the Act to apply are the following:

- i) there must be a transfer of property,
- ii) the transferor and transferee must not be 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 Act for the reporting period that includes the time at which the property was transferred or any preceding reporting period.

[4] Essentially, the appellants argue that they were improperly assessed by the Minister under subsection 325(1) of the Act since:

- i) the amount of \$124,322.22 distributed amongst them was "the repayment" of their loans to the Corporation;
- ii) at the time the Corporation transferred \$124,322.22 to the appellants, it was not liable to remit any amounts to the Receiver General for Canada under subsections 225(1) and 228(2) of the Act since the Corporation never received notices of the assessments listed in Schedule A to the Reply to the Notice of Appeal.

[5] I wish to point out immediately that the Minister of National Revenue (the "Minister") did not allege in the Reply to the Notice of Appeal that there was no

consideration or inadequate consideration flowing from the appellants to the Corporation. Consequently, I am of the opinion that the burden of proof regarding consideration rested on the respondent.

[6] Only Mr. Mostafa Sadeghi Marmari testified for the appellants. Essentially, he testified that the Corporation never received notices of the assessments listed in Schedule A to the Reply to the Notice of Appeal and that the above-described transfers of assets by the Corporation to the appellants were “repayment” of their loans to the Corporation.

[7] In the present cases, it is useful to make certain general comments on the credibility of Mr. Mostafa Sadeghi Marmari, who, I repeat, was the only person to testify in support of the three appeals. I emphasize that the appellants filed no document in support of their position. In my view, it would be hazardous to give Mr. Mostafa Sadeghi Marmari’s testimony any credence without any conclusive corroborating evidence in the form of documentation or testimony by credible witnesses.

[8] Mr. Mostafa Sadeghi Marmari’s answers were vague, imprecise and ambiguous. All too often in cross-examination he was unable to provide any valid explanations regarding the Corporation’s operations and financial statements; he constantly repeated that only the Corporation’s outside accountant, who, I note again, did not testify, could have provided valid explanations. Not only were Mr. Marmari’s answers generally vague and imprecise, they were, on essential issues, contradicted by documentary evidence. For example, he testified that the transfers of assets by the Corporation were made to repay the appellants’ advances to the Corporation. However, the documentary evidence filed by the respondent (Exhibits R-1, R-2 and R-3) established clearly that at the relevant time the appellants were not creditors of the Corporation since at all material times the corporation’s only creditor was the Bank of Montreal. For those reasons, I attach little probative value to Mr. Mostafa Sadeghi Marmari’s testimony.

### Conclusion

[9] In the present cases, the respondent has satisfied me that the transfers of assets to the appellants by the Corporation can only be characterized as dividends or winding-up dividends. The appellants, on the other hand, failed to satisfy me that the Corporation did not receive notices of the assessments listed in Schedule A to the Reply to the Notice of Appeal.

[10] Several decisions of this Court, the Federal Court of Appeal and the Supreme Court of Canada have clearly established that subsection 325(1) of the Act applies to a dividend so that payment of a dividend constitutes a transfer of property within the meaning of section 325 (i.e., a transfer without consideration).

[11] Consequently, I am of the opinion that the four conditions for subsection 325(1) of the Act to apply are met in the present cases.

[12] For the above reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 25th day of June 2013.

“Paul Bédard”

---

Bédard J.

CITATION: 2013 TCC 204

COURT FILE NO.: 2012-1652(GST)I, 2012-1653(GST)I,  
2012-1654(GST)I

STYLE OF CAUSE: MAHMOOD AFLAKI ALIMORADI,  
SEYFOLLAH SADEGHI,  
MOSTAFA SADEGHI MARMARI v.  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 17, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: June 25, 2013

APPEARANCES:

Agent for the Appellants: Prakash Kkhanna

Counsel for the Respondent: Alisa Apostle  
Louis L'Heureux

COUNSEL OF RECORD:

For the Appellants:

Name:

Firm:

For the Respondent: William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada