

Docket: 2014-3831(IT)G

BETWEEN:

JEAN-CLAUDE MAJOR,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on September 6, 2016, at Montréal, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Kévin Lampron

Counsel for the Respondent: Emmanuel Jilwan

JUDGMENT

The appeal of the reassessments established under the *Income Tax Act* for the 2009, 2010 and 2011 taxation years is dismissed with costs in favour of the respondent, and the penalties imposed are confirmed to be justified according to the attached reasons for judgment.

Signed at Ottawa, Canada, this 27th day of October, 2016.

“Alain Tardif”

Tardif J.

Translation certified true
On this 23rd day of June 2017

François Brunet, Revisor

Citation: 2016 TCC 243
Date: 20161027
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Appellant,

And

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[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal pursuant to a notice of assessment for the 2009, 2010 and 2011 taxation years based on: rejected employment expenses, including expenses related to the use of an office at the appellant's personal residence, car expenses and fees paid to his spouse for 2009 and 2010.

[2] The appellant admitted that all the components of the assessment under appeal are correct, with the exception of the fees paid to his spouse of \$76,190 for the 2009 taxation year and \$93,235 for the 2010 taxation year, amounts which were claimed as disbursements for fees paid to his spouse and that the appellant considers to be eligible expenses. The amounts were billed on a monthly basis via invoices containing few details.

[3] According to the appellant, disbursements of \$76,190 and \$93,235 were to cover fees for support work, collaboration and business development, with the ultimate objective of increasing revenues, making them eligible expenses to be deducted from his business income.

[4] The appellant was first employed as an insurance agent and quickly became a broker. His career path finally led him to become a financial planner. He worked as a financial planner for several companies headquartered in Toronto.

[5] His territory was generally eastern Canada starting at the Ontario border; in other words, he did business in Quebec and the maritime provinces.

[6] He was generally paid a base salary plus commission. The base salary and percentage of commissions varied depending on the companies retaining his services.

[7] He explained that his spouse, Nathalie Scott, with whom he had been married for over 10 years, billed him for fees via a monthly invoice from a company bearing her name, i.e., Nathalie Scott, his spouse.

[8] Fees were paid for two types of services. When the appellant testified, he added a third. The work involved making and preparing corporate gifts for clients and prospective clients.

[9] In that regard, his spouse had to use her imagination to make individual, distinctive and personalized purchases and prepare various arrays, which meant she had to be familiar with the gift recipients. The gifts could include fruit, wine, cigars or cognac, depending on the situation.

[10] According to the appellant, Ms. Scott also prospected, organized appointments, managed the agenda and provided administrative support such as booking rooms, flights, etc.

[11] The appellant also stated that his spouse prepared and dealt with logistics such as room rentals, invitations, caterers, information kits, etc. during certain presentations.

[12] The appellant also said that his wife was involved in organizing certain social and recreational events, such as go-karting, snowmobiling and skeet shooting competitions and a very important activity in Bromont, host of an internationally renowned equestrian festival. Also, in more general terms, she accompanied him at most of the activities in which he participated in order to project a positive image of his family values to his existing and prospective clients.

[13] Despite her organizational skills, discipline and great attention to nuances and details, the appellant explained that his spouse, Ms. Scott, did not like management to the extent that he had to conduct the incorporation procedures on his own. He obtained his wife's Quebec Sales Tax (QST) and Goods and Services Tax (GST) numbers. He was the one who completed the reports to which the

registrants are subject, even Ms. Scott's income tax returns. A very significant and singular fact: he even prepared the invoices and their contents. In other words, he was the one who looked after everything connected with Ms. Scott's business. Ms. Scott had absolutely nothing to do with the management of her business; the appellant took care of everything.

Remuneration or payment of fees

[14] The appellant did not give his spouse anything at all, including any cheques or cash and did not make any deposits into her bank account. He used his own credit card statements to explain that Ms. Scott made purchases using a credit card in her own name based on her own credit file.

[15] As payment or in consideration of fees, at the end of the month, he paid the amounts owing, in which part of the expenditures had been made by Ms. Scott. The evidence showed that these were often personal expenses, but also family expenses, including food. The account statements in question list essentially personal expenses for both the wife and husband, and leisure and family expenses.

[16] In other words, everything went on the credit card including grocery expenses. The appellant paid the amount owing without making a distinction. He argued that this was the method used to pay the fees owed to Ms. Scott. Ms. Scott had no control over or latitude regarding the amounts allegedly paid for her fees.

Accountability

[17] The accounting, allocation or assignment of the responsibility for the items listed on the credit card statements was never established in detail. In other words, all the expenses incurred by the appellant and his spouse were paid with a credit card: they each had their own credit card based on a single file and account held by the appellant. When they came due, the appellant paid all amounts for the expenses incurred. The portion regarding Ms. Scott was also paid in lieu of payment of the fees. This was not proven, but I assume that the appellant prepared fee invoices based on the amounts paid. The appellant submitted that it was the only way in which he was paying for the cost of the fees. In response to questions from the Court, he said that he had never given his wife any cheques or cash, adding, however, that he did have some cash in a safe to which she had access. Concretely, it seems that Ms. Scott never took advantage of it.

[18] Ms. Scott also testified at the respondent's request. From the outset, she contradicted the appellant. She said that she did indeed fulfill some of the duties and responsibilities that the appellant had previously described. However, she basically maintained that this was a collaboration, her normal involvement as a spouse. She even said that, at the start of their union, the appellant expected her to act as she always had before they were married, that is to say, no responsibilities outside the family home.

