

Docket: 2006-3809(IT)I

BETWEEN:

PAMELA VERNA,

Appellant

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 8, 2007 at Kelowna, British Columbia

Before: The Honourable Justice D.W. Beaubier

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Selena Sit

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* with respect to Assessment #28580 dated February 15, 2006 is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

The Appellant is awarded the sum of \$100 for her out-of-pocket disbursements incurred in prosecuting this appeal.

Signed at Saskatoon, Saskatchewan this 15th day of June, 2007.

"D.W. Beaubier"

Beaubier, J.

Citation: 2007TCC341
Date: 20070615
Docket: 2006-3809(IT)I

BETWEEN:

PAMELA VERNA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Beaubier, J.

[1] This appeal pursuant to the Informal Procedure was heard at Kelowna, British Columbia on June 8, 2007. The Appellant was the only witness.

[2] The particulars in appeal are set out in paragraphs 5 to 13, inclusive, of the Reply to the Notice of Appeal. They read:

5. By Notice of Assessment #28580 dated February 15, 2006 (the "Assessment"), the Minister of National Revenue (the "Minister") assessed the Appellant in the amount of \$12,002.79 in respect of a transfer of property to the Appellant within the meaning of section 160 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.)(the "Act").
6. By Notice of Objection dated May 2, 2006 the Appellant objected to the Assessment.
7. By Notification of Confirmation dated September 11, 2006 the Minister confirmed the Assessment.
8. In assessing the Appellant and in confirming the Assessment, the Minister assumed the same facts as follows:

- a) The Appellant's spouse, Emilio Quinn Verna, passed away on August 27, 2000;
- b) Carlo Verna is the brother of the Appellant's spouse;
- c) Lia Sambrielaz is the sister of the Appellant's spouse;
- d) Andy Sambrielaz, the Corporation's accountant, is married to Lia;
- e) Prior to the death of the Appellant's spouse, the Appellant, her spouse and her brother-in-law Carlo held the following percentage of shares of the Corporation:

	<u>% of the shares of the Corporation held</u>
Appellant	25%
Appellant's spouse	25%
Carlo	50%

- f) After the death of the Appellant's spouse, the Appellant and her brother-in-law each held 50% of the shares of the Corporation;
- g) Prior to the death of the Appellant's spouse, the Appellant and Carlo were both directors of the Corporation;
- h) Prior to the death of the Appellant's spouse, Carlo was an officer of the Corporation, holding the position of Secretary;
- i) The fiscal year end of the Corporation is August 31st;
- j) On or about August 31, 2001, the Corporation paid dividends to the Appellant and Carlo as follows:

	Actual	Taxable
<u>Recipient</u>	<u>Dividend</u>	<u>Dividend</u>
Appellant	\$24,000.00	\$33,000.00
Carlo Verna	\$24,000.00	\$33,000.00

- k) In 2001, the Appellant and Carlo each received a dividend from the Corporation as stated in paragraph j), above;
- l) The Appellant and Carlo acted in concert to direct the Corporation to issue the dividends to its shareholders in 2001;
- m) The Corporation issued the Appellant a T5 information slip for the 2001 taxation year as follows:

<u>Actual Dividend</u>	<u>Taxable Dividend</u>	<u>Dividend Tax Credit</u>
\$24,000.00	\$30,000.00	\$4,000.00

- n) On filing her return of income for the 2001 taxation year, the Appellant included the taxable portion of the dividend she received from the Corporation in the computation of income and claimed the dividend tax credit to reduce her tax liability;
- o) The Corporation did not receive any consideration in regard to the transfer of property to the Appellant, by way of paid dividends in 2001 in the amount of \$24,000.00 (the "Property");
- p) The aggregate of all amounts that the Corporation was liable to pay under the *Act* in respect of the taxation year in which the Property was transferred or any preceding taxation year was not less than \$12,002.79 as follows:

<u>Fiscal Year End</u>	<u>Tax</u>	<u>Arrears Interest</u>	<u>Instalment Interest</u>	<u>Total</u>
August 31, 2001	\$7,890.68	\$3,672.43	\$439.68	\$12,002.79

- q) The Corporation did not owe a debt to the Appellant immediately prior to the transfer of the Property; and
- r) As at fiscal year ending August 31, 2000, the Appellant's spouse and Carlo owed the Corporation \$151.94 and \$41,171.52, respectively.

B. ISSUE TO BE DECIDED

9. The issue is whether the Appellant is liable to pay the amount of \$12,002.79 pursuant to section 160 of the *Act* in respect of the transfer of the Property to the Appellant by the Corporation.

