

Docket: 2013-4861(IT)I

BETWEEN:

MICHEL DESCHENES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 19, 2014 at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Anne-Marie Boutin

JUDGMENT

In accordance with the attached Reasons, the appeal from the assessment of October 16, 2012, with respect to the 2011 taxation year is dismissed without costs.

Signed at Toronto, Ontario, this 29th day of August 2014.

“Gaston Jorré”

Jorré J.

Citation: 2014 TCC 261
Date: 20140829
Docket: 2013-4861(IT)I

BETWEEN:

MICHEL DESCHENES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Jorré J.

[1] In his income tax return for 2011, the appellant deducted \$21,609 in legal expenses.

[2] The Minister of National Revenue disallowed the deduction in the assessment and the appellant is appealing from the assessment.

[3] This involves a very long story with many facts, but the material facts are not complicated.

[4] The appellant's father, Guy Deschênes, died in 1997. The provisions of Mr. Deschenes' will included the following paragraph:

[TRANSLATION]

I give and bequeath as a particular legacy to my spouse Ghislaine Gagné my Registered Retirement Savings Plan (RRSP) to and for her own use absolutely upon my death. However, upon my death my spouse shall buy a Registered Retirement Income Fund (RRIF) the beneficiaries of which shall be my spouse Ghislaine Gagné and, upon her death, my children afterward.

[5] The appellant believed that according to this provision, Ghislaine Gagné was obliged to buy a registered retirement income fund with some characteristics that may be found with an insurance company.

[6] Ms. Gagné was of the opinion that she could choose any registered retirement income fund.

[7] The practical consequence of this disagreement is that if the appellant was correct, Ms. Gagné would have been restricted in the amounts that she could receive and, potentially, when Ms. Gagné died, the appellant and Mr. Deschênes's other children would receive more money.

[8] This dispute was before the courts for a long time. The courts, including the Quebec Court of Appeal in 2007, agreed with Ms. Gagné; she can freely choose any registered retirement income fund she wants. In 2008, the fund chosen by Ms. Gagné received the money from Mr. Deschenes' RRSP.

[9] However, the saga did not end there since, in 2010, the appellant and his two brothers brought another action in the Superior Court. This action resulted in the decision *Deschênes c. Services financiers Dundee ltée*, 2011 QCCS 5954. The reasons were rendered on October 31, 2011.

[10] The details of this saga are set out in the reasons of *Deschênes*.

[11] The legal expenses incurred in 2011, at issue, were used in this litigation. The amount of \$21,609 is one third of the legal expenses incurred. The appellant's two brothers paid the rest of the expenses.

[12] Upon reading the judgment, it is clear that the appellant was trying to debate, in another way, the same issue of the interpretation of the will that had already been decided. The estate also presented a claim for damages.

[13] The appellant did not file the first page of the motion to institute proceedings in evidence,¹ but the Superior Court reproduced it at paragraph 56 of *Deschênes*:

[TRANSLATION]... The two main findings sought in the motion to institute proceedings are reproduced below:

¹ Exhibit A-4 (for identification) tab 4, which is in evidence.

ORDER Dundee to return to Ghislaine \$1,040,090 (ONE MILLION FORTY THOUSAND NINETY DOLLARS), the amount that was received initially so that Ghislaine Gagné may specify for others a RRIF insurance contract that will create, once it is concluded, an irrevocable claim between the promisor Dundee and the beneficiaries Deschênes that at no point will become part of the applicant's patrimony all in accordance with the agreement P-12 being a contract having the effect of *res judicata*;

ORDER Dundee to pay the Succession of Guy Deschênes \$122,000 (ONE HUNDRED AND TWENTY-TWO THOUSAND DOLLARS) to reimburse the additional work of the liquidator following the Hallée Judgment, which amount is to be established from June 1, 2008, to the end of these proceedings;

[14] The appellant was no more successful in 2011 than in the past. I would also note that his appeal to the Quebec Court of Appeal was also dismissed following motions by the respondents.²

[15] It is clear that the purpose of the expenses incurred in 2011 by the appellant was to establish that he had certain rights in the succession. There was also a second purpose: the succession was seeking damages.

[16] Under these circumstances, I do not see how these could be deductible expenses.

[17] In order for an expense to be deductible, two general conditions, among others, are set out in paragraphs 18(1)(a) and (b) of the *Income Tax Act*:

18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of:

(a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

(b) an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part;

[18] This is certainly not a business expense.

² *Deschênes c. Services financiers Dundee ltée*, 2012 QCCA 395.

[19] A right of any kind whatever is property within the meaning of the Act.³

[20] The appellant submits that his purpose was to preserve property, specific rights, because, according to the appellant, these rights have existed since his father died. However, the courts have clearly decided that this was not correct; the appellant does not have the rights he claimed. A person cannot preserve property that he never owned.

[21] Consequently, the legal expenses incurred in 2011 were incurred in a new attempt to establish rights that the appellant claims to have.

[22] It would not be different if it were litigation where Ms. Gagné claimed that a will covered lot A and the appellant claimed that the will included additional rights, lot B in addition to lot A.

[23] Even if it were an expense for the purpose of earning income from a property, these are capital expenses, establishing rights, and they are not deductible pursuant to paragraph 18(1)(b).

[24] Moreover, I do not see how, under these circumstances, that they could be considered expenses incurred by the taxpayer for the purpose of gaining or producing income from the property within the meaning of paragraph 18(1)(a). The purpose was to obtain rights that could have the consequence that upon the death of Ms. Gagné, the appellant would receive more money. Inheriting more money upon the death of Ms. Gagné is not income from property.⁴

[25] Where the expenses were incurred to obtain damages payables to the Succession of Guy Deschênes to reimburse the additional work of the liquidator, they are not expenses incurred for the purpose of earning income from a property. Furthermore, a payment to the succession and not the taxpayer was being sought.

[26] The appellant relied heavily on *65302 British Columbia Ltd. v. Canada*,⁵ a case involving whether an egg producer can deduct the over-quota levy. The circumstances are very different from those here and I do not see how *65302 British Columbia* could help the appellant.

³ See the definition of “property” in section 248 of the Act.

⁴ It is receiving the property; similarly, if the heir receives lot B in the above example, receiving lot B is not considered income.

⁵ [1999] 3 S.C.R. 804.

[27] The appellant also relied on *Nadon v. Canada*⁶ particularly paragraph 17. However, this paragraph deals with an expense incurred in recovering an amount owing under a pre-existing right. In this case, no such amount exists.

[28] Consequently, given that the fees at issue are not deductible, the appeal is dismissed.

Signed at Toronto, Ontario, this 29th day of August 2014.

“Gaston Jorré”

Jorré J.

Translation certified true
on this 7th day of October 2014
Monica F. Chamberlain, Translator

⁶ 2003 FCA 400.

CITATION: 2014 TCC 261

COURT FILE NO.: 2013-4861(IT)I

STYLE OF CAUSE: MICHEL DESCHENES v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: August 19, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: August 29, 2014

APPEARANCES:

| | |
|-----------------------------|-----------------------|
| For the appellant: | The appellant himself |
| Counsel for the respondent: | Anne-Marie Boutin |

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada