

Docket: 2018-1544(CPP)

BETWEEN:

KOOTENAY MANAGEMENT CONSULTANTS LTD.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

and

RAY ZIBRIK,

Intervener.

Appeal heard on common evidence with the Appeals of *Kootenay Management Consultants Ltd. v Her Majesty the Queen*, docket number 2018-1546(IT)I, and *Ray K. Zibrik v Her Majesty the Queen*, docket number 2018-1549(IT)I on February 12, 2019, and March 20, 2019, at Vancouver, British Columbia

By: The Honourable Justice Ronald MacPhee

Appearances:

Agent for the Appellant: Ray Zibrik
Counsel for the Respondent: Spencer Landsiedel
For the Intervener: The Intervener himself

JUDGMENT

The Appeal pursuant to section 28 of the *Canada Pension Plan* (the “*Plan*”) is allowed, without costs, and the decision of the Minister of National Revenue dated February 5, 2018, and the assessment made under section 27 of the *Plan* is vacated on the basis that the worker, Ray Zibrik, was not engaged in pensionable

employment with the Appellant within the meaning of paragraph 6(1)(a) of the *Plan* in 2012, 2013 and 2014.

Signed at Ottawa, Canada, this 30th day of April 2019.

“R. MacPhee”

MacPhee J.

Docket: 2018-1546(IT)I

BETWEEN:

KOOTENAY MANAGEMENT CONSULTANTS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the Appeals of
*Kootenay Management Consultants Ltd. v The Minister of National
Revenue*, docket number 2018-1544(CPP), and *Ray K. Zibrik v Her
Majesty Queen*, docket number 2018-1549(IT)I
on February 12, 2019, and March 20, 2019, at
Vancouver, British Columbia

By: The Honourable Justice Ronald MacPhee

Appearances:

Agent for the Appellant: Ray K. Zibrik
Counsel for the Respondent: Spencer Landsiedel

JUDGMENT

The Appeals from the assessments made under the *Income Tax Act* for the Appellant's 2012, 2013 and 2014 taxation years are allowed, without costs, and the assessments dated June 14, 2016 and October 23, 2017 are vacated.

Signed at Ottawa, Canada, this 30th day of April 2019.

“R. MacPhee”

MacPhee J.

Docket: 2018-1549(IT)I

BETWEEN:

RAY K. ZIBRIK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the Appeals of
*Kootenay Management Consultants Ltd. v The Minister of National
Revenue*, docket number 2018-1544(CPP), and *Kootenay Management
Consultants Ltd. v Her Majesty the Queen*,
docket number 2018-1546(IT)I on
February 12, 2019, and March 20, 2019, at
Vancouver, British Columbia

By: The Honourable Justice Ronald MacPhee

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Spencer Landseidel

JUDGMENT

The Appeals from the reassessments made under the *Income Tax Act* for the Appellant's 2012, 2013 and 2014 taxation years are allowed, without costs, and the reassessments dated June 17, 2016 are vacated.

Signed at Ottawa, Canada, this 30th day of April 2019.

“R. MacPhee”

MacPhee J.

Citation: 2019 TCC 97
Date: 20190430
Docket: 2018-1544(CPP)

BETWEEN:

KOOTENAY MANAGEMENT CONSULTANTS LTD.,
Appellant,
and
THE MINISTER OF NATIONAL REVENUE,
Respondent,
and
RAY ZIBRIK
Intervener,

Docket: 2018-1546(IT)I

AND BETWEEN:

KOOTENAY MANAGEMENT CONSULTANTS LTD.,
Appellant,
and
HER MAJESTY THE QUEEN,
Respondent,

Docket: 2018-1549(IT)I

AND BETWEEN:

RAY K. ZIBRIK,
Appellant,
and
HER MAJESTY THE QUEEN,
Respondent.

REASONS FOR JUDGMENT

MacPhee J.

[1] There are three related Appeals before the Court. They are *Kootenay Management Consultants Ltd. v The Minister of National Revenue*, docket number 2018-1544(CPP), *Kootenay Management Consultations Ltd. v Her Majesty the Queen*, docket number 2018-1546(IT)I, and *Ray K. Zibrik v Her Majesty the Queen*, docket number 2018-1549(IT)I. These Appeals were heard on common evidence.

[2] Kootenay Management Consultations Ltd. (“KMC”) is wholly owned by Ray K. Zibrik (“Mr. Zibrik”). Mr. Zibrik is also the sole shareholder and director of KMC.

