

Citation: 2007TCC697
Date: 20071123
Docket: 2004-3538(IT)G

BETWEEN:

GEORGE ALBERTO DEMARCHI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

For the Appellant: The Appellant himself
Counsel for the Respondent: Kandia Aird

REASONS FOR JUDGMENT

(Delivered orally from the bench on
November 2, 2007, at Toronto, Ontario.)

McArthur J.

[1] These appeals are from reassessments by the Minister of National Revenue for the Appellant's 1999 and 2000 taxation years with respect to his claim for expenses in relation to Global Power Company in the amounts of \$86,928 and \$134,755, respectively. In addition to disallowing these expenses, the Minister reduced employment expenses to allow only \$6,636 and \$6,423 in 1999 and 2000.

[2] The Appellant understandably did not contest the Minister's reassessment of his 1999 taxation year beyond the normal three-year period, which reassessment was completed by the Minister pursuant to subsection 152(4) of the *Income Tax Act*. I agree with the Minister in stating that the Appellant misrepresented his total 1999 income by claiming business expenses of almost \$87,000 and overclaiming employment expenses of \$4,441.

[3] Briefly, the issues are as follows. During the 1999 and 2000 taxation years, the Appellant was employed on a fulltime basis as vice-president of eLoyalty (Canada) Corporation, where he earned approximately \$250,000 annually. In filing his income tax returns, he deducted from his income, expenses of more than \$210,000 over the two years, from what he described as a business, Global Power Company (“Global”), which business was owned by the Appellant and described by him as “power generation and property management”.

[4] Global was organized in a confusing manner. To begin with, I find that it had little to do with power and was not incorporated. It was registered by the Appellant as a sole proprietorship in September 1997. It appears to have been set up primarily as a vehicle to write off personal expenditures, including salaries to his parents from Argentina. I believe I could term this as just visiting from Argentina. He claimed he paid them \$25,000 each in both taxation years, totalling \$100,000. Other than the oral testimony of the Appellant, there was no evidence that they did any work for Global and no evidence that they were in fact paid.

[5] On the positive side for the Appellant, he did own an income-producing real property for which the Minister allowed appropriate expenses. He was also a distributor of vitamins and related products for Nature's Sunshine. Although he claimed expenses of \$2,700 for the purchase of Sunshine's products, he declared no income. We do not know how these vitamins were disposed of.

[6] I had difficulty discerning what business Global carried on. The Appellant did attempt to establish for his own personal benefit a business in competition with his employer, eLoyalty. This was confirmed by the witness for the Respondent, Emile Querel, formerly of eLoyalty, who testified that the Appellant was forced to resign for attempting to set up his own business in competition to that of his employer. Strangely, the Appellant takes issue with it being said that he was fired.

[7] The Appellant also presented evidence of an attempt to enter contracts with corporations. These produced no visible business activity or income. He mingled his Global expenses together with his real property income and expenses, making the Appellant's audit very difficult.

[8] Mr. Demarchi was the only witness on his behalf, and the Respondent had two witnesses, David Brown, an auditor, and Deborah Chapman, an appeals officer. By and large, when there are inconsistencies between the Respondent's testimony and that of the Appellant, I accept that of Ms. Chapman and Mr. Brown. There are

minimal exceptions to this, including that I accept the Appellant's evidence in some matters, such as, he does not know a Mr. Archibald, and that Mr. Archibald did not live in the Appellant's condo in 1999 or 2000. Further, the Appellant's fiancée did not come to Canada until mid-2000, and his parents may have filed returns in 1999 and 2000. These discrepancies have little effect on my overall decision.

[9] The following comments of Bowman J. in *Chrabalowski v. The Queen*,¹ apply equally to the present case:

8 It boils down to this. I am sure that there are probably buried in the expenses claimed amounts that should be allowed, but I cannot determine what they are because they are mixed in with so many unproved or implausible claims.

9 The appellant came into court with a large box of receipts. They were grouped in bundles with adding machine tapes attached. Contrary to the allegations that the revenue authorities ignored his evidence or treated him unfairly, I find that Ms. Lo, the appeals assessor who dealt with his objection, made a serious and conscientious attempt to reconcile his claims with the receipts and she gave him ample opportunity to organize the receipts in an orderly and comprehensible way. She cited a number of instances in which she attempted to reconcile the amounts claimed under specific headings with the receipts, but was unable to do so.

This entire quotation clearly expresses my thoughts about the present appeals and what Ms. Chapman experienced. The following are a few examples of why I have no difficulty not accepting any of the deductions claimed by the Appellant.

[10] Ms. Chapman dutifully went through the miscellaneous receipts, I believe totalling more than \$20,000, which were disorganized and without any correlation to a specific business. I will read from her handwritten list which was not picked selectively. The items include the first 20 lines on page 1 and the first 10 lines of page 2 of Tab 14 of Exhibit R-1. First from page 1:

Gas - Canadian & United States
includes food, snacks,
duty-free purchases

Miscellaneous

Faxes
Eaton Centre, chocolate Godiva

¹ 2004TCC644.