[19] She said that the appellant controlled her very closely. He took care of everything not at her request, but out of habit. She argued that she had agreed to collaborate and back and support him to the best of her ability. She acknowledged that she accepted the arrangements imposed by the appellant. She also admitted that she had collaborated, contributed and participated in some activities in the course of the appellant's business.

[20] Ms. Scott was very clear about the amount of the fees. She said that she had never been involved in any discussions, negotiations or transactions regarding the value of the services. She admitted that the appellant paid the bills, adding that she never had any money of her own. The sole purpose of her personal bank account was to receive an indemnity pension for her two children from a previous marriage.

[21] She admitted that she had signed all the documents at the appellant's request, but clearly indicated that she was not the author thereof.

[22] Although the relationship between Ms. Scott and the appellant was obviously strained as a result of a difficult divorce, Ms. Scott seemed fairly serene. She did not show any malice that would tend to discredit her testimony.

[23] In view of the evidence, the appellant and Ms. Scott went through a period of great turbulence in their relationship as a result of their divorce.

Analysis

[24] At first glance, the first impulse would be to determine the credibility of the two main witnesses, the appellant and Ms. Scott. Admittedly, some assertions and statements were filled with such tension that they affected their reliability to a certain extent. However, I do not think this tension amounted to anything that would cause either testimony to be rejected.

[25] The evidence regarding the undisputed facts is largely sufficient to dispose of the appeal.

[26] These facts include:

- The absence of a genuine contract between the parties;
- The absence of a precise definition of the tasks;
- The absence of specific evidence as to when the work was performed;
- The conspicuous absence of work justifying such high fees;
- The absence of evidence of a correlation between the work described and an increase or even impacts on income;
- The absence of evidence regarding the necessity and/or usefulness of the work;
- The absence of negotiations, talks and discussions on an agreement regarding an offer of service;
- The absence of evidence regarding the reasonableness of the amounts claimed as fees;
- The total absence of proof of payment of fees;
- The total absence of a link between the invoices and the supposed payment of fees.

[27] There is no doubt that the appellant's spouse collaborated, contributed and did her part as a spouse for the appellant. In the context of the appellant's affairs, Ms. Scott was available and very flexible, and in general collaborated fully, no doubt with spontaneity and enthusiasm.

[28] She participated and helped organize social functions and events. She understood and accepted that her role involved demonstrating that the appellant was a serious, reliable person with strong human and family values. In other words, she fully agreed to support the appellant's wish to bolster his image as a family man.

[29] According to preponderance of the evidence, during the 2009 and 2010 taxation years, Ms. Scott, the appellant's wife, acted as a generous, responsible spouse who fully benefited from the standard of living provided by the appellant.

[30] Ms. Scott's commitment to the appellant was simply something that she freely agreed to provide at no charge. She had never negotiated or required any fees in return for the provision of defined services determined by the appellant alone. Indeed, Ms. Scott has never received, included, asked for or demanded fees. This was essentially a scheme dreamed up, designed and implemented unilaterally by the appellant.

[31] Consequently, the absence of consent completely contradicts the existence of any employment contract.

[32] Even if Ms. Scott had wanted to cash on her availability or participation, it should have been defined and framed, and the consideration should have been in line with the value of the services rendered, reasonable and consistent with the market.

[33] The consideration should have been paid to her in actuality, in full and on a regular basis. Finally, it would have been necessary that she be completely free to use the amounts received as she saw fit. The appellant did not have the right to decide everything on his own.

[34] In any kind of bona fide contract, the parties must be free and involved in all components of the contract, which clearly was not the case in this instance.

Penalties

[35] Contrary to what he attempted to demonstrate, the appellant is not a novice in matters fiscal. He received a very large salary from the sale of financial products, which he himself described as "tax shelters."

[36] It is quite impossible for someone with such financial knowledge to be unaware of the basic tax rules governing eligible business expenses.

[37] He even claimed that the first time he heard the phrase "income splitting" was when his ex-spouse used it.

[38] The scheme put in place and used by the appellant was conceived and thought out unilaterally by the appellant. The amounts involved were so large that he also retained control over these amounts through the credit card. That allowed him to maintain full control over expenses at all times and enabled him to respond quickly.

[39] He prepared the income tax returns of the company created for his spouse and his spouse's returns. The appellant knowingly and wilfully established that strategy to reduce his tax burden, knowing full well that he would in fact retain the full enjoyment of his income.

[40] His system allowed him to deduct essentially personal expenses such as food. This meant that all his family responsibilities were covered.

[41] Clearly, according to preponderance of the evidence, the appellant knowingly committed gross negligence in the treatment of his income, which also fully justifies imposing the penalties set out in subsection 163(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Suppl.).

[42] For these reasons, the appeal is dismissed with costs in favour of the respondent and the penalties imposed are confirmed to be well founded.

Signed at Ottawa, Canada, this 27th day of October 2016.

“Alain Tardif”

Tardif J.

Translation certified true
On this 23rd day of June 2017

François Brunet, Revisor

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DATE OF HEARING: September 6, 2016

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: October 27, 2016

APPEARANCES:

Counsel for the Appellant: Kévin Lampron

Counsel for the Respondent: Emmanuel Jilwan

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