

Docket: 2012-663(IT)I

BETWEEN:

DALI BENTOLILA,

appellant,

and

HER MAJESTY THE QUEEN,

respondent.

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Appeal heard on common evidence with the appeals of  
Telepath Corporation (2012-666(IT)I and 2012-672(GST)I)  
on September 24, 2012, at Toronto, Ontario.

Before: The Honourable Justice Robert J. Hogan

Appearances:

For the appellant:                      The appellant himself

Counsel for the respondent:        Darren Prevost

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**JUDGMENT**

The appeal from the reassessments made under the *Income Tax Act* for the 2001 and 2002 taxation years is allowed, without costs, and the reassessments are vacated in accordance with the attached reasons for judgment.

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is dismissed, without costs, for the reasons given at the hearing.

Signed at Ottawa, Canada, this 4th day of December 2012.

“Robert J. Hogan”

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Hogan J.

Dockets: 2012-666(IT)I  
2012-672(GST)I

BETWEEN:

TELEPATH CORPORATION,

appellant,

and

HER MAJESTY THE QUEEN,

respondent.

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Appeals heard on common evidence with the appeal of  
Dali Bentolila (2012-663(IT)I) on September 24, 2012,  
at Toronto, Ontario.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Agent for the appellant: Dali Bentolila

Counsel for the respondent: Darren Prevost

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**JUDGMENT**

The appeals from the reassessments made under the *Income Tax Act* for the 2001, 2002 and 2003 taxation years and under the *Excise Tax Act* for the periods ending December 31, 2001, 2002 and 2003 are allowed, without costs, and the reassessments are vacated in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 4th day of December 2012.

“Robert J. Hogan”

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Hogan J.

Citation: 2012 TCC 423

Date: 20121204

Dockets: 2012-666(IT)I, 2012-672(GST)I  
2012-663(IT)I

BETWEEN:

TELEPATH CORPORATION,  
DALI BENTOLILA,

appellants,

and

HER MAJESTY THE QUEEN,

respondent.

### **REASONS FOR JUDGMENT**

#### **Hogan J.**

[1] The Minister of National Revenue (the “Minister”) reassessed Dali Bentolila (the “appellant”) for his 2001 and 2002 taxation years to include unreported income of \$38,579.64 and \$28,202.16 allegedly appropriated from Telepath Corporation (“Telepath”). The Minister reassessed Telepath for its 2001 and 2002 taxation years to include unreported business income of \$27,084 and \$51,467 for those years. The Minister also reassessed Telepath for failing to have collected, for the reporting periods beginning January 1, 2001 and ending December 31, 2003, goods and services tax (“GST”) on its alleged unreported business income.

[2] The unreported income of the appellant and Telepath in the years under appeal was based on an analysis of deposits to the bank accounts of Telepath and the appellant.

[3] The appeals were heard on common evidence under the informal procedure.

[4] In these appeals, the Court must decide:

- (a) whether the appellant and Telepath neglectfully, carelessly or wilfully misrepresented their income for the 2001 and 2002 taxation years,

thereby entitling the Minister to reassess beyond the normal reassessment period;

- (b) whether the appellant and Telepath failed to include as income for their 2001 and 2002 taxation years the amounts assessed as undeclared income;
- (c) whether the Minister properly assessed penalties against Telepath and the appellant for failure to file tax returns as and when required under the *Income Tax Act* (the “ITA”); and
- (d) whether Telepath failed to collect GST on the amount assessed as undeclared income by the Minister.

[5] In making against the appellant the reassessments at issue herein, the Minister relied on the following assumptions of fact set out in the reply to the notice of appeal:

- 7. In determining the tax liability of the appellant, the Minister relied on the following assumptions:
  - a) at all material times the appellant was resident in Canada;
  - b) at all material times Telepath was a corporation resident in Canada;
  - c) the year-end of Telepath is November 30;
  - d) at all material times the appellant was the president and sole shareholder of Telepath;
  - e) at all material times the appellant was involved in the day-to-day operations of the business of Telepath;
  - f) on his income tax returns for the 2001, 2002, and 2003 taxation years, the appellant reported total income in the amounts of \$3,511, \$3,511 and \$7,968, respectively;
  - g) the appellant did not file tax returns for the 2001, 2002 and 2003 taxation years by their due date;
  - h) Telepath had unreported business revenue of \$27,084 and \$51,467 for its 2001 and 2002 taxation years, respectively;
  - i) deposits totalling \$38,579.64 and \$28,202.16 in taxation years 2001 and 2002, respectively, (the “Deposits”) and detailed on Schedule A, attached,

were revenue earned by Telepath and deposited to a bank account held jointly by the appellant and other family members;

- j) the Deposits were from merchant deposits from a Moneris point of sale terminal and these deposits were from Telepath's merchant account;
  - k) the Deposits were not reported as income by Telepath or the appellant;
  - l) the appellant received the Deposits in his capacity as shareholder of Telepath.
8. In reassessing the 2001, 2002, and 2003 taxation years beyond the normal reassessment period, the Minister relied on the following facts:
- a) the facts assumed by the Minister as stated above;
  - b) the appellant made a misrepresentation when he understated his income in the amounts of \$38,579.64 and \$28,202.16 for the 2001 and 2002 taxation years, respectively; and
  - c) by understating his income the appellant made a misrepresentation attributable to neglect, carelessness or wilful default for the years in issue.

[6] The Minister relied on similar assumptions of fact with respect to Telepath.