C. STATUTORY PROVISIONS RELIED ON

10. He relies on sections 160 and 251, and subsection 248(1) of the *Act*.

D. GROUNDS RELIED ON AND RELIEF SOUGHT

11. He submits that the Minister properly assessed the Appellant pursuant to subsection 160(1) of the *Act* on the basis that the Appellant is jointly and severally liable with the Corporation for the Corporation's liability to pay tax under the *Act* because the Corporation transferred the Property to the Appellant for no consideration when there was a tax liability for the Corporation for the year of transfer.
12. He submits that the Corporation was not indebted to the Appellant immediately prior to the transfer of the Property.
13. He submits that the Appellant was not dealing with the Corporation at arm's length in 2001.

[3] The "Corporation" is 560006 BC Ltd. which operated two bulk Petro-Canada gas line stations until September 2001, one in Kelowna and the other in Penticton, British Columbia. In September, Petro-Canada repossessed them.

[4] Assumptions 8(a) to (i), inclusive, (m), (n), (p), (q) and (r) were not refuted by the evidence.

[5] Pamela appears to be in her early 40's. When her husband, Emilio, died in 2001 she was at home with their three children aged five, four and two. That day, or the next day, her former brother-in-law, Andy Sambrielaz, came to her home with a paper, which she signed upon his demand, giving power over the Corporation to Andy and her former brother-in-law, Carlo. Carlo was described on page C2 of the September 11, 2004 edition of *The Vancouver Sun* (Exhibit A-1) as a member of the Hell's Angels. The article described him as a physical enforcement operator of various unsavoury enterprises in British Columbia. (Exhibit A-1 was admitted as evidence of Carlo's reputation among the public.)

Pamela stated that Andy and Carlo gave her orders and she followed those orders. She is believed.

[6] When Emilio died, Pamela acquired \$2,000 in their joint bank account, Emilio's 25 shares in the Corporation and her interest in her home. She had nothing else except her Canada Pension Plan entitlement. She and her children lived on the Food Bank and charity from her parents and neighbours.

[7] Carlo and Andy ordered a funeral for Emilio which cost \$27,798.33 and told Pamela to pay for it. Pamela had no money and Carlo and Andy had contracted for the funeral. At law, they were liable for the funeral bill. So they had the Corporation pay the funeral bill.

[8] There was no meeting of the directors or shareholders to authorize payment of the funeral bill or the alleged \$24,000 dividend. There are no such minutes. Nor was any money, including the \$24,000 dividend, paid to Pamela by the Corporation. Instead, Andy gave Pamela a T5 slip (Exhibit A-3) describing the dividend and told her to report it with her 2001 income tax return. Pamela did this.

[9] The minute book of the Corporation is filed as Exhibit A-2. Pamela can not obtain any bank records or cancelled cheques of the Corporation. She believes that Andy has them.

[10] Thus, contrary to assumptions 8(j) and (k), the Corporation did not pay Pamela any dividends in 2001 or at any other time and she did not receive a dividend or any benefit from the Corporation. Rather, Andy and Carlo received a benefit from the Corporation of \$27,798.33 when it paid their funeral bill. (Pamela is believed when she stated that she would never have ordered such an elaborate funeral and she could not have afforded it.)

[11] Contrary to assumption 8(l), the Court finds that Andy and Carlo acted in concert to cause the Corporation to pay the funeral bill for their benefit and, further, that no dividend was authorized or paid by the Corporation according to the evidence before the Court. Thus, contrary to assumption 8(o), the Corporation did not transfer any property to Pamela by way of dividend or by any other means in 2001.

[12] For these reasons the appeal is allowed in its entirety and this matter is referred to the Minister of National Revenue for reconsideration and reassessment accordingly. The Appellant is awarded costs which are fixed at \$100 on account of

reimbursement of her out-of-pocket expenses, including postage, copying, telephone charges and parking expenses incurred to prosecute her appeal.

Signed at Saskatoon, Saskatchewan this 15th day of June, 2007.

"D.W. Beaubier"

Beaubier, J.

CITATION: 2007TCC341

COURT FILE NO.: 2006-3809(IT)I

STYLE OF CAUSE: Pamela Verna v. The Queen

PLACE OF HEARING: Kelowna, British Columbia

DATE OF HEARING: June 8, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice D.W. Beaubier

DATE OF JUDGMENT: June 15, 2007

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Selena Sit

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

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