[3] The issue that must be decided in all matters is whether Mr. Zibrik has received unreported employment income from KMC pursuant to subsection 6(1) of the *Income Tax Act* (the “Act”) which should have been reflected in his T4 earnings and pensionable earnings. If this is found to be the case, it must then be determined whether the Minister properly assessed KMC for unpaid Canadian Pension Plan (“CPP”) contributions on these taxable T4 earnings and also properly assessed penalties for the KMC failure to file T4 information returns with the Minister of National Revenue (the “Minister”) for the 2012, 2013 and 2014 taxation years.

FACTS

[4] Mr. Zibrik is an engineer. He has been the President of YVR Property Management (“YVR”) since 2005. In this role, he oversees as many as 200 construction projects at the Vancouver airport. He often works long hours with YVR, arriving at work at 6 a.m. and working until the evening or later. He also travels in his work with YVR three to five times a year. These are trips to airport conferences in the United States or Europe.

[5] There was not a whole lot of evidence lead about the business of KMC. KMC in its earliest days held stocks, bonds and other personal investments for the ultimate benefit of Mr. Zibrik. Over the years KMC has evolved somewhat in that it now has two real estate holdings in addition to its previous investments in stocks and bonds. At the time of the assessment these two real estate investments were

composed of five lots of land in Vancouver and real estate in Coquitlam with which the Appellant intends to tear down six to seven homes and build 217 residential units. The total value of these two real estate holdings was estimated by the Appellant to be \$650,000.

[6] In previous years, KMC held two other real estate investments also located in Vancouver and Coquitlam. In total, over the years KMC has had four investment properties, two in Coquitlam and two in Vancouver.

[7] KMC has no employees. Mr. Zibrik testified that two of his children, Kevin and Lindsay, help out with KMC, mostly providing advice. Both have their own full-time jobs. Kevin is an economist for HSBC, Lindsay works in genetics, custom tailoring cancer treatments.

[8] In 2016, the Canada Revenue Agency (the “CRA”) examined the Appellant’s payroll records and made the following conclusions about a portion of the claimed business expenses of KMC:

- KMC claimed motor vehicle expenses for Mr. Zibrik’s personal vehicles belonging to Mr. Zibrik and his family members and that Mr. Zibrik failed to reimburse KMC.¹
- KMC claimed business expenses for Mr. Zibrik’s personal expenditures such as athletic club memberships, season ski passes, family vacations and outdoor equipment.
- It was also concluded that Mr. Zibrik received a taxable employment benefit from the Appellant for the expenses mentioned above.

[9] The Minister of National Revenue (the “Minister”) reassessed Mr. Zibrik for the 2012, 2013 and 2014 taxation years in 2017 for unreported income arising from the alleged taxable employment benefits.

¹ Interestingly, the Reply for 2018-1546(IT)I states that Ray K. Zibrik did not reimburse the motor vehicle expenses to the Appellant. However, the Replies in 2018-1549(IT)I and 2018-1544(CPP) state that KMC did not reimburse the motor vehicle expense to Ray K. Zibrik. It should be noted that factually, I have concluded that Mr. Zibrik paid for the motor vehicle expenses and recorded these amounts as a shareholder loan owed to him by KMC.

[10] The Minister also assessed KMC for CPP contributions on the taxable benefits for the 2012, 2013 and 2014 taxation years and for late-filing penalties in each taxation year for failure to file T4 information returns.

[11] Mr. Zibrik has paid for the majority of the expenses in issue from his own pocket. KMC has recorded a shareholder loan in these instances, owing to Mr. Zibrik for the amounts he has paid. In a couple of instances KMC has paid for the items directly. I will describe each of the expenses claimed and how they are dealt with below.

Items in Issue

Trip to Cancun

[12] In 2012 Mr. Zibrik paid for himself and eight family members to travel to Cancun, Mexico. The individuals who made this trip were Mr. Zibrik, his wife, his three daughters, their partners and one newborn grandchild. The Appellant testified that KMC's annual general meeting was held in Cancun in 2012. The cost of the trip (in issue) for nine people to Mexico was \$7,862.64. This amount was claimed by KMC as an expense. There was an additional \$3,500 in costs spent on personal activities, such as a turtle-watching expedition that was not claimed by KMC. No explanation was given as to why nine people were necessary for the corporate meeting. No minutes from these meetings were provided as evidence, nor any notes or schedules from the meetings.