[7] For reasons that were not disclosed at the hearing, the audits of the appellant and Telepath were commenced by the Special Enforcement branch of the Canada Revenue Agency ("CRA"). The CRA auditor who conducted the initial audit of the taxpayers concluded that the appellant had failed to report income appropriated from Telepath in the amounts of \$197,733, \$207,215 and \$58,465 for his 2001, 2002 and 2003 taxation years. The initial reassessments were based on the assumption that all amounts deposited in a Bank of Montreal ("BMO") bank account in the names of the appellant, his mother, two of his brothers, and a friend were undeclared income of the appellant and Telepath.

[8] At the objection stage, the appellant was able to convince the CRA auditor that the BMO bank account belonged to him, his mother, two of his brothers and a friend. The evidence shows that the bank account was initially opened by the appellant's mother, who testified at the hearing that she added two of her sons and a family friend to the account in order to facilitate electronic transfers of funds among the signatories on the account.

[9] The appeals officer assigned to review the work of the CRA auditor was satisfied with most of the appellant's explanations and reduced the unreported business income to the amounts indicated above.

[10] The appeals officer testified that she treated deposits from a Moneris point of sale terminal (the "Merchant Account") as undeclared income of the appellant and Telepath. She did so because the Merchant Account was opened in the name of Telepath and she did not accept the appellant's explanations that the income belonged to a business operated by a friend, and later, by his brother in the circumstances described below.

[11] The appellant testified that the Merchant Account was opened in Telepath's name at the request of Michael Schweitzer, a U.S. resident. Mr. Schweitzer travelled to Cuba frequently, where he met his future wife, Aimelin Schweitzer. The couple opened a business called Cubamall.com ("Cubamall"). That business offered Cuban cigars and liquor for sale on the Internet. The U.S. had imposed a trade embargo on Cuba, which precluded Mr. Schweitzer from doing business with Cuba from the U.S. He asked the appellant to open the Merchant Account to receive payments made by Cubamall customers on Visa, MasterCard and American Express credit cards.

[12] The appellant produced two Excel spreadsheets.<sup>1</sup> One spreadsheet, which covered the period from October 5, 2001 to June 5, 2002, was prepared to track funds received by Telepath and the appellant on behalf of Cubamall. The other spreadsheet, which covered the period from October 19, 2001 to July 22, 2002, also recorded funds spent on behalf of Cubamall's business by the appellant and Telepath. Finally, the appellant produced an email from Mr. Schweitzer dated December 23, 2001 asking the appellant to send funds electronically to a relative of Mr. Schweitzer's future wife in Cuba. Ms. Schweitzer left Cuba to join her future husband in the U.S. The Cubamall business was terminated at that time and the Merchant Account was no longer used to receive funds on behalf of Mr. Schweitzer.

[13] The appellant also testified that his brother, Will Bentolila, opened a printing shop in the Ottawa area. The appellant is estranged from his brother, who is now living in Russia.

[14] According to the appellant, his brother had a poor credit history and a criminal record, which prevented him from accessing credit and opening a merchant account to receive credit card payments. To aid his brother, he gave him access to his and

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<sup>1</sup> Exhibit A-1.

Telepath's Merchant Account. Payments received from Visa and MasterCard were credited to the BMO joint account and payments received from American Express were deposited to a Telepath bank account. The appellant kept detailed Excel spreadsheets that showed the revenue received on behalf of his brother's business and the amounts spent for the business and those used for personal expenses of his brother and his brother's common-law spouse.

[15] These spreadsheets were shown to the CRA appeals officer, who refused to accept their content without additional documentary support.

[16] The appellant's testimony is corroborated by the testimony of Kavita Persaud, his brother's former common-law spouse. Ms. Persaud explained that Will Bentolila had a poor credit record, which made it difficult for him to access credit or establish a merchant account. She stated that she was aware that the appellant allowed Will to use his and Telepath's bank accounts. She knew this because the appellant paid most of their personal expenses and Will Bentolila had explained to her why the appellant was doing so. I note that the CRA appeals officer did accept one of the deposits in the BMO bank account as not belonging to the appellant because the appellant was able to show that the funds had been transferred electronically to Ms. Persaud's bank account.

[17] Subparagraph 152(4)(a)(i) of the *ITA* allows the Minister to issue an assessment beyond the normal reassessment period in the following circumstances:

(i) [where the taxpayer] has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act . . .

[18] The respondent bears the burden of proving that these circumstances exist with respect to the appellant and Telepath.

[19] I found the appellant, Lise Bentolila, and Ms. Persaud to be credible witnesses. Their testimony confirmed the appellant's position that he adopted unorthodox banking arrangements to operate Telepath's business and to facilitate banking transactions with friends and family members. I also take comfort from the fact that the CRA appeals officer was able to establish that most of the funds deposited in the BMO account belonged to other family members.

[20] Finally, I note that the appellant cooperated fully with the CRA during its audit and presented the CRA with accounting records in which the deposits in the Merchant Account were highlighted.

[21] Considering the evidence as a whole, I am satisfied that the appellant and Telepath did not fail to report all of their income.

Signed at Ottawa, Canada, this 4th day of December 2012.

“Robert J. Hogan”

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Hogan J.

CITATION: 2012 TCC 423

COURT FILE NOS.: 2012-666(IT)I, 2012-672(GST)I  
2012-663(IT)I

STYLE OF CAUSE: TELEPATH CORPORATION,  
DALI BENTOLILA, v. HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 24, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan

DATE OF JUDGMENT: December 4, 2012

APPEARANCES:

For the appellant Dali Bentolila: The appellant himself

Agent for the appellant  
Telepath Corporation: Dali Bentolila

Counsel for the respondent: Darren Prevost

COUNSEL OF RECORD:

For the appellants:

Name:

Firm:

For the respondent: William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada