

BETWEEN:

JANICE CASOLINO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on August 24, 2020, at Toronto, Ontario  
Before: The Honourable Justice Ronald MacPhee

Appearances:

Counsel for the Appellant: Charles Haworth  
Jeffrey Radnoff  
Counsel for the Respondent: Tony Cheung

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JUDGMENT

The Appeal from the assessment dated October 13, 2013, made under subsection 325(1) of the *Excise Tax Act* is allowed and the matter is referred back to the Minister of National Revenue for reassessment on the basis that the shortfall in consideration on the transfer of 7850 Sixteenth Sideroad, Township of King, Ontario (“the Property”) was only \$11,354, being Mr. Edlpidio Casolino’s \$196,147 half interest of the fair market value of the Property less the \$184,793 mortgage as a result of the JEMM line of credit, which was assumed by the Appellant.

Costs are payable by the Respondent to the Appellant in accordance with the Tariff.

Signed at Ottawa, Canada, this 3rd day of September 2020.

“R. MacPhee”

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MacPhee J.

Citation: 2020 TCC 99  
Date: 20200903  
Docket: 2015-5214(GST)G

BETWEEN:

JANICE CASOLINO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### REASONS FOR JUDGMENT

MacPhee J.

[1] This Appeal relates to an assessment dated October 13, 2013, under subsection 325(1) of the *Excise Tax Act*, RSC, 1985, c.E-15, as amended (“the Act”).

[2] The assessment arose as a result of the transfer by Mr. Edlpidio Casolino (“Mr. Casolino”), of his half interest in the matrimonial home, to the Appellant at a time in which he had an outstanding tax debt in the amount of \$69,174.90. The Appellant was his spouse at the time of transfer, and continues to be.

#### I. FACTS:

[3] Two witnesses testified at trial, the Appellant and her husband. The vast majority of the necessary facts in this case were not in dispute and agreed upon by the parties. Various documents pertaining to the mortgage on the matrimonial home were agreed to by the parties and entered into evidence for the truth of their contents.

[4] The Appellant and her husband have been married for 40 years. Together they raised three children. For the relevant years, the parties resided at 7850 Sixteenth Sideroad, Township of King, Ontario (“the Property”). Until the date of transfer on February 11, 2003, the parties held title to the Property jointly. The agreed value of the Property as of February 11, 2003 was \$630,000.

A. Debt in question:

[5] Mr. Casolino was the sole owner of 706177 Ontario Inc. operating as JEMM painting (“JEMM”), which was a commercial painting business. In order to run his business, Mr. Casolino required a line of credit. One was arranged through the Bank of Montreal (“BMO”). The evidence at trial was that the responsibility to pay this line of credit was JEMM’s first, and if JEMM was unable to, the debt was the responsibility of Mr. Casolino. Given that Mr. Casolino was the sole owner of JEMM, and that this evidence was not contested by the Respondent, I accept this to be the case.

[6] On December 15, 1999 a second mortgage (“the Second Mortgage”) in the amount of \$125,000 was registered on the title to the Property. This mortgage was put in place to guarantee the payment of the operating line of credit of JEMM. On August 25, 2000, the Second Mortgage was increased to \$192,500. Again, this amount was incurred solely on behalf of JEMM’s commercial painting business. With this larger debt, the parties again both confirmed the agreement that the line of credit was the responsibility of JEMM first and then Mr. Casolino. This loan was also acquired from BMO.

[7] Unfortunately JEMM, and subsequently Mr. Casolino, were unable to pay the amounts owing on the line of credit. Prior to February 2003, BMO insisted that the line of credit be paid. The parties testified that this caused considerable stress on them both. They were also incurring penalties on the loan, adding to their stress.

[8] As a result the parties employed a mortgage broker in the hopes of arranging a new mortgage, to in part pay off the line of credit to BMO. On February 6, 2003, the Property was remortgaged for \$422,500.

[9] As part of this new arrangement, the matrimonial home was transferred to the Appellant’s name alone. This occurred on February 11, 2003. The parties testified that this was a requirement of the bank. This new loan was with Firstline Mortgage. I will refer to these two events as one set of transactions, specifically as the February 6, 2003 transaction.

[10] The transfer of the Property led to the assessment against the Appellant. Specifically, the fact that Mr. Casolino, while owing a debt to Canada Revenue Agency, transferred his share of the matrimonial home to his wife. The only issue raised by the parties at trial was whether the Appellant provided consideration for the transfer of the Property, and if so, in what amount.

II. ANALYSIS:

[11] As noted, there is a sole issue before the Court, whether at the time of transfer of the Property to the Appellant, the fair market value (“the FMV”) of the Property transferred to the Appellant exceeded the fair market value of the consideration provided by the Appellant.

[12] Subsection 325(1) of the *Act* reads as follows:

**325. (1) 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,

the transferee and transferor are jointly and severally liable to pay under this Part an amount equal to the lesser of

(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.<sup>1</sup>

[13] It is therefore necessary to first determine the fair market value of consideration provided by the Appellant, if any, for the transfer into her name of her husband's share of the family home, which was previously held jointly between the couple.

[14] The Minister in assessing the Appellant, took the primary position that the Appellant provided no consideration as part of this transaction. At trial, the Respondent takes the position that the FMV of the benefit realized by the Appellant as part of this transaction can be calculated as follows:

FMV of home	\$630,000
Joint mortgage on home	\$237,706
Business line of credit	<u>\$184,793</u>
Total equity in home	\$196,147

Therefore, the half equity transferred by Mr. Casolino to the Appellant was \$98,073.50. As this exceeds the amount of taxes owing by Mr. Casolino of \$69,174.90, the Appeal should be dismissed.

[15] I do not agree. The Respondent's calculation attributes half the debt of JEMM to the Appellant. While there is no doubt that this debt was secured by way of a mortgage against the Property, the facts do not support this allocation.

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<sup>1</sup> For subsection 325(1) of the *Act* to apply, four conditions must be met: (*Livingston v. R.*, 2008 FCA 89 (F.C.A.) at para 17, 2008 D.T.C. 6233 (Eng.) (F.C.A.)

i) The transferor must be liable to pay or remit an amount under the Act for the reporting period that includes the time of transfer or any preceding reporting period;

ii) There must be a transfer of property, either directly or indirectly, by means of a trust or by any other means whatever, from the transferor to the transferee;

iii) The transferee must either be the transferor's spouse or common-law partner at the time of transfer or a person who has since become the person's spouse or common-law partner, be a person who was under 18 or be a person with whom the transferor was not dealing at arm's length; and

iv) The fair market value of the property transferred must exceed the fair market value of the consideration given by the transferee at the time of transfer.

[16] In reviewing this transaction, I find it most helpful to look at the Appellant's position prior to the February 6, 2003 transaction, and her financial position after the February 6, 2003 transaction.

[17] At the outset of the transaction, the following was the Appellant's state of affairs:

FMV of home	\$630,000
Joint mortgage on home	\$237,706
Business line of credit	<u>\$184,793</u>
Total equity in home	\$207,501

[18] What should be noted above is that the \$184,793 debt was a debt that was first the responsibility of JEMM, and then the responsibility of Mr. Casolino. It would be incorrect, given the evidence at trial, to reduce the Appellant's ownership of the home by way of the debt owed by JEMM, despite the fact that BMO had secured that debt by way of a mortgage against the home. The evidence therefore indicates that the Appellant's ownership in the home at the outset of the transaction was \$196,147<sup>2</sup>.

[19] As part of the February 6, 2003 transaction, two key events occurred. First, Mr. Casolino transferred the Property, which was previously held jointly, into the Appellant's name. Second, the Appellant took on sole responsibility to ensure that the business line of credit was paid. The Appellant assuming the responsibility of the JEMM loan was solely for the benefit of Mr. Casolino. I note that prior to the remortgage of the Property, his share of the family home provided him with sufficient equity to pay this amount.

[20] The overall result of this transaction for the Appellant was as follows:

FMV of home	\$630,000
Mortgage, solely in the name of the Appellant	<u>\$422,500</u>

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<sup>2</sup> \$392,294 x .5 = \$196,147

Total equity in home

\$207,500

[21] Therefore, as a result of the transactions with her husband, whereby the Appellant assumed the debts of JEMM and also received her husband's share of the family home, she provided consideration of \$184,793. This consideration was her personally taking responsibility of the JEMM loan. The Appellant received in return her husband's share of the family home.

III. CONCLUSION:

[22] The Appeal is allowed and the matter referred back to the Minister of National Revenue for reassessment on the basis that the shortfall in consideration on the transfer of the Property was only \$11,353, being Mr. Casolino's \$196,147 half interest of the FMV of the home less the \$184,793 mortgage as a result of the JEMM line of credit. The Appellant paid off the JEMM line of credit as part of the new \$422,000 mortgage, which became her responsibility.

[23] Cost are payable by the Respondent to the Appellant in accordance with the Tariff.

Signed at Ottawa, Canada, this 3rd day of September 2020.

“R. MacPhee”

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MacPhee J.

CITATION: 2020 TCC 99

COURT FILE NO.: 2015-5214(GST)G

STYLE OF CAUSE: JANICE CASOLINO AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 24, 2020

REASONS FOR JUDGMENT BY: The Honourable Justice Ronald MacPhee

DATE OF JUDGMENT: September 3, 2020

APPEARANCES:

Counsel for the Appellant: Charles Haworth  
Jeffrey Radnoff

Counsel for the Respondent: Tony Cheung

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