

dossier: 2015-5010 (IT) I

ENTER :

NORMAN DUGUAY,

appellant,

and

HER MAJESTY THE QUEEN

intimatee.

Appeal heard on March 14, 2016, Quebec City (Quebec)

In front of : The Honourable Justice Réal Favreau

appearances :

For the Appellant: calling himself
Counsel for the Respondent: M^e Simon Vincent

JUDGMENT

The appeal against the assessment dated 25 September 2014 issued under the *Tax Act on income* by the Minister of National Revenue concerning the tax year 2013 is rejected in accordance with the Reasons for Judgment -joints.

Signed at Montreal, Canada, 8th day of July 2016.

"Réal Favreau"
judge Favreau

reference: 2016 CCI 168

Date: 20160708

Dossier: 2015-5010 (IT) I

ENTER :

NORMAN DUGUAY,

appellant,

and

HER MAJESTY THE QUEEN

respondent.

REASONS FOR JUDGMENT

The judge Favreau

[1] This is an appeal governed by the informal procedure against a contribution dated 25 September 2014 issued by the Minister of National Revenue (the "Minister") under the *Income Tax Act* *income tax Act*, RSC (1985) ch. 1 (5th Supp.), As amended (the " *Act* ") for the 2013 taxation year of the caller.

[2] Under the contribution dated 25 September 2014, the Minister disallowed the deduction of an amount of \$ 10,000 as a charitable donation for the purpose of calculating non-refundable tax credits.

[3] To establish and maintain the assessment for the 2013 tax year for the appellant, the Minister assumed the following facts:

- a) the appellant is retired;
- b) the appellant resides at 527-815 rue de Villers in Quebec in a housing belonging to the Manoir Laure Gaudreault (hereinafter the "Manoir");
- c) producing his tax return for the year of taxation in dispute, the appellant claimed an amount of \$ 10,000 as a charitable donation made to the Manor;
- d) The Manoir is a registered charity since 1st January 1978;
- e) the Manoir provides housing for low-income people and also has a seniors' residence;
- f) litigation during the taxation year, the appellant purchased building materials for a total of \$ 20,153;

- g) these building materials were used exclusively for renovations of the appellant's dwelling;
- h) November 18, 2013, Manoir issued two checks (# 2030 and # 2031) in the amount of \$ 10,000 each in the name of the caller as reimbursement for construction materials;
- i) the same day, the appellant # 2030 endorsed the check in the amount of \$ 10,000 and handed it over to the Manor, which was deposited in his bank account 26 November 2013;
- j) November 18, 2013, Manoir issued a charity receipt of the appellant in the amount of \$ 10,000;
- k) the Minister has calculated the eligible amount as a donation as follows:

monetary contribution of the caller (check # 2030)	\$ 10,000
Less value of the benefit received by the appellant (repairs)	(\$ 10,000)
Eligible amount in grant	\$ 0

- l) the donation receipt issued to the appellant by the Manor for the 2013 taxation year does not contain (sic) information (sic) following (sic):
 - i) address of the donor;

[4] At the opening of the hearing, counsel for the respondent informed the Court that the response to the notice of appeal had to be changed because the receipt issued to the appellant complied Manor the requirements of the *Act* and sections 3500 and 3501 of *the tax Regulations income* . Therefore, paragraph (1) of the factual assumptions made by the Minister must be removed.

[5] The facts in this case are not in dispute. Specifically, the respondent does not dispute that the materials purchased by the appellant in the amount of \$ 20,153 were exclusively used to renovate the housing of the latter at the Manor. In addition, the parties recognized that on 18 November 2013, the Manor has issued two checks for \$ 10,000 each in the name of the caller as reimbursement of construction materials and the same day, the appellant endorsed one of two checks for \$ 10,000 and handed to the Manor for deposit for which the Manoir issued the appellant a receipt for a charitable donation of \$ 10,000.

[6] The appellant testified at the hearing and explained that he had reached an agreement with the former administration of the Manor to the effect that the Manoir reimburse the caller 50% of the cost of the work and him charity issues a

receipt for the other 50% of the cost of the work to reflect the value of the materials that the caller will have to leave behind when he will leave.

[7] A copy of the lease signed by the appellant and his wife July 24, 2013 for a period of 14 months commencing on 1st May 2013 and ending June 30, 2014 was filed in evidence. A provision in the lease allowed the caller to renovate housing at his own expense. The monthly rent payable by the appellant was \$ 765 while the lowest rent paid for accommodation during the 12 months preceding the start of the lease was \$ 810 per month.

[8] Madame Solange Castonguay, the current CEO of the Manor, testified at the hearing and she explained that the Manor was a non-profit organization that provided affordable housing to people with low income. The Manor has 135 units, half of which have not been renovated since 1979. The current policy of the Manor is pay the full renovation costs which are around \$ 10,000 per unit. The renovations mainly involve removing carpet and replacing them with floating floor.

[9] Ms. Castonguay has also mentioned that she had been informed that there has been in the past other cases where charitable receipts were issued under renovation but that this practice was abandoned following a notice of the Régie du logement.

[10] Ms. Castonguay did not understand how the appellant could qualify to reside at the Manor when its net income for the 2013 taxation year was \$ 52,248.

Analysis

[11] Following the hearing of the case, the parties have produced notes to address the Court on the issue of whether the concept of donation is different in civil law from that adopted by the *common law* . The question is relevant because the word "gift" is not defined in the *Act* .

[12] At the hearing, the respondent referred in particular to the following passage from the decision *Marshals c. The Queen* , 2009 TCC 587.

[31] In some relevant case law, the courts have tended to describe, in slightly different ways, what a gift. For the purposes of this appeal, it is not necessary to analyze these nuances. Just refer to the description of a "gift" that Linden JA given in the judgment of *The Queen v. Friedberg* , 92 DTC 6031 (FCA), 6032 page:

The *Tax Act on income* does not define the word "gift", and these are the general principles of law concerning the gifts that the courts apply in such circumstances. As Justice Stone explained in the judgment in *The Queen v. McBurney*, 85 DTC 5433, at p. 5435:

The Act does not define the word "gifts". Nothing in the context within which that term is used not to believe that there is technical meaning rather than its ordinary meaning.

Therefore, a gift is a voluntary transfer of property from a donor to a donee, in return for which the donor receives no benefit or consideration (see Heald J. in *The Queen v. Zandstra* [74 DTC 6416] [1974] 2 FC 254, at p. 261). The tax advantage conferred by a donation is generally not considered an "advantage" in the sense that it is understood in this definition because if it were so, many donors would be unable to avail relative charitable donations deductions.

[32] If the above definition is applied to the facts of this case, it is clear that the appellant has not made any donation to the foundation since it obtained an important benefit in exchange for the donation.

[33] The advantage stems from the funding agreement. The loan of \$ 80,000 interest bearing that the appellant received, to which is added the scheduled put option, was an important advantage that was given in exchange for the donation. The funding was not granted regardless of Don. The two were inextricably linked by the relevant agreements .

(My underlining)

[13] He had certainly been helpful if the respondent reproduces the relevant provision of the *Civil Code of Québec (CCQ)*, section 1806 which provides as follows:

The donation is a contract by which a person, the donor, transfers ownership of property free of charge to another person, the donee; the transfer may also include a dismemberment of ownership or any other rights it holds.

The donation can be made inter vivos or mortis causa.

(My underlining)

[14] By cons, as Archambault J. of this Court noted in *Gonthier c. Queen* 2003 CANLII 1659 by. 9, the definition of "gift" provided by the *CCQ* corresponds to that adopted by the *common law* .

As can be seen, this definition corresponds to that which is found in the *common law*. Whether one refers to the *CCQ* or definitions from the *common law*, it is the essence of a gift that is a transfer of property for no consideration, no consideration.

[15] In both civil law and *common law*, the concept of donative intent must clearly exist for a legal act to qualify as a donation. In *Martin v. Dupont*, 2016 QCCA 475, the Quebec Court of Appeal described the concept of donative intent as follows:

[27] Note also that it also belongs to one who claims that a legal act is a gift to make the default proof since, there is a presumption of non-free⁷ such as recalls Professor Brière:

According to a broader concept, donative intent is knowing that receives no consideration and fixed determination not to receive anything in return, ie the deliberate will to be lost. [...] It will be necessary for the person alleging donation, to prove that liberal intention unequivocal.⁸

[Underscore the Court]

[28] The donation and requires the presence of two components, the material element and the psychological element.