[13] The only plausible conclusion that I can reach from the evidence is that Mr. Zibrik paid for a family vacation for his entire family. He then recorded this as an expense for KMC and recorded a shareholder loan for the amounts he paid. I find this to be an expense solely for Mr. Zibrik and his family's personal benefit.

Motor Vehicle Expenses

[14] Mr. Zibrik has claimed the following amounts to be motor vehicle expenses he incurred and paid for on behalf of KMC: \$18,080 in 2012, \$20,968 in 2013 and \$16,187 in 2014. To arrive at these amounts, the Appellant claimed he drove the following kilometers for the benefit of KMC: 72,157 in 2012, 79,703 in 2013 and 80,820 in 2014.

[15] In support of this position, Mr. Zibrik provided a “Record of Business Travel; Weekly Log” for the 2012 taxation year alone. No logs were provided at trial for any of the other years.

[16] Mr. Zibrik testified that he used five vehicles in his travels; two vehicles he owned and also vehicles owned by his children Deborah, Kevin and Lindsay.

[17] Mr. Zibrik’s evidence, which lacked an air of reality, was at times contradictory and did not support the claim being made. The fact that Mr. Zibrik said he used five different vehicles to accumulate these kilometers defied logic. Furthermore, other than his written notes in the log book he relied upon at trial, he had no documentation to support his claim that he made these numerous trips for KMC.

[18] A review of the 2012 log book indicates that every day of the year, except December 25 to 27, Mr. Zibrik claims he was driving on behalf of KMC, many times hundreds of kilometers in the evening after work. This must be considered in light of the fact that the Appellant had a busy full time job with YVR, and enjoyed playing hockey and kayaking in his spare time.

[19] If Mr. Zibrik was being truthful concerning all the driving he claimed to have done, he would also be conducting some activity when he reached his various destinations. This would be a time-consuming endeavor as well. Simply put, there is not enough time in Mr. Zibrik’s day to accept his claim.

[20] Various other items in the business travel log also lead me to disbelieve the credibility of Mr. Zibrik. Some examples are as follows: despite the fact that Mr. Zibrik acknowledged travelling out of town three to five times per year as part of his full time job with YVR, there are no breaks in his travel log for these instances. I also note that he has claimed driving hundreds of kilometers in Germany and Italy on behalf of KMC without a reasonable explanation as to how this driving would benefit KMC. There are also excursions to the United States, specifically Wyoming and Montana being expensed.

[21] In closing submissions, the Appellant has admitted that a portion of the kilometers should be removed from his claim, as they were part of his volunteer work. I have no evidence before me detailing where these kilometers are found in his log book, and whether he made the same entries in other years.

[22] While Mr. Zibrik testified in a very general sense that he drove all these kilometers in an effort to scout out other potential investment properties, his evidence on this issue was at best, vague. His testimony did little to shed light on why, for a small company that has never owned more than two properties at a time, these trips were necessary.

[23] If the question before the Court was whether the motor vehicle expenses were business expenses incurred on behalf of KMC, I would have denied the expenses in their entirety, but, that is not the issue being litigated.

[24] Of importance is the fact that Mr. Zibrik paid for all auto expenses from his own pocket. KMC recorded a shareholder loan payable to Mr. Zibrik for these payments. It is this amount that was assessed each year by the Minister pursuant to subsection 6(1) of the *Act*.

Kerrisdale Athletic Club Membership:

[25] Mr. Zibrik's gym membership of \$1,200 was paid for by KMC in each of 2012, 2013 and 2014. At trial Mr. Zibrik admitted that this was a personal item, paid for by KMC. The only question is whether this amount can be assessed to the Appellant pursuant to subsection 6(1) of the *Act*.

Cheque to Hanna and Michelle Kleindienst

[26] Michelle Kleindienst is Mr. Zibrik's daughter. Hannah is his granddaughter.

[27] In 2012, KMC issued a cheque for \$2,500 to Hannah. In 2014, KMC issued a cheque to Michelle Kleindienst for \$5,000. The testimony of Mr. Zibrik was that these payments were made as a result of KMC purchasing office equipment. In particular in 2012, Mr. Zibrik testified that his daughter purchased, on behalf of KMC, two filing cabinets, an office chair and an oak desk. He stated that he paid her \$2,500 for these items. No receipts were provided nor any further evidence concerning the origins of these items. The actual cheque was made out to his then newborn grandchild, Hannah. Mr. Zibrik, in testimony, could not recollect why the payment was made in this manner.