Home Depot – deadbolt lock
Cleaners
Slippers
Dress shoes
Retreat shoes
Perfume
Socks
Dress shirts
Frames
Lalique for Men
National Sports
Unknown purchases
No proof of purchase – no receipts
no name
Cuffs - pants alterations.

Then going to page 2, under Miscellaneous:

Perfume duty free
Vitamins, eye exam
Liquor and perfume duty free
LCBO
Kids' air - Pearson Airport
Convenience store
Godiva Chocolates
Zellers Photo
Fax
Business Depot

In addition to these receipts, there are other instances that give me doubts about the Appellant's claimed deductions. As mentioned above, he claims to have paid his mother and father \$25,000 each, in cash, in each of the two years for services they rendered to Global. While his parents may have filed returns which included these amounts, although I did not see those returns, this does not take away from the fact there was no evidence corroborating that these cash amounts were paid, and the auditor found no matching bank withdrawals. There was no evidence that these claimed amounts were business expenses. As Judge Bowman stated in *Chrabalowski*, "This strikes me, to put it mildly, as overreaching".

[11] Further, in the 2000 taxation year, the Appellant claimed expenses of \$79,074 for transportation and accommodation. He stated that this was incurred for business purposes, although he declared no income from the purported business. In fairness, there may have been an element of business, but so much of it appears to be personal

that I cannot even guess what portion may be business related. He had relatives in Argentina and a fiancée, also in South America. He had the burden of proof that he was engaged in any business activity that could possibly require him to expend \$79,000 in transportation. He did not segregate his purported business expenses from rental income and expenses, and perhaps Sunshine expenses. He provided very little information to support his position, leaving the Minister to attempt to sort out the mingled invoices. I believe, as assumed by the Minister, that this was done purposefully. He claimed car and other expenses for which he had been reimbursed by his employer.

[12] In addition, a T2200 form filed for the Appellant's 2000 taxation year was altered by him. I do not give much weight to his claim that the Minister lost some of his documents. In any event, more paper of the same that has already been produced would be of little assistance to anyone. Section 230(1) of the *Income Tax Act* places on the Appellant the duty to keep proper records.

[13] In summary, neither the Minister or I could determine what exactly his business was, for which he claims to have expended in excess of \$200,000 in the two years in issue, with no income to show from it. There was no evidence or other indication that he had an accountant, although he apparently quoted his accountant as stating that the auditor's actions were ridiculous. Further, he claimed 90% business use for his car, though he had full-time employment and received some reimbursement from his employer. He obviously did not keep a log book.

[14] A further quotation from *Chrabalowski* reflects my conclusions in the present appeals. Bowman J. stated:

12 One problem faced by an Appellant in a case of this sort is that there is a series of excessive, implausible or unreasonable claims. It casts doubt on all of the claims. In other words, once a pattern of implausibility or excessiveness is established, the Court is inclined to scrutinize with greater care claims that, standing alone, might be sustainable. In other words, any gaps left in the evidence are filled in and any doubts resolved in a manner that is consistent with the pattern. I discussed this point in greater detail in *Voitures Orly Incorporated v. The Queen*, [2004] GST 57 TCC. The fact that some aspects of a witness' testimony are not satisfactory does not mean that the testimony is to be rejected in its entirety. In a case such as this, where the evidence is both complex and contradictory, the trier of fact must endeavour to reach conclusions on the evidence as a whole. This will involve obviously observation of the demeanour of the witness and the plausibility or implausibility of the testimony in light of other evidence. The witness, Madam Turcotte, spoke on a number of occasions of a 'pattern.' To base findings of fact on a system or pattern of behaviour -- a general *modus operandi*, if you will -- is

something that must be done with some care. First, there must be convincing evidence that a pattern exists. Second, the Court must be cautious about excessive use of the pattern simply as a means of filling in lacunae in the evidence, although it may have limited function in this respect. Importantly, the identification and articulation of a pattern can be used as a touchstone against which to test findings of fact. If they are consistent with a pattern they are more likely to be veridical; conversely, one should be skeptical of findings of fact that are inconsistent with an overall pattern. I am of course not talking about similar fact evidence in criminal law, about which there is a great deal of jurisprudence. The use of a pattern for the somewhat limited purposes that I have indicated above as an aid in civil cases to making or testing findings of fact is I think appropriate provided one does not carry it too far. In civil cases, courts have used evidence of systems or scheme as probative of a variety of matters discussed in Sopinka -- Second Edition –

[15] The Appellant in his submissions found fault with several of the Minister's findings and procedures. I feel it does not serve a useful purpose to review these in further detail. The Minister's auditor and appeals officer did the best they could with the records and evidence presented to them. My decision remains the same for the reasons given.

[16] The appeals are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 23rd day of November, 2007.

“C.H. McArthur”

McArthur J.

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COURT FILE NO.: 2004-3538(IT)G

STYLE OF CAUSE: GEORGE ALBERTO DEMARCHI and
HER MAJESTY THE QUEEN

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REASONS FOR JUDGEMENT BY: The Honourable Justice C.H. McArthur

DATE OF JUDGMENT: November 13, 2007

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Kandia Aird

COUNSEL OF RECORD:

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