[...] There is no liberality without the presence of the intellectual or psychological factor, the *animus donandi*, and without the presence of the material element, the transmission of values without equivalent consideration.⁹

[29] The psychological element, the *animus donandi*, was defined as "a real will to dispose of property in favor of a third party, without drawing any advantage in return."

[30] The gift implies the intention to be lost without getting anything in return, if not to expect gratitude of the donee¹¹. It is also imperative that the donor does not remove material benefit.

[31] The two components are required and the absence of one of them is sufficient to conclude that the act is not a donation.

[16] As we have seen, the *Act* does not define what a gift. For cons, the *Act* contains provisions aimed at reducing the amount of a gift of the amount of the benefit received by the donor. These provisions were adopted in June 2013

with retroactive effect from 21 December 2002 (see *Act 2012* providing technical tax amendments and taxes, SC 2013, c. 34, s. 358 (30) and (54) .

[17] These provisions define the eligible amount of a gift and the amount of the benefit in respect of a gift. Here's how to subsections 248 (31) 248 (32) of the *Act* are drafted:

eligible amount of a gift or monetary contribution

(31) The eligible amount of a gift or monetary contribution is the excess of the fair market value of the property that is the subject of the gift or contribution on the amount of the benefit, if any , under the grant or contribution.

Amount of benefit

(32) The amount of the benefit in respect of a gift or monetary contribution by a taxpayer is the aggregate of:

a) the total amount, except that referred to in subparagraph b), each representing the value at the time of donation or contribution, of any goods or services, compensation, use or any other benefit that the taxpayer or another person or partnership that at arm's length, received or obtained, or has the right, whether immediate or future and either absolutely or contingently, to receive or obtain, or which the taxpayer or a such a person or partnership has enjoyed or has the right, whether immediate or future and whether absolute or contingent, enjoy, and, as applicable:

(I) is granted in return for the gift or contribution,

(ii) is granted in recognition of the gift or contribution,

(iii) refers otherwise donation or contribution,

b) the limited-recourse debt, determined under subsection 143.2 (6.1), concerning the donation or contribution when it is done.

[18] The amount of the benefit under a donation includes the total of all amounts each value at the giving of any property the taxpayer enjoyed or has the immediate or future law, or conditional, of enjoy, and that is consideration for the gift or contribution in recognition of the gift or contribution relates or otherwise donation or contribution.

[19] In this case, the appellant had, at the time of the donation, the right to immediately enjoy the renovations to his home and this advantage was granted through the donation made to the Manor. The occupation of the renovated housing was not granted regardless of giving. The occupation of the renovated housing and the gift were inextricably linked by prior arrangement agreed verbally Manor before the renovation.

[20] It should also be noted here that the appellant conceded at the hearing that the rent paid to occupy the dwelling was less than the market value of rent required to hold this type of housing. Moreover, there has been evidence that the rent paid by the appellant was even lower than the rent paid by the previous tenant housing before the renovations have been completed.

[21] Moreover, contrary to what the appellant suggests, the concept of benefit received in return for the donation must be analyzed according to the perspective of the donor, not the perspective of the donee. Thus, it is irrelevant to the question whether the Manor has received or will receive the gift in the future when the caller leaves his home.

[22] During the hearing, the respondent commented in relation to the opportunity to share the gift between a qualifying portion and a non-eligible part credit for charitable giving. As this point was not raised by the appellant and as no method has been suggested to divide the alleged charitable donation of \$ 10,000, there is no reason in the circumstances of this case to share the gift or contribution to a party to be admitted as a charitable donation.

[23] For these reasons, the appeal is dismissed.

Signed at Montreal, Canada, this 8th day of July, 2016.

"Réal Favreau"
judge Favreau

REFERENCE: 2016 CCI 168

N ° THE COURT FILE: 2015-5010 (IT) I

STYLE OF CAUSE: NORMAN DUGUAY AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Quebec (Quebec)

DATE OF HEARING: March 14, 2016

REASONS FOR JUDGMENT: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: July 8, 2016

APPEARANCES:

For the Appellant: calling himself
Counsel for the Respondent: M^e Simon Vincent

LAWYER REGISTERED BACK TO:

For Caller:

name:

Cabinet:

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