

Docket: 2008-3026(IT)I

BETWEEN:

CHERIE FERRARI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on January 14, 2010, at Toronto, Ontario

Before: The Honourable Justice L.M. Little

Appearances:

Agent for the Appellant: Silverio Ferrari  
Counsel for the Respondent: Nathalie Hamam

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**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act*, Notice of Reassessment Number 43079, dated April 22, 2008, is dismissed, without costs.

Signed at Vancouver, British Columbia, this 21st day of January 2010.

“L.M. Little”

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Little J.

Citation: 2010 TCC 40  
Date: 20100121  
Docket: 2008-3026(IT)I

BETWEEN:

CHERIE FERRARI,  
and  
HER MAJESTY THE QUEEN,  
Appellant,  
Respondent.

### **REASONS FOR JUDGMENT**

Little J.

A. Facts:

[1] Cherie Ferrari Inc. (the “Company”) was incorporated under the laws of the *Ontario Business Corporations Act* on March 20, 1998.

[2] The Appellant was the sole officer, sole director and sole shareholder of the Company.

[3] The Company was in the business of web design and internet consulting services.

[4] The Company had one employee, namely K. McMurdo.

[5] According to records filed by the Respondent with the Court, the Company failed to withhold and remit employment insurance and Canada Pension Plan payments to the Canada Revenue Agency (the “CRA”) for the 1998, 1999 and 2000 taxation years.

[6] Officials of the CRA issued a Notice of Assessment against the Company with respect to the taxes, interest and penalties owing for the 1998, 1999 and 2000 taxation years. The Company did not pay the taxes that were imposed.

[7] By Notice of Assessment dated the 22nd day of August, 2006, the CRA assessed the Appellant for the taxes that were not paid by the Company. The Assessment was issued pursuant to section 227.1 of the *Income Tax Act* (the “Act”). (This Assessment is referred to as the “First Assessment”.) The amount assessed against the Appellant was \$18,581.19.

[8] By Notice of Assessment dated the 22nd day of April, 2008, the Minister of National Revenue reassessed the Appellant to impose tax in the amount of \$13,702.62. (This Assessment is referred to as the “Second Assessment”.) The Second Assessment eliminated the tax, interest and penalty assessed for the 2000 taxation year.

[9] The Appellant filed a Notice of Objection to the Second Assessment. In the Notice of Objection, the Appellant maintains that she was not subject to the tax that was imposed.

B. Issues:

[10] The issues to be decided are:

- (a) whether the Appellant is liable under subsection 227.1(1) of the *Act* for failure by the Company to remit to the Receiver General the unpaid source deductions, penalties and interest relating thereto; and
- (b) whether the Appellant exercised the degree of care, diligence and skill to prevent the failure on part of the Company to remit source deductions that a reasonably prudent person would have exercised in comparable circumstances.

C. Analysis and Decision:

[11] Mr. Ferrari, the Appellant’s husband, acted as the Appellant’s agent. Although invited by the Court to testify, the Appellant declined. Mr. Ferrari testified himself on behalf of the Appellant.

[12] Mr. Ferrari said that he believes that the Appellant resigned as a Director of the Company. However, Mr. Ferrari did not produce any written evidence that the Appellant had signed in which she resigned as a Director. I am not convinced on the evidence presented that the Appellant had resigned or even attempted to resign as a Director of the Company.

[13] Subsection 227.1(3) of the *Act* provides as follows:

227.1.(3) A director is not liable for a failure under subsection 227.1(1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

[14] Mr. Ferrari said that the Appellant dealt with the Company's accountant with respect to all accounting and tax questions. However, there was no evidence provided to indicate that the Appellant attempted to ensure that the Company's tax liability was satisfied.

[15] Subsection 227.1(1) has been considered by Canadian Courts on a number of occasions.

[16] In *The Queen v. Kalef*, 96 D.T.C. 6132, Mr. Justice McDonald said:

Subsection 227.1(1) makes a director of a company vicariously liable for any failure by the company to withhold, deduct or remit source deductions. The section reads as follows:

227.1 (1) Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally liable, together with the corporation, to pay that amount and any interest or penalties relating thereto.

The justification for the imposition of vicarious liability is simple. The directors of a company are its directing mind. They are the persons responsible for insuring that the corporation fulfils its financial obligations.

The vicarious liability imposed by subsection 227.1(1) is not indefinite. A time limit on the liability of a director is found in subsection 227.1(4):

227.1 (4) No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) shall be commenced more than two years after the director last ceased to be a director of that corporation.

(In this case, the evidence does not support the suggestion by Mr. Ferrari that the Appellant resigned as a director of the Company.)

[17] Based on a careful analysis of all the evidence that was presented, I have concluded that the Appellant did not exercise the degree of care, diligence and skill that a reasonable, prudent person would have exercised in comparable circumstances to prevent the Company's failure to remit the unpaid source deductions with interest and penalties as provided for in the *Act*.

[18] I have therefore concluded that the Appellant was liable for the unpaid source deductions, penalties and interest that were assessed by the Second Assessment issued under section 227.1 of the *Act*.

[19] The appeal is dismissed, without costs.

Signed at Vancouver, British Columbia, this 21st day of January 2010.

“L.M. Little”

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Little J.

CITATION: 2010 TCC 40  
COURT FILE NO.: 2008-3026(IT)I  
STYLE OF CAUSE: Cherie Ferrari and  
Her Majesty The Queen  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: January 14, 2010  
REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little  
DATE OF JUDGMENT: January 21, 2010

APPEARANCES:

Agent for the Appellant: Silverio Ferrari  
Counsel for the Respondent: Nathalie Hamam

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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