[28] Concerning the 2014 claim for office purchases, Mr. Zibrik testified that his daughter obtained for his office a photocopy machine for \$2,300. He said she also obtained a kayak for \$2,500. No explanation was provided as to why these items did not add up to \$5,000. Concerning the photocopier, he initially stated in his

written submission given to the Court that it lasted for two years. In testimony, he stated it lasted for a few days.

[29] Concerning the kayak, Mr. Zibrik claimed it was purchased for KMC by his daughter. Mr. Zibrik stated that he used the kayak when he wished to view properties from the water as part of KMC's search for new investments.

[30] As noted above, I did not find Mr. Zibrik to be a credible witness. I do not accept, based on the evidence at trial, that the purchases claimed were made for office equipment for KMC. I instead find that these are payments made to his daughter and granddaughter at the direction of Mr. Zibrik. These payments were made to benefit Mr. Zibrik's family, not to purchase KMC office equipment.

Whistler ski pass

[31] Mr. Zibrik paid for a season ski pass to Whistler and recorded the amount as a shareholder loan in KMC's books. Mr. Zibrik provided credit card statements to support the fact that he, not KMC, paid this amount. On the balance of probabilities I accept that Mr. Zibrik has made this payment. The cost of the ski pass was \$1,775. KMC recorded an expense of \$1,249, or approximately 70% of the cost. This amount was also added to the shareholder loan account payable to Mr. Zibrik.

[32] Mr. Zibrik stated in testimony that he volunteers his time to assist the Canadian Olympic Committee and various host nations in their Olympic preparations. He says he has been doing this since 2007. Mr. Zibrik stated that he had volunteered for the Vancouver Whistler Olympics and had knowledge that was valuable to other nations in subsequent Olympics.

[33] My finding concerning the ski pass is that if Mr. Zibrik did in fact have meetings at Whistler Mountain during ski season, then these meeting were personal in that they were a component of his volunteer time. Mr. Zibrik in evidence admitted that this volunteer work was in no way related to the revenue stream of KMC. In closing submissions Mr. Zibrik changed his position, somewhat stating that in participating in these meetings he may someday create a future revenue stream for KMC. I do not accept this position. I find that the Whistler ski passes were a personal expense, paid for by Mr. Zibrik. A shareholder loan was recorded with KMC as a result of that payment.

Analysis

[34] The Minister submits that Ray Zibrik was engaged in pensionable employment with KMC as there was a contract of service between the parties during the 2012 to 2014 taxation years. No evidence of a contract of service was lead at trial. Mr. Zibrik testified that he was not an employee of KMC. The respondent did not challenge this assertion in cross examination. Given the evidence, I accept that Mr. Zibrik was not an employee of KMC.

[35] The respondent further argues that if Mr. Zibrik was not an employee, then Mr. Zibrik received taxable benefits pursuant to subsection 6(1) of the *Act* as he received income from an office. The Minister also assessed KMC for CPP contributions on the taxable benefits and penalties for not filing timely T4 information returns for the 2012, 2013 and 2014 taxation years.

[36] The question that must be answered for each of the items in issue is whether Mr. Zibrik received taxable benefits from an office pursuant to subsection 6(1) of the *Act*.

[37] Paragraph 6(1) of the *Act* reads,

Amounts to be included as income from office or employment

6(1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

[38] Mr. Zibrik was the director and sole shareholder of KMC.

[39] Subsection 248(1) of the *Act* reads:

248(1) In this Act,

Office means the position of an individual entitling the individual to a fixed or ascertainable stipend or remuneration

and includes a judicial office, the office of a minister of the Crown, the office of a member of the Senate or House of Commons of Canada, a member of a legislative assembly or a member of a legislative or executive council and any other office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity and also includes the position of a corporation director, and *officer* means a person holding such an office; (*charge*)

...

employee includes officer.

[40] Under the *Canada Pension Plan* (the “*CPP*”), the definition of “employee” includes an “officer” and the definition of “office” is identical to the definition of “office” under the *Act*. When interpreting the definition of “office” under the *CPP*, examining jurisprudence on the definition of “office” under the *Act* is relevant.

