

Docket: 2007-4312(IT)G

BETWEEN:

SUNNY J. DOCHERTY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on November 23 and 24, 2009 at
Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Keith Oliver

Counsel for the Respondent: Matthew Canzer
Michel Lamarre

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2001 and 2002 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 29th day of January 2010.

“L.M. Little”

Little J.

Citation: 2010 TCC 45
Date: 20100129
Docket: 2007-4312(IT)G

BETWEEN:

SUNNY J. DOCHERTY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS

[1] The Appellant resides in Maple Ridge, British Columbia.

[2] In the 2001 and 2002 taxation years, the Appellant was employed by Lordco Parts Ltd. (“Lordco”).

[3] In the 2001 and 2002 taxation years, the Appellant reported income as follows:

2001	- Lordco; and	\$20,692.00
	- Employment Insurance Benefits.	

(Note: the Appellant received employment insurance benefits in 2001 because she gave birth to a daughter in that year)

2002 - 1. Lordco; and	\$21,467.38
- 2. Rent from a rental property:	\$14,400.00
Less expenses:	<u>15,367.44</u>
Net Loss:	\$ -967.44

(See Exhibit R-3)

[4] In the 2001 and 2002 taxation years, the Appellant lived at 2012 Mead Street in New Westminster (the “Mead Street Property”) with her infant daughter, her father (Robert Docherty), her mother (Tracey Docherty) and her boyfriend (Keith Desaulnier). Mr. Desaulnier testified that he lived with Sunny Docherty and her parents in the 2001 and 2002 years until June 30, 2002.

[5] In January 2002, the Appellant purchased a home located at 19226 Hammond Road, in Pitt Meadows, British Columbia (the “Hammond Road Property”) at a cost of \$219,000.00. In 2002, the Hammond Road Property was rented by the Appellant to her father’s brother. Note: Cash required to purchase: \$219,000.00 – \$202,027.50 = \$16,972.50 (see Exhibit A-3).

[6] In June 2002, the Appellant purchased a home located at 13371 McCauley Crescent in Maple Ridge, British Columbia (the “McCauley Crescent Property”) at a cost of \$379,000.00. Note: Cash required to purchase: \$379,000.00 – \$264,000.00 = \$115,000.00 (see Exhibit A-2).

[7] The Appellant, her daughter and her parents lived in the McCauley Crescent Property after it was purchased in June 2002.

[8] When the Appellant filed her income tax return for the 2001 taxation year, she reported the income that she received from Lordco, plus Employment Insurance benefits.

[9] When the Appellant filed her income tax return for the 2002 taxation year, she reported the income from Lordco, plus rental income minus expenses from the Hammond Road Property.

[10] Officials of the Canada Revenue Agency (the “CRA”) reviewed the Appellant’s income tax returns for the 2001 and 2002 taxation years. Officials of the CRA noted that in 2002 the Appellant (age 24), with earned income of \$20,692.00 in 2001 and \$21,467.38 in 2002 (total \$42,159.38), had purchased two homes in 2002 at a total cost of \$598,000.00.

[11] The Minister of National Revenue (the “Minister”) carried out a net worth analysis on the Appellant for the 2001 and 2002 taxation years. Following the net worth analysis, the Minister determined that the Appellant’s lifestyle and personal expenditures, including the purchase and maintenance of the Hammond Road Property and the MacCauley Crescent Property, exceeded her reported income in the 2001 and 2002 taxation years.

[12] On June 6, 2006, the Minister Reassessed the Appellant’s 2001 and 2002 taxation years to include the following unreported income:

		<u>Unreported Income</u>
2001	-	\$ 22,430.00
2002	-	\$152,081.00

[13] The Minister also imposed the following penalties:

2001	-	\$ 3,179.00
2002	-	\$21,260.98

B. ISSUES

[14] The issues are:

- (a) Did the Appellant receive unreported income of \$22,430.00 and \$152,081.00 in the 2001 and 2002 taxation years respectively?
- (b) Is the Appellant liable for the gross negligence penalties that were imposed by the Minister in the 2001 and 2002 taxation years?

C. ANALYSIS AND DECISION

[15] The Reassessments under appeal were prepared after the Minister prepared a net worth analysis. Reassessments based upon a net worth analysis have been considered by Canadian Courts on a number of occasions. For example, in *Ramey v. The Queen*, 93 D.T.C. 791, Justice Bowman (later Chief Justice Bowman) said at page 793:

... The net worth method of estimating income is an unsatisfactory and imprecise way of determining a taxpayer's income for the year. It is a blunt instrument of which the Minister must avail himself as a last resort. A net worth assessment involves a comparison of a taxpayer's net worth, i.e., the cost of his assets less his liabilities, at the beginning of a year, with his net worth at the end of the year. To the difference so determined there are added his expenditures in the year. The resulting figure is assumed to be his income unless the taxpayer establishes the contrary. Such assessments may be inaccurate within a range of indeterminate magnitude but unless they are shown to be wrong they stand. It is almost impossible to challenge such assessments piecemeal. The only truly effective way of disputing them is by means of a complete reconstruction of a taxpayer's income for a year. A taxpayer whose business records and method of reporting income are in such a state of disarray that a net worth assessment is required is frequently the author of his or her own misfortunes. ...

(Underlining added)

[16] I must determine whether the evidence provided by the Appellant and her father or any other witness is sufficient to explain whether the Appellant is subject to tax on the net worth analysis.

[17] During the hearing, the Appellant stated that she was employed by Lordco in 2001 and that she received the income noted above. The Appellant also said that she received Employment Insurance benefits in 2001 after she gave birth to a baby daughter. In 2002, she received income from Lordco, plus some rental income from the Hammond Road Property. The Appellant maintained that she had no other source of income in the 2001 or 2002 taxation years.

[18] Counsel for the Respondent asked the Appellant how she was able to pay her living expenses in 2001 and 2002, plus obtain the funds required to purchase the properties and pay the regular operating expenses of the Hammond Road Property and the McCauley Crescent Property.

[19] The Appellant said that in 2001 and 2002, she received funds from her "family unit". According to the Appellant, the family unit is made up of the following:

- (a) the Appellant;
- (b) the Appellant's former boyfriend (Keith Desaulnier);
- (c) Robert Docherty (father); and
- (d) Tracey Docherty (mother).

[20] The Appellant said that in 2002, she also received gifts from her grandmother, Billie Stubbert.

[21] The Appellant said that the funds that were received by her from the family unit, which she used to enable her to purchase the two above properties, may be summarized as:

- (a) Gift from her grandmother – Billie Marlene Stubbert - \$30,000.00;
- (b) Inheritance - \$40,000.00; and
- (c) Gifts from three friends of her father - \$30,000.00.

[22] In addition, the Appellant maintained that she received financial assistance from her father, her mother and her former boyfriend.

[23] Robert Docherty confirmed the evidence of the Appellant. Robert Docherty said that when his mother's father, William Geary, died in 1993, he left an estate consisting of some real estate plus \$70,000.00 in cash. Mr. Docherty said that the \$70,000.00 in cash was left to Mr. Docherty and his family (\$40,000.00) plus \$30,000.00 in cash to Mr. Geary's daughter, Billie Stubbert.

[24] Counsel for the Minister maintains that evidence regarding the amounts of \$40,000.00 and \$30,000.00 is not sufficient to establish that these amounts were given to the Appellant to enable her to purchase and maintain the McCauley Crescent Property and the Hammond Road Property.

[25] I have carefully considered the testimony of the Appellant and the testimony of her father and I have concluded that there is no basis for the position adopted by the Minister to ignore the sworn testimony with respect to the amounts of \$30,000.00 (gift) and \$40,000.00 (inheritance).

[26] I have accepted the Appellant's testimony, confirmed by her father, that she and/or the family unit received the following gifts or inheritance:

- (a) Gift from grandmother - Billie Stubbert - \$30,000.00; and
- (b) Inheritance received by father - \$40,000.00.

[27] The Appellant testified and Mr. Docherty testified that three friends of Mr. Docherty advanced \$10,000.00 each to the Appellant to enable the Appellant to purchase a home. Exhibit A-1, Tab 4 reads as follows:

Oliver & Co.
202 – 2963 Glen Drive
Coquitlam, B.C.
V3B 2P7

Attention: Keith Oliver

Re: Sunny Docherty
[...]

Dear Sir,

At the request of Ms. Docherty's authorized representative we attest to the following:

Ms. Docherty's parents were former partners and business associates of ours in a company called D.E. Installations Ltd.

