

BETWEEN:

CYRIL BARRETT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on April 28, 2010 at St. John's, Newfoundland & Labrador

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant:                      The Appellant himself

Counsel for the Respondent:        Devon E. Peavoy

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**JUDGMENT**

The appeal with respect to an assessment made under the *Income Tax Act* for the 2004 taxation year is dismissed.

Signed at Ottawa, Canada this 5<sup>th</sup> day of May 2010.

“J. M. Woods”

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Woods J.

Citation: 2010 TCC 248  
Date: 20100505  
Docket: 2009-2976(IT)I

BETWEEN:

CYRIL BARRETT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Woods J.**

[1] In 2004, Go West Drywall issued a cheque to an individual by the name of Cyril Barrett as payment for services rendered. The cheque was in the amount of \$5,070.

[2] In an assessment under the *Income Tax Act* for the 2004 taxation year, this amount was included in the income of the appellant, Cyril Barrett. A gross negligence penalty was also imposed.

[3] Mr. Barrett suggests that this is a case of mistaken identity and that the income was actually earned by his son who has the same name.

[4] There are three issues:

- a) Was the income earned by the appellant or his son?
- b) Is a gross negligence penalty appropriate?
- c) Was the assessment statute barred?

## Background

[5] The appellant is a resident of Newfoundland and Labrador but he has worked in other provinces from time to time. The appellant's son was a resident of British Columbia at the relevant time.

[6] The appellant was audited by the Canada Revenue Agency after it was discovered that three information slips (T5018) from different contractors indicated that payments had been made to Cyril Barrett for services rendered. All of the contractors were based in British Columbia. None of the amounts had been reported on income tax returns, either by the appellant or his son.

[7] The result of the audit was to include over \$20,000 in the appellant's income for the 2003, 2004 and 2005 taxation years. This appeal relates to the income inclusion for 2004.

[8] The payment in the 2003 taxation year, \$7,539, related to services performed in British Columbia for a company called Paraline Ventures Ltd. The assessment issued to the appellant was reversed after the appellant provided support that he was working outside British Columbia at the time. The CRA accepted that the work had been performed by the appellant's son.

[9] The payment in the 2005 taxation year, \$11,185, related to services performed for Ivory Interiors Ltd. At the audit and appeals levels, the appellant first denied that he had worked for Ivory Interiors. After being informed that someone from Ivory Interiors would testify, however, the appellant acknowledged that the income was his.

[10] As for the payment from Go West Drywall in the 2004 taxation year, the appellant testified at the hearing that this amount was not earned by him. The son testified that the payment was made to him and that the fee from Go West Drywall was earned by the son and his friends.

## Analysis

[11] Based on the evidence as a whole, I am satisfied that the assessment for the 2004 taxation year was correct.

[12] The testimony of the appellant and his son was quite evasive, especially in reference to identifying their signatures on various documents. Neither witness was credible.

[13] I would also note that the appellant admitted to the CRA that he had not been truthful about the income from Ivory Interiors. When confronted by the CRA as to why he reversed his position regarding 2005 and not 2004, he answered that he had been caught.

[14] The respondent submits that its position is supported by the appellant's signature on the back of the cheque from Go West Drywall. Counsel asked me to compare the similarity between this signature and signatures of "Cyril Barrett" on forms filed with the appellant's income tax returns (Ex. R-1, Tabs 1, 3).

[15] I agree with counsel for the respondent that the signatures appear to be similar.

[16] I would also comment that the above signatures are quite different from signatures on the cheques received in 2003 from Paraline Ventures. This income is acknowledged to have been earned by the appellant's son.

[17] When the evidence is viewed as a whole, it is convincing that the appellant intentionally did not report income in the amount of \$5,070 for the 2004 taxation year. The Minister was correct to assess this amount after the normal reassessment period and to impose a gross negligence penalty.

[18] The appeal is dismissed.

Signed at Ottawa, Canada this 5<sup>th</sup> day of May 2010.

"J. M. Woods"

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Woods J.

CITATION: 2010 TCC 248

COURT FILE NO.: 2009-2976(IT)I

STYLE OF CAUSE: CYRIL BARRETT and  
HER MAJESTY THE QUEEN

PLACE OF HEARING: St. John's, Newfoundland & Labrador

DATE OF HEARING: April 28, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: May 5, 2010

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Devon E. Peavoy

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

For the Respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada