Docket: 2010-1520(IT)I

BETWEEN:

LEONA MADISON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 24, 2010, at Edmonton, Alberta

Before: The Honourable Justice T.E. Margeson

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Adam Gotfried

JUDGMENT

The appeal from an assessment made under subsection 227.1(1) of the *Income Tax Act*, notice of which is dated April 30, 2009, and bears number 719199, is dismissed, and the Minister's assessment is confirmed.

Signed at Kamloops, British Columbia, this 6th day of April 2011.

"T.E. Margeson"

Margeson J.

Citation: 2011 TCC 201
Date: 20110406
Docket: 2010-1520(IT)I

BETWEEN:

LEONA MADISON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Margeson J.

[1] This is an appeal from the assessment No. 719199 by which the Minister of National Revenue (the "Minister") assessed the Appellant as a director of Canfleur Mining Inc. ("Canfleur") for $43,241.88 representing unpaid deductions by Canfleur.

Evidence

[2] The Appellant testified that she resigned as a director on December 31, 2002.

[3] She called the directors frequently and told them about their duty to make remittances to Canada Revenue Agency (CRA). In the year 2002, she remembered seeing a credit balance in the account. This can be seen in Exhibit A-1 which was admitted by consent. She was never a "*de facto*" director. She was never involved in the day-to-day operations of Canfleur. She had no control over how the money of Canfleur was collected or spent. When she advised them about the required deductions, they were rude to her.

[4] She was unable to pay the bills. She had no authority with the banks, so she could not set up any accounts for paying the CRA deductions. The directors would not give her the cash or set up any bank accounts.

[5] When she was first asked to put her name on the incorporating documents she refused but then she agreed to go on the list of directors for the first year which was 2001.

[6] The incorporator of Canfleur recruited others to go on the list of directors. He agreed to remove her name from the list but did not do so. She believed that he would. They paid off some debts but otherwise would not listen to her. They told her that they were taking care of it.

[7] She tried to do things that a director was supposed to do but there was nothing that she could do. She was not a part of Canfleur's operations except that she put much money into it. "She was hung out to dry".

[8] She never hired or fired anyone in Canfleur. She gave them the reports, told them what had to be paid and gave them the calculations for the source deductions that had to be paid. It was totally out of her control.

[9] Canfleur was dissolved more than two years before she was assessed.

[10] Exhibits A-2 to A-16 were admitted by consent, including the Certificate of Dissolution, Notice of Intent to Dissolve, Order Nisi and Order Absolute. She said that all assets of Canfleur went to one individual. The 2006 Order Nisi and Order Absolute rendered the company insolvent.

[11] The annual returns filed for 2002 and 2003 were not filed by her and were filed without her consent. These documents show that Michel Filion was making the decisions alone.

[12] Exhibit A-14 shows that the Appellant was sending reports to others at Canfleur about the outstanding accounts.

[13] In cross-examination, she said that she had received one share in Canfleur. She was appointed a director on November 1, 2000. She was also Canfleur's accountant. They gave her the banking information and she was asked to keep up the bank accounts. She was to look after the financial records, produce any financial reports and set up the records for the new shareholders. In addition, she ran Canfleur's

payroll; filed income tax returns; did the annual and interim financial statements; acted as corporate secretary; completed the share register and issued new share certificates.

[14] She was involved in opening Canfleur's first bank account. She was unaware that CRA expected a separate bank account. She told the others that the remittances were trust funds and had to be paid to the CRA. They were deducted and remitted in 2001.

[15] In the year 2002, she was aware that CRA had said that the remittances were not being made. She reminded the others and they said that they were making them. She was aware that Canfleur was still carrying on transactions and taking in money.

[16] She resigned as a director on December 31, 2002. She handed her resignation to the other directors. She did not file it with the Registrar.

[17] After that her work did not change much. She did the financial statements and returns for 2003 and 2004 and worked on the Minute book and share register. She is listed on the documents as a director but she did not file them and they were not filed with her permission.

[18] Exhibit R-2 was an Alberta Corporation/Non-Profit Search and showed the Appellant listed as a director. This was dated April 15, 2009.

[19] Canfleur was struck off the registry on May 2, 2007.

[20] She was not consulted in March of 2005 about opening a new bank account. She was asked to re-open the old account.

[21] She was asked why she continued to be involved in Canfleur as late as 2004 and she said that she felt intimidated by the others. She was still listed as a director, her home address was still listed as the address of Canfleur and she billed Canfleur for $39,500.

[22] In reply, she said that the documents show that she was not a "*de facto*" director.

[23] The Respondent called Susan Bernice Rousseau who was a Collections Officer for CRA. She was involved in collecting amounts from Canfleur.

[24] Ms. Rousseau sent out the pre-assessment letters. She was involved in certifying the debt, raising the assessments and sending them out and she received back the nil returns after a writ of search and seizure was issued and enforced by a civil agency.

[25] Exhibit “A” to the Amended Reply to the Notice of Appeal accurately reflects the assessment against the Appellant. The numbers set out in Exhibit A-1 are not correct.

Argument of the Appellant

[26] In written argument, the Appellant maintained that she was a director in name only. She did not participate in making decisions for Canfleur nor in the day-to-day operations of it.

[27] Her name was to be removed from the list of directors during the 2002 mining season.

[28] During the incorporation process, she explained to Michel Filion the need for remitting source deductions to the Receiver General. He undertook to take care of that. Her only responsibility was to take care of the books and report to the other directors.

[29] In 2001, she conveyed to Michel Filion and “his friend” that her name should be removed from the records in accordance with their agreements.

[30] Canfleur did in fact remit source deductions for March, April and June of 2001. She never ran a payroll after October of 2002 in accordance with Michel Filion’s directions.

[31] CRA made an arbitrary assessment in 2003 which had nothing to do with her. She received the assessment after May 2, 2009 for $19,414.91.

[32] On December 31, 2002, she submitted a letter of resignation to the management of Canfleur, which was a formality only as the management recognized that she was not a director.

[33] Exhibits A-14 and A-15 show that CRA was on the list for source deductions and she informed the management. Every time CRA contacted her, she informed the management who told her that they were looking after that obligation.

[34] She believes that because she communicated information regarding source deductions to CRA that she was being diligent in her duties as external bookkeeper and secretary. She had no duties as a director, no control over finances and no authority over the bank account.

[35] She did resign as a director and the Respondent has a copy of that resignation. She should not be held to due diligence as a director because she was not a "director" by definition.

[36] Only one cheque bearing the date of February 28, 2002, bears her signature. Michel Filion brought it to her and demanded that she sign it as two signatures were required. All other cheques were drawn without her knowledge or influence.

[37] CRA has not complied with the requirements of paragraph 227.1(2)*(b)* of the *Income Tax Act* (the "*Act*") since they did not commence action within six months of the date of intention to dissolve (October 14, 2006)(Exhibit A-3) and the date of dissolution (May 2, 2007)(Exhibit A-3). They did not take action until March 26, 2009 (Exhibits R-7 and R-8).

[38] A copy of her resignation was not permitted to be filed in Court.

[39] She was never told by any agent from CRA that she was a director or asked if she was. She told the CRA agents that she had no authority over the bank account and she told them that she would pass along their request to Michel Filion and/or Doug Olson.

[40] Attempts were made to reach a settlement in this matter by way of payments starting on March 18, 2003. Michel Filion said that he would take care of it.

Argument on behalf of the Respondent

[41] The Respondent took the position that the Appellant was a director at all relevant times since her appointment on November 1, 2000 and that she was not "duly diligent" in preventing Canfleur's failure to remit source deductions.

[42] The Appellant only ceased to be a director on May 2, 2007, the date that Canfleur was dissolved and struck from the corporate registry. Subsection 227.1(4) of the *Act* provides that the directors must be assessed within two years of their

ceasing to be a director. She was assessed on April 30, 2009, within the two-year period.

[43] The Court should reject the Appellant's claim that she resigned as a director in December of 2002 because there is no corroborating evidence that she resigned at that time; the taxpayer had not previously informed the Minister that she had resigned and she continued to act as a director after allegedly resigning.

[44] There was no written evidence of her resignation, none of the evidence before the Court mentions her resigning; no witnesses were called to corroborate her position that she had resigned and the Alberta Corporate Registry lists her as a director as of the Strike Date and lists her home as Canfleur's registered office and records address.

[45] The Appellant did not tell CRA that she had resigned as a director during conversations in 2003 and 2004. It would have been reasonable for her to do so.

[46] The Appellant admitted that she continued performing the same duties at Canfleur as she did before her alleged resignation.

[47] The Appellant should be held to a high standard of care on the "due diligence" issue. She had in-depth knowledge of accounting concepts and financial matters. She has been a certified management accountant since 1992. She admitted that it was part of her training as a CMA to know the responsibilities associated with being a director. She knew that source deductions were trust funds of the Crown that had to be remitted to CRA.

[48] She did not take positive steps to prevent the failure that she should have when she became aware of the non-remittances. Even though she informed the directors that CRA was demanding money she did not indicate any actions taken by her to remedy the failure to remit.

[49] The appeal should be dismissed.

Analysis and Decision

[50] The Court must first comment upon certain arguments made by the Appellant in her written submissions.

[51] She indicated that her attempt to introduce written evidence of her resignation as a director was prohibited because of time constraints during the trial. This is not correct.

[52] Such evidence was prohibited because counsel for the Respondent objected to the document that was sought to be introduced and the Court indicated that it would have to inquire as to whether the document met the requirements of the Rules of Evidence. The Appellant then decided not to attempt to enter the document in evidence. Further, even though it was late in the day, the Court was prepared to stay as long as it had to in order to allow all of the evidence to be presented. The only matter that was to be delayed, was the presentation of written arguments by both parties, rather than oral arguments, to which both parties agreed.

[53] Further, the Court made no indication that it would not accept the Appellant's husband's testimony, and the decision not to call the husband was that of the Appellant alone.

[54] Further, the Court did not rule as to the admissibility of a purported copy of the Appellant's resignation, which was purportedly in the hands of CRA. It was not presented to the Court for admission.

[55] Further, the Court made no ruling with respect to an alleged Canfleur document regarding the names of management, and it was not presented for admission into evidence.

[56] With respect to the Appellant's attempts to introduce the telephone bills into evidence, the Respondent objected to their admission and the matter was not pursued. It had nothing to do with time constraints. The same is true with respect to any actual bills, telephone journals, fax messages, cleared cheques (from the Appellant's working papers), and any document allegedly in the possession of CRA that would corroborates any attempt by the Appellant to reach an agreement with CRA.

[57] The Court will deal firstly with the Appellant's argument that the assessment shall be vacated because the Respondent did not comply with the provisions of paragraph 227.1(2)(*b*) of the *Act*. That section provides as follows:

> A director is not liable under subsection 227.1(1), unless
>
> […]
>
> (*b*) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the

> corporation's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; […]

[58] The Appellant argues that attempts by CRA to collect were not approved by the Court until March 26, 2009, long after the six-month window.

[59] However, it is clear from the pleadings and the evidence, that the Respondent was proceeding under the provisions of paragraph 227.1(2)(*a*) of the *Act* which provides as follows:

> A director is not liable under subsection 227.1(1), unless
>
> (*a*) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part; […]

[60] A reference to paragraph 4 of the Reply indicates that this was done on March 26, 2009. There was no evidence given to rebut this provision.

[61] The Court is satisfied that the Respondent has complied with this provision.

[62] The Appellant argues that she was a director in name only for incorporation purposes and not a real director or an acting director. However, the evidence establishes that the Appellant was appointed a director on November 1, 2000. She was given a share of Canfleur in exchange for her assistance starting and incorporating Canfleur. She ceased being a director on May 2, 2007, the date that Canfleur was dissolved and struck off the registry.

[63] The Court is satisfied that she was a *de jure* director and a *de facto* director during this period of time.

[64] The Court does not accept the Appellant's position that she resigned as a director in December of 2002. There was no corroborating evidence to support her claim either by documentation or *viva voce* evidence.

[65] The Court is satisfied that she did not inform the Minister about any resignation and it would have been reasonable for her to do so as soon as she was confronted with the assessment. The Court is further satisfied that she continued to act as a director after her alleged resignation. As pointed out by counsel for the

Respondent, an Alberta Corporate Registry report lists her as a director of Canfleur at the date the name was struck from the corporate registry. Her home was listed as Canfleur's registered office and records address. Again, as argued by counsel for the Respondent, and indicated in her cross-examination, in 2003 and 2004 she continued to perform the same duties for Canfleur that she had done before her alleged resignation.

[66] The Appellant argued that if she were a director of Canfleur at any time relevant to this assessment she should not be held liable for the assessment because she has met the due diligence test under subsection 227.1(3) of the *Act*.

[67] The Court is satisfied that the Appellant should be held to a high standard of care because of her knowledge, experience in business and her business training and acumen. She has been a certified management accountant since 1992 and has a high degree of knowledge of accounting concepts and financial matters.

[68] She advised the Court in her evidence that she was aware that source deductions were trust funds and had to be submitted to the CRA. She was aware that those deductions and remittances were not being made. The only action she took, even by her own evidence, was to advise the other directors that those deductions and remittances were in arrears.

[69] She said that she had no power to prevent the failures. Yet she continued to run Canfleur's payroll, prepare and file its financial statements and income tax returns. She continued to update the Minute book and was aware that Canfleur was still taking in money and disbursing it. She continued on Canfleur's payroll.

[70] The Court is satisfied that the Appellant took no positive steps to prevent the failure as required under the reasonable care doctrine.

[71] The best that one can say about her actions is that she advised the other directors about the failure but this was after it had occurred.

[72] The appeal is dismissed and the Minister's assessment is confirmed.

Signed at Kamloops, British Columbia, this 6th day of April 2011.

"T.E. Margeson"

Margeson J.

CITATION:	2011 TCC 201
COURT FILE NO.:	2010-1520(IT)I
STYLE OF CAUSE:	LEONA MADISON and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	November 24, 2010
REASONS FOR JUDGMENT BY:	The Honourable Justice T.E. Margeson
DATE OF JUDGMENT:	April 6, 2011

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Adam Gotfried

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	

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