As a result of a lengthy civil litigation brought to bear on D.E. Installations Ltd. the Docherty's lost their family home. When their daughter Sunny was in a position [to] purchase a home for herself and family we gifted to her \$10,000.00 each, by cheque as a gift to help her and her family out.

It is our understanding that these cheques are clearly shown to be deposited in her personal bank account prior to the purchase of her home.

Should you require any further information please contact Ms. Docherty's representative.

Yours truly,

“Frank Folino”
Frank Folino

“Mike Gabriele”
Mike Gabriele

“Fred Chow”
Fred Chow

(Note: Mr. Folino also was the Indemnitor of the Mortgage that was obtained when the McCauley Crescent Property was purchased (see Exhibit A-2).)

[28] Counsel for the Appellant filed Exhibit A-1, Tab 4, containing copies of the bank account maintained at Westminster Savings for the Appellant and her mother, Tracey Docherty. The bank statement for April 27, 2002 shows a cheque deposit in the amount of \$10,000.00 and on the same day, a further cheque deposit in the amount of \$10,000.00. The bank statement for May 4, 2002 shows that a cheque from Mike Gabriele in the amount of \$10,000.00 was deposited in the bank account.

[29] I have accepted the testimony of the Appellant and her father that Mr. Docherty's three friends provided financial assistance to the Appellant in the total amount of \$30,000.00 (see Exhibit A-1, Tab 4) to enable her to purchase the McCauley Crescent Property.

[30] In accepting the evidence concerning the gifts of \$30,000.00, I have noted the following facts:

- (a) Some time prior to 2001, Mr. and Mrs. Docherty owned a family home.
- (b) Mr. Docherty was one of the Plaintiffs in a lawsuit. The lawsuit was settled and Mr. and Mrs. Docherty suffered financial costs and lost their family home (see Exhibit A-1, Tab 4).
- (c) After Mr. and Mrs. Docherty lost their family home, they lived with their daughter (the Appellant) and Mr. Desaulnier in the Mead Street Property.
- (d) Mr. Docherty owned and ran his own electrical business and had income from this source.
- (e) Tracey Docherty reported income from various sources.
- (f) Mr. Desaulnier had income in 2001 and 2002 and he testified that he provided financial assistance to Ms. Docherty to pay for some of the family expenses. He has no record of the amount that he paid.
- (g) In other words, the family unit provided some of the money that made it possible for the Appellant to purchase the two properties and to pay some of the normal operating expenses of those properties.

[31] While there is no direct evidence on this point, it is possible that the homes located at McCauley Crescent and Hammond Road were registered in the Appellant's name and not Mr. Docherty's name because Mr. Docherty was concerned with the legal issues that he was then facing in the lawsuit (see Exhibit A-1, Tab 4) and he did not wish to jeopardize his legal position by registering either the McCauley Crescent Property or the Hammond Road Property in his name.

[32] I have concluded, based on the evidence, that in the years under review, the Appellant obtained funds from the following sources:

1. Billie Stubbert (gift)	\$30,000.00
2. Robert Docherty (inheritance from Mr. Geary)	\$40,000.00
3. Gifts from Messrs. Folino, Gabriele and Chow	\$30,000.00
4. Funds provided by Keith Desaulnier (Note: the evidence from Mr. Desaulnier on this issue was vague and I found him to be an unreliable witness. However, I am prepared to recognize that he made some financial contributions.)	\$10,000.00 - 2001 \$5,000.00 - 2002
	\$115,000.00

Funds available to the Appellant in 2001 and 2002: \$115,000.00

Funds included by the Minister in the Appellant's income:

2001 -	\$ 22,000.00
2002 -	<u>152,200.00</u>
	\$174,200.00

The Minister is to remove the following amounts from the Appellant's income:

2001 -	\$10,000.00
2002 -	<u>\$105,000.00</u>
	\$115,000.00

[33] Note: It should be noted that I have accepted all of the items raised by counsel for the Appellant except the argument concerning further financial contributions made by Tracey Docherty and the funds provided by Mr. Desaulnier. Tracey Docherty was not called by the Appellant as a witness and the evidence regarding any financial contributions from her was vague and uncertain.

[34] With respect to Mr. Desaulnier, I have also accepted that Mr. Desaulnier (the former boyfriend) contributed a total of \$15,000.00 to the family unit and not \$30,000.00 as suggested by the Appellant in Paragraph 6 of the Notice of Appeal. In my opinion, there was insufficient and unreliable evidence from Mr. Desaulnier to support the \$30,000.00 claim made by the Appellant.

[35] At page 11 of the Argument, counsel for the Respondent said:

... and what Your Lordship ought to do is to set aside the reassessment, which will result in the original assessment being accepted and none of this extra money being taxable, and obviously the gross negligence penalties will fall by the way side.

(Transcript, page 11, lines 5-10)

In response to counsel's argument, I must note that I am bound to follow the evidence. I cannot extend my conclusions beyond what the evidence tells me.

[36] I understand that the income reported by Robert Docherty and Tracey Docherty in 2001 and 2002 was included in the Net Worth Calculations prepared by the Auditor (see comments by Mr. Lamarre, Transcript p. 51, lines 22-24).

[37] Since I have allowed the appeals and eliminated some of the unreported income, it follows that the penalties imposed by the Minister will be reduced accordingly.

[38] The appeals will be allowed and the Minister is ordered to recognize the adjustments as outlined in paragraph [32] above.

[39] I am not prepared to allow any costs in this matter because success has been divided. Furthermore, I have concluded that the Appellant should have provided more evidence to the Auditor or to the Court to confirm some of the testimony. I am referring, in particular, to the letter signed by Messrs. Frank Folino, Mike Gabriele and Fred Chow (Exhibit A-1, Tab 4). One or more of these individuals should have been subpoenaed as a witness for the Appellant in order to provide verbal testimony on the gifts made to enable the Appellant to purchase the properties. In addition, I wish to note that the evidence indicates that the Appellant and her father were uncooperative, hostile, rude and unreasonable in their dealings with the Auditor. I refer to the letter sent to the Auditor by Mr. Docherty on December 20, 2005 (the Appellant's father and authorized representative). In the letter (Exhibit R-4), the following comment is found:

Be advised that I am seeking legal counsel with respect to filing a criminal complaint against yourself and superiors with respect to this matter. I am also concurrently investigating a tort claim of misfeasance to be filed against yourself and team leader.

Do not destroy any documentation, notes, records, working paper on any other information with respect to this file.

[40] By an undated letter (Exhibit R-2), the Appellant wrote to the Auditor. In her letter, the Appellant said:

...

As a result Mr. Pandher you and CCRA must comply with the Law as must I. For you to interpret Section 231 as a requirement for me to attend the meeting on December 8, 2004 shows your complete lack and skill in comprehending the English language and the intent of Section 231 of the Income Tax Act, which you purport to be authorized to administer.

I would be more than happy to attend a meeting at the business premises being audited with my representatives if that is what you wish and require. For your information those premises would be the company vehicle, as all business is carried on from it and it does contain the books and records.

...

As to your reference to IC71-14R3T and CCRA's normal practices I refer you to paragraph 3 already brought to your attention. It would appear that your normal practices are that of extortion, blackmail and coercion under the guise of "inducement".

[41] My comment with respect to the comments contained in the two letters is that this is not how a taxpayer should respond to reasonable requests made by an Auditor of the CRA who is trying to determine if a taxpayer has reported all of her income.

[42] In the Court decision of *Ramey v. The Queen* (quoted at paragraph [15] above), former Chief Justice Bowman said that a taxpayer whose business records and method of reporting income are in such a state of disarray that a net worth assessment is required is frequently the author of his or her own misfortunes.

[43] I believe that this is the situation here, where the Appellant had insufficient records to properly establish where the cash came from to enable her to purchase and pay the operating expenses of the Hammond Road Property, the McCauley Crescent Property and other living expenses in 2001 and 2002.

Signed at Vancouver, British Columbia, this 29th day of January 2010.

“L.M. Little”

Little J.

CITATION: 2010 TCC 45
COURT FILE NO.: 2007-4312(IT)G
STYLE OF CAUSE: Sunny J. Docherty and
Her Majesty the Queen
PLACE OF HEARING: Vancouver, British Columbia
DATES OF HEARING: November 23 and 24, 2009
REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little
DATE OF JUDGMENT: January 29, 2010

APPEARANCES:

Counsel for the Appellant: Keith Oliver
Counsel for the Respondent: Matthew Canzer
Michel Lamarre

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