Docket: 2008-2475(IT)I

BETWEEN:

HUGUETTE GÉNIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 30, 2010, at Kapuskasing, Ontario, and by way of conference call on July 29, 2010, at Ottawa, Canada.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Appellant:	Paul Mongenais
Counsel for the Respondent:	Mélanie Sauriol

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2003, 2004 and 2005 taxation years is allowed, with costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons for judgment.

It is further ordered that the filing fee of $100 be reimbursed to the Appellant.

Signed at Ottawa, Canada, this 21st day of December 2010.

"Patrick Boyle"

Boyle J.

Citation: 2010 TCC 641
Date: 20101221
Docket: 2008-2475(IT)I

BETWEEN:

HUGUETTE GÉNIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] Mrs. Génier's appeal under the informal procedure from the denial of her 2003 to 2005 business losses was heard in Kapuskasing, Ontario. It is not disputed that Mrs. Génier carried on a retirement home business. The only issue to be decided is whether, after ceasing regular operation of that business, she continued selling off the business assets in a commercially reasonable and orderly way in the years in question. The amount of the expenses in the years in question is not disputed. There was never any element of personal use by Mrs. Génier of any part of the property in question. She lived in her own nearby home throughout.

[2] The Court heard from two witnesses. Mrs. Génier testified on her own behalf. The Respondent subpoenaed Ms. Edith Belair, who was at the relevant time the chairman of the board of directors of the Cochrane Community Living Association ("Community Living"), Community Living being one of the entities that expressed an interest in purchasing the former retirement home premises from Mrs. Génier after she ceased normal operations and listed the property for sale. There is no issue of credibility whatsoever with either witness' testimony. Both testified in a clear, consistent and forthright manner. Mrs. Génier's recollection of events was very clear, complete and at her finger tips. This is not surprising since the events in question would have caused her significant financial setback and loss of business reputation within her community. No doubt whatsoever was cast on her testimony during the

course of a good and strong cross-examination by the Respondent's counsel. Ms. Belair's recollection was somewhat less clear but this is hardly surprising given her more distant and much lesser interest in the property and the events concerning it. Further, she was the chairman of Community Living's board but was not involved in its day-to-day management or operations at the time. Certainly, none of Ms. Belair's testimony regarding Community Living's interest in the building was inconsistent with Mrs. Génier's testimony. I accept entirely the testimony of each without hesitation or qualification.

[3] Mrs. Génier lives in the town of Genier, located outside Cochrane. She has a long personal and business history in her community. She and her husband ran a heavy equipment company serving the forestry industry from 1975 to 1992; it was called Alexandre Génier Ltd. In 1992, when her husband passed away, she carried it on for a period of less than a year and then stopped its operations and wound up its activities. She sold off its assets over a period of three years because she was unable to find anyone to purchase the business as a going concern. In 1993, she became as well a part-time secretary at a Cochrane funeral home. She later took that position on a full-time basis. Along with other investors, she became the owner of the funeral home in 1995 and she became its head of operations. In 1999, the funeral home's name was changed to Génier & Gauthier Funeral Home. The funeral home is a traditional local funeral home serving the needs of those wanting to preplan their funerals and people who have lost a loved one. It also acts as agent for a memorials company.

[4] Her funeral home experience caused her to perceive a need in Cochrane for an independent living building for healthy seniors. When a closed convent building went up for sale locally, she thought it would be an opportune location in which to open such a business. The property was listed for sale with an agent in February 2000 for an asking price of $269,000. After looking at it several times to assess its suitability, she purchased it in August 2000 for $189,000. She named her retirement home Foyer Oasis du Bonheur ("Foyer Oasis").

[5] Before buying the property she made inquiries in her community and had about 25 people express an interest in living in her proposed new retirement home. She knew that almost all of them would need to sell their own homes in a small Ontario town first, so she expected things to start up slowly. She anticipated start-up losses but projected a profitable business after a modest start-up. She understood the property needed rezoning, knew what that would entail and expected to be able to receive rezoning approval after her purchase. She also knew the property would need significant renovations in order to be changed from a convent to a retirement home

and she anticipated what those would consist of and what they would cost, and was aware of her available sources of financing for renovations.

[6] After closing the purchase, she attended to the needed renovations. The convent had 14 bedrooms. These needed modifications and she had future plans to add two more bedrooms when needed. In addition she was required to add a bathroom for handicapped persons. Substantial rewiring was required, including getting both telephone lines and cable television into each of the bedrooms. Substantial improvements to the electrical system were required in order to bring it up to code standards. The kitchen needed to be substantially renovated to make it into a commercial kitchen and it needed such things as a commercial dishwasher and fridges. A suitable laundry room had to be set up with commercial washers and dryers. She was required to convert all of the interior doors to fire doors. She acquired office equipment and furnishings. The gas lines had to be dug up from the street because of a defective source pipe. She also had to carry out significant grading and landscaping upgrades of the surrounding lawns, and she added a large petanque lawn and a large outdoor sign identifying Foyer Oasis. The sidewalks at the entrance had to be dug up and freshly laid to have level entranceways. Tenant storage rooms had to be constructed in some of the convent's former communal storage areas.

[7] Mrs. Génier financed all of this with her savings, a mortgage loan on the convent and two lines of credit, one of which was secured with her own home. All of the proceeds of the mortgage and all of the draws on the lines of credit were used to finance the acquisition and renovation of the Foyer Oasis business. None of it was used for any personal purposes; Mrs. Génier had other financial resources in place for her personal matters.

[8] Foyer Oasis opened for business in October 2000. More than 225 people came to its opening ceremony. One resident moved in on the first day, another signed up on the first day and moved in a week later, and a third would move in two weeks after that. All three of these were from her initial list of 25 potential occupants.

[9] Foyer Oasis was staffed 24 hours a day, as one would expect. Mrs. Génier employed six full-time staff in the business: two cooks, one washer, two housekeepers and one maintenance man/handyman.

[10] Foyer Oasis' tenants paid $1,200 per month, which was within her initial projections. For this, occupants received a private bedroom, a storage area, three meals and two snacks a day, laundry and housekeeping services, as well as cable television and telephone.

[11] Unfortunately for Mrs. Génier, Foyer Oasis' success in attracting tenants stalled shortly thereafter. Within the community, whispered rumours began circulating about her conflict of interest in running both a seniors' home and a funeral home and, perhaps related to that, concerns were expressed about the adequacy of the meals.[1]

[12] In spite of this, she continued to promote and publicize Foyer Oasis, including obtaining favourable local newspaper coverage.

[13] In May 2001, still with only three tenants and not generating enough revenue to pay the winter heating bills, she decided to close the residence's doors and discontinue operations. The three residents were able to be placed in other homes by May 31, 2001. She promptly listed the property for sale for an asking price of $450,000. By the time that listing expired in December 2001, all of Cochrane was well aware that the property, after its extensive renovations and brief operation, was up for sale. The property was very visible, located in town, on a hill, beside the church, and it was advertised in the newspapers as well as the normal real estate media. There were "For Sale" signs outside the property as well as in a window of the property. After the listing expired she had her own "For Sale" signs on the property. She listed the property again in June 2002 and dropped the price to $359,000. By October 2002, she had dropped the price to $295,000 in consultation with her real estate agent. She was anxious to sell the property from the outset due to the financial drain on her. That listing agreement expired in December 2002 and was not renewed. The agent's interest in the listing dwindled; the agent was located some distance from Cochrane, in the broker's New Liskeard office. The agent recommended that Mrs. Génier consider selling privately or use a local broker who could, among other things, be present to show the property promptly.

[14] Mrs. Génier immediately started offering the property for sale privately. In addition to relying on the signage and the local knowledge that the property was for sale, she advertised the property in newspapers outside Cochrane as far away as Timmins, where the advertisements could be targeted economically. The property was listed on Internet sites including eBay and Kijiji Sudbury. She also listed the property for sale with business brokers.

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[1] As an aside, the rumours are inconsistent with the situation of small-town North American funeral homes which have often been associated with the local furniture supplier who made the caskets, and were often associated as well with local ambulance services before the government took over responsibility for ambulance services. For an Ontario example in this Court, see *Gilpin Furniture and Funeral Service Limited v. M.N.R.*, 2009 TCC 192.

[15] During this period the property had been shown 25 to 50 times and, although no written offers were received, a number of oral proposals and expressions of interest from interested persons were received. She had offers or expressions of interest at prices up to $395,000, which fell through because of financing, zoning or other difficulties.

[16] While the property was being offered for sale privately, the local Community Living organization developed a strong interest in the property. Community Living had in mind selling its several homes in the area and consolidating its services into the much larger Foyer Oasis property. It is not clear when Community Living first expressed an interest in the property and had the first of its visits to the property. During its visits, Community Living did an extensive assessment of the adequacy of the projects and the renovations needed for complete handicapped access. Several officials from Community Living, including at least one director, looked at the property.

[17] In mid-February 2004, its Executive Director wrote a follow-up letter to Mrs. Génier inquiring about occupancy costs and formally requesting a purchase price for the property. At the earlier showings, Mrs. Génier had only mentioned a range.

[18] Mrs. Génier promptly responded to this letter, indicating that the asking price was $390,000, which was a reduction from the original listing price. She also answered their questions about utilities and occupancy costs. Community Living orally negotiated a price of $350,000.

[19] Thereafter, Community Living made a funding proposal to the Ontario Ministry of Community and Social Services for its proposed purchase of the Génier property and a relocation from its existing properties. There is no reason to think that Community Living did not propose a purchase at a price in the vicinity of $350,000. The Executive Director of Community Living had a meeting with the Ministry of Community and Social Services to discuss this. The other board member involved in this process was a former mayor of Cochrane of good reputation and known for his integrity. For all of these reasons, Mrs. Génier, reasonably, felt comfortable in continuing to negotiate with Community Living in the hope that a sale would come to fruition. The Ontario Ministry of Community and Social Services rejected the Community Living proposal for reasons entirely unrelated to the property. The Ministry's letter to Ms. Belair was dated in August 2004. This letter was not shared with Mrs. Génier until preparation for trial. In fact, Community Living's interest did not end at that time even though Ms. Belair might not have recalled this or even been

aware of it at the time. Community Living's continued interest in the property is evidenced by Mrs. Génier's late September 2004 letter to the Executive Director of Community Living. Her letter says she is responding to his request to consider renting the building to them. Her response is to quote a monthly net rent for the building and to offer a lease to own option whereby 80% of the monthly rent would be applied towards the purchase price. Mrs. Génier recalls Community Living's interest continuing well after that time and she continued to be hopeful for a long period of time.

[20] Ms. Belair confirmed that everybody in the area knew the property was for sale because of the prominently displayed "For Sale" sign on what was an institutional property and because of its central location in the town.

[21] It is not clear when Community Living's interest finally ended. However, I accept that Mrs. Génier continued to believe that the Community Living possibility was worth pursuing and that she did pursue it with officers from Community Living into 2005.

[22] In September 2005, Mrs. Génier again listed the property for sale, through December 2006, with the original listing broker. However this time she listed it with one of their sales agents located in Cochrane. The asking price was $249,900. This listing was renewed in November 2006 for another year with the same broker. While the property was listed with this broker, Mrs. Génier continued with her private advertisements on Internet sites, even though any private sale would be subject to the terms of the exclusive listing agreement. Over this period she also dropped the price to $225,000 and then to $189,000.

[23] She later advertised it in Toronto and Ottawa as well as on MLS.ca. She had prospects from as far away as Toronto. Over the duration of the listing she received offers to purchase the property in order to demolish the building and sell off the four lots on which it was built; one such offer was from the Town of Cochrane itself.

[24] She asked her listing agents what she could do to make it more readily saleable and they generally indicated that as long as she was flexible on the price there was little else to do.

[25] At the time of the hearing, Mrs. Génier had entered into an agreement to sell the property for $175,000, however closing was conditional on a necessary rezoning being obtained.

[26] During the period she had the property for sale and was no longer carrying on her business activities there, Mrs. Génier sought to minimize her carrying costs by renting out the property. At times she was able to receive modest rent and the tenants were also responsible for the utilities; at other times she was only able to have the tenants pay the utilities. She also had several short-term special event rentals and was once able to rent out several of the small rooms for one year to a professional practice that was in need of temporary accommodations while its new building was being completed.

[27] There was no evidence that, or from which I can infer that, Mrs. Génier did not, generally speaking, want to sell the property during this period, but was interested in holding on to it in order to obtain greater capital appreciation at the expense of taxpayers generally through the deduction of her losses.

[28] Mrs. Génier reported in respect of Foyer Oasis during the years in question net losses in amounts between $25,000 and $30,000. These were made up primarily of interest, property taxes and utilities.

Analysis

[29] It is clear from the Respondent's assumptions, the Canada Revenue Agency ("CRA") audit proposal letter and the notice of confirmation following Mrs. Génier's objections that CRA officials reassessed 2003 through 2005 with little or no further thought once they found out that the business's regular operations of running a retirement home had ended in mid-2001. The objections were promptly followed by a confirmation on that same basis notwithstanding that the submissions to the CRA audit and appeals units detailed the continued efforts to sell the asset after normal operations had ended. The CRA was clearly wrong. It is simply not in accordance with the *Income Tax Act* (the "*Act*"), with the interpretation of that *Act* by the courts, and with the realities of Canadian businesses, large and small, that once normal operations cease all of a business's assets become non-business or personal assets. It is simply incontrovertible that the general rule is that business closing costs are deductible business expenses. It would be nonsensical if it were otherwise. It is simply unacceptable that individual Canadian business people are summarily told otherwise by CRA audit and appeals officials.

[30] That CRA business auditors could be wrong on such a basic tax premise is surprising. That CRA appeals officers could dismiss an objection on this point is

simply inexcusable. Canadian businesses expect and deserve better. Canadians are entitled to, and pay for, a professional and trained public service.

[31] The Respondent at trial sensibly abandoned the positions of the CRA audit and appeals officials and of the CRA agent who drafted the reply. The Respondent's counsel instead focussed on whether Mrs. Génier was reasonable in her approach to selling the property and minimizing her continuing losses after regular operations had ceased. However, in this case there is no suggestion of either personal use or some other obvious reason to continue to hold the property, nor is there any evidence from which to infer that Mrs. Génier was holding it for the purpose of continued capital appreciation. In such a case, the CRA has little business questioning the commercial business and investment decisions of Canadians. As I wrote in *Central Springs Limited v. The Queen*, 2010 TCC 543:

> 34 The courts have, on a number of occasions, reminded the CRA that it does not have the authority to second-guess business decisions legally implemented. See, for example, *Gabco Ltd. v. M.N.R.*, 68 DTC 5210 (Ex. Ct.), and *Jolly Farmer Products Inc. v. The Queen*, 2008 TCC 409, 2008 DTC 4396 (TCC).

[32] Mrs. Génier may have made some business mistakes but those were her mistakes to make. Many Canadian businesses have exercised what Monday morning and armchair quarterbacks say was poor business judgment and lost large amounts of money, including banks and other financial institutions, natural resource companies and real estate development companies. Some, with names like Eaton, Campeau and Massey lost their businesses as a result. Their tax losses were not denied as a result of arguably poor business decisions. It can be no different for the Géniers of Canada. It is not open to CRA officials after the fact to substitute their sense of what constitute reasonable and sound commercial, business or economic investment decisions for the judgment of those who incur the losses. Canadian businessmen and women, of whatever type they may be, are entitled to make their own considered judgments and decisions. Some may be averse to risk and conservative; others may be more aggressive and open to risk. Once it is established that their business or investment activity is a source of income from a business or property, their risk/reward analysis, risk tolerance, judgment and decisions are not generally open to be challenged by the CRA, nor should these be reviewed by judges. That is not the role of the CRA or the Court where everything is clearly happening within the context of a business and where no concerns of personal use or benefit arise. This is all the more true where the Respondent leads no evidence to support its view that a genuine reasonable, sensible business person would not act in such a way.

[33] In *Brian J. Stewart v. The Queen*, 2002 SCC 46, 2002 DTC 6969, the Supreme Court of Canada wrote:

> 50 It is clear that in order to apply s. 9, the taxpayer must first determine whether he or she has a source of either business or property income. As has been pointed out, a commercial activity which falls short of being a business, may nevertheless be a source of property income. As well, it is clear that some taxpayer endeavours are neither businesses, nor sources of property income, but are mere personal activities. As such, the following two-stage approach with respect to the source question can be employed:
>
> > (i) Is the activity of the taxpayer undertaken in pursuit of profit, or is it a personal endeavour?
> >
> > (ii) If it is not a personal endeavour, is the source of the income a business or property?
>
> The first stage of the test assesses the general question of whether or not a source of income exists; the second stage categorizes the source as either business or property.

[34] The first step in the *Stewart* analysis is to distinguish between commercial and personal activities but, according to the Supreme Court of Canada, this analysis is only required where there is some personal or hobby element to the activity in question. See paragraphs 52 and 53 of the Court's reasons.

[35] In *Langille v. The Queen*, 2009 TCC 398, 2009 DTC 1262, I wrote the following on the subject of the continued deductibility of expenses related to a business once its ordinary operations had ceased and it was in a winding-up period and pursuing the winding-up in a commercially reasonable, sensible and orderly manner:

> 9 I am satisfied that the net business losses claimed by Mr. Langille in 1999 to 2001 were properly deductible. The evidence is that a sensible, commercially reasonable and entirely business-like approach was followed in liquidating the dairy farm assets following the suspension of its business operations. It is not unreasonable to think that the disposal of approximately 3,000 acres of farmland in the Annapolis Valley, after deciding there was no future viability of carrying on commercial farming operations on it, would not be a quick process. The taxpayer made business decisions on how to liquidate and maximize his proceeds thereby minimizing his shutdown expenses consistent with the advice he received, continuously tried to market and sell the remaining property, and did not use the property for any personal purposes. In the circumstances of this case, the period 1988 or 1989 through 2001 continues to be a reasonable period in which to continue to successfully conduct the liquidation in commercial fashion.

10 This approach to expenses incurred during a winding up period for a discontinued business was adopted by C. Miller J. in *Heard v. Canada*, [2001] 4 C.T.C. 2426 (see especially paragraph 15). The reasons of C. Miller J. in *Heard* were quoted approvingly by Hershfield J. in *Mikhail v. Canada*, [2002] 2 C.T.C. 2612 (at paragraph 34). The reasons of C. Miller J. and Hershfield J. are not diminished by the fact they were written in a pre-Stewart REOP world (*Brian J. Stewart v. The Queen*, 2002 SCC 46, 2002 DTC 6969).

11 As I wrote in *Caballero v. The Queen*, 2009 TCC 390, at paragraph 6:

> It is possible to commence to carry on a business for purposes of the *Income Tax Act* (the "*Act*") before the business is operational. A business can be expected to have different types and different levels of activities throughout its course. What it does during its start-up or winding down phases can be expected to differ significantly from what it does during its operational phase. It may even have periods of relative dormancy when its normal operations are interrupted.

In this case, I find we have a business that is continuing to be carried on in the year in question in the course of completing the winding down of the farming activities it had ceased to operate.

12 As stated by the House of Lords in *South Behar Railway Company Limited v. I.R.C.*, [1925] A.C. 476 at 488: "Business is not confined to being busy; in many businesses long intervals of inactivity occur." In that case the decision was: "The concern is still a going concern though a very quiet one."

13 It was the respondent's position that in the years 1999 to 2001 the taxpayer simply was not in a farming business. His activity in those years did not establish he was genuinely farming. The respondent did not consider the historical substantial commercial farm operations relevant. The CRA was either looking only at what was happening in the years 1999 to 2001, or treated those years' activities as reflective of the past farming history of Mr. Langille. In the words of the CRA witness, that farm history was so far removed she just did not factor it in. Further, she was not aware there had been regularly recurring land sales since 1988. This means that the respondent was not looking at those losses as resulting from business shutdown expenses.

14 As a general rule, there is no reason that business shutdown or termination expenses incurred post-closure of operations cease to be deductible business expenses in ordinary commercial and business-like circumstances. If it were otherwise, Canadian businesses, whether manufacturers, mills, mines or otherwise, would be denied recognition of a potentially significant portion of the expenses associated with their taxable revenues. That would not be right and there are no express provisions of the *Income Tax Act* which would require it as a general

> principle. While no evidence was received on this point, I doubt very much that it would be in accordance with ordinary commercial principles or with Canadian generally accepted accounting principles.
>
> 15 The Crown argued that, after the dairy operations ended or at least for the years in question, the land was held for personal enjoyment or for investment purposes. There was no evidence to support the remaining listed lands being personal use property or being used for personal enjoyment. In order for me to conclude the lands ceased to be related to the shutdown [of the] dairy business and its use changed to being held as a capital investment asset, I would have to at least be persuaded that the taxpayer was not carrying on throughout a reasonable disposition of the farming assets. The evidence presented does not support such a conclusion and, where there is no personal or hobby aspect to a venture, it is not for the CRA to second-guess or overlook business decisions made by business owners relating to their businesses if the decision is not unreasonable.
>
> 16 On the Crown's theory, section 45 would have applied at some point upon a change from an income-producing use to a non-income-producing use or from a business income-producing use to a property income-producing use by Mr. Langille. There is no evidence to support the position that the property ever ceased to be held or used for the purpose of gaining or producing business income. Section 45 was not pleaded by the Crown.

[36] This is entirely consistent with earlier decisions of this Court in *Mikhail v. The Queen*, [2002] 2 C.T.C. 2612, *Raegele v. The Queen*, [2002] 2 C.T.C. 2955, *Baird v. The Queen*, 2010 TCC 316, *MacIntyre v. The Queen*, 2010 TCC 277, *Heard v. The Queen*, [2001] 4 C.T.C. 2426, and *Nadoryk v. The Queen*, 2002 DTC 2044.

[37] The Crown's principal submission was that Mrs. Génier's exorbitant $450,000 asking price at the outset and the absence of a listing agreement with a commercial real estate brokerage for most of the period in question demonstrated that she was not pursuing the sale of Foyer Oasis in a reasonable manner, hence her continued ownership and efforts to sell were no longer connected with the Foyer Oasis retirement home business. It was argued that she was looking instead for the future accrual of a capital gain. I am unable to reach the same conclusion. In hindsight, Mrs. Génier may have been as unwise in setting her initial asking price as she may have been in even opening the business, but she readily dropped the price every six months or so, and by early October 2002 it was listed at $295,000.

[38] Her asking price was simply that — an asking price; it was clear that it was always negotiable. Indeed, she quickly began dropping the price on the recommendation of her agents, and by the end of 2002 her asking price compared favourably with the asking price for the old convent, which had been $269,000

before Mrs. Génier's extensive renovations and improvements. Further, by the end of 2005, she had reduced her price to under $250,000.

[39] During the periods that she did not have the property listed with an agent, it continued to be advertised extensively for sale and continued to be known throughout the Cochrane area as still being for sale. It was during that period that Community Living pursued its interest in the property. The fact that, when Community Living was unable to buy the property and was interested in renting it, Mrs. Génier offered them a lease-to-purchase agreement confirms that she continued to be interested in selling the property in its entirety as quickly as reasonably possible.

[40] This was a special-use institutional residential complex in a Northern Ontario town. It could not be expected to sell very quickly. It was in need of a special purchaser like Community Living or someone interested in running a guest house, a bed and breakfast, a rooming house, a special needs home or a group home, or some organization interested in communal housing. The property could be converted into professional offices or a residential treatment centre or it could be converted back to church use given its chapel and its small rooms suitable for offices and classrooms.

[41] This is not a case of a taxpayer holding on to an asset which has declined in value, hoping for a future capital gain to recover her investment.

[42] There is no concept of reasonableness which would suggest that in these circumstances a real estate agent was required. It seems illogical that there should be any such presumption or general principle that would require the incurring of additional fees by taxpayers. The reasonableness of winding-up efforts will need to be decided on the basis of particular facts and circumstances. In this case, I am satisfied that throughout 2003 to 2005 Mrs. Génier continued to pursue the sale of the property in an orderly, sensible, commercially reasonable and businesslike manner.

[43] I find that Mrs. Génier's continued carrying costs for the property in the period 2003 through 2005 continued to be deductible as an expense associated with her Foyer Oasis business.

[44] The Respondent, in the course of her cross-examination and argument, questioned whether Mrs. Génier's lines of credit associated with Foyer Oasis had only been used for the purposes of that business. The Respondent questioned the amount of interest claimed in respect of those lines of credit.

[45] After hearing the evidence, in particular Mrs. Génier's responses in cross-examination in which she was able to account from memory for about 90% of the amount in question by referring to specific renovations and their approximate cost, I am satisfied that the amounts drawn on the lines of credit were, as Mrs. Génier testified in examination-in-chief, used entirely for the Foyer Oasis business renovations and the carrying costs and were never used for personal purposes. The only evidence of any crossover of her business and personal financing is the fact that she mortgaged her home to secure the Foyer Oasis business lines of credit.

[46] The taxpayer's accountants did contribute to the Respondent's concern by showing the interest not as a business expense in her initial return but as interest paid on money borrowed for investments. The evidence satisfied me that that was an incorrect classification at the outset.

[47] For these reasons, the appeal is allowed with costs.

Signed at Ottawa, Canada, this 21st day of December 2010.

"Patrick Boyle"

Boyle J.

CITATION:	2010 TCC 641
COURT FILE NO.:	2008-2475(IT)I
STYLE OF CAUSE:	HUGUETTE GÉNIER v. HER MAJESTY THE QUEEN
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DATE OF JUDGMENT:	December 21, 2010

APPEARANCES:

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