[41] In *Blanchard*, the Federal Court of Appeal determined that only the smallest connection to employment is required to trigger the operation of the section.²

[42] The Federal Court of Appeal in *McGoldrick v Canada* cited the following passage from the Supreme Court of Canada found in *The Queen v Savage*,³

As a general rule, any material acquisition in respect of employment which confers an economic benefit on a taxpayer and does not constitute an exemption falls within paragraph 6(1)(a).

[43] While I partially accept the Crown’s argument that some benefits were conferred upon Mr. Zibrik and can be identified, in particular Mr. Zibrik’s gym membership and payments made to his daughter and grandchild, I still must determine, pursuant to subsection 6(1) of the *Act*, if Mr. Zibrik received remuneration as a result of being the director of KMC.

[44] The relevant legal tests underlying the existence of an “office” were examined by the Federal Court of Appeal in 2009 in *Vachon (Sucession de) c. R.* in which the Court held⁴:

36 ... the relevant legal tests underlying the existence of an office are twofold: first, the individuals involved must hold an "office, the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity" and, second, the position in question must entitle the individual to a fixed or ascertainable stipend or remuneration.

...

38 There are two requirements for meeting this second test. The office or position held must "entitle" the individual to remuneration, and this remuneration must be "fixed or ascertainable".

[Emphasis added]

² *HMQ v Eugene Joseph Blanchard*, [1995] 2 CTC 262 at para 6, 9 DTC 5479.

³ *McGoldrick v Canada*, 2004 FCA 189.

⁴ 2009 FCA 375 at paras 36-38 and 40.

[45] The Federal Court of Appeal goes on to cite Justice Lamarre Proulx in *Duguay v R* wherein she stated:

The appropriate test for whether a payment is remuneration or a stipend is to determine whether the person received the payment for his activities in the performance of his office or whether he received it simply as an individual.”⁵ Reimbursement for expenses incurred by reason of the employment (or office) is neither remuneration as such nor a benefit.⁶

[46] Justice Stratas, in the *Real Estate Council (Alberta) v Minister of National Revenue* found the following:

...the phrase, “the position...[must be one] entitling” the individual to “stipend or remuneration,” means nothing more than a position for pay: *Vachon Estate v. Canada*, 2009 FCA 375 (CanLII) at paragraphs 38-43.

[47] Specific to Mr. Zibrik’s role with KMC, I do not find that any of the items in issue in this trial were payments made to Mr. Zibrik for *activities in the performance of his office*. I find that he was not in a position for pay with KMC.

[48] Any benefits Mr. Zibrik received from KMC were not compensation for services rendered. There is no evidence that Mr. Zibrik had an entitlement to a fixed or ascertainable stipend or remuneration.

[49] Although subsection 15(1) of the *Act* was neither assessed nor argued at trial it would have been applicable to some of the items in issue. I find the following passage of some assistance. In *Chopp v R*, Justice Mogan discussed the distinction between benefits taxable under subsection 15(1) and paragraph 6(1)(a) of the *ITA*,⁷:

It has been held on many occasions that a benefit will be taxable under subsection 15(1) of the *Income Tax Act*... only if it is conferred on a shareholder in his capacity as a shareholder. See *Minister of National Revenue v. Pillsbury Holdings Ltd.*, [1964] C.T.C. 294, 64 D.T.C. 5184 (Ex. Ct.). The relationship between a corporation and its shareholders is based on invested capital. That relationship is not, by itself, incidental to or connected with any business carried on by the corporation. Indeed, a corporation may not carry on a business or, if it does, the shareholders may not be involved in the business.

⁵ [2000] TCJ No 381 at para 37, [2001] 4 CTC 2726.

⁶ *Ransom v Minister of National Revenue*, [1967] CTC 346, 67 DTC 5235.

⁷ *Chopp v R*, [1995] 2 CTC 2946.

The relationship between a corporation and those individuals who work in the operation of the corporation's business is one of employer/employee. That employment relationship is, of course, incidental to and connected with the corporation's business. If a shareholder is also an employee of the corporation and receives a benefit in his capacity as employee, the value of that benefit would be taxed under paragraph 6(1)(a) of the Act. A corporation is ordinarily permitted to deduct as a business expense the cost of a benefit received or enjoyed by an employee qua employee. A corporation, however, is not permitted to deduct any amount with respect to a benefit conferred on a shareholder qua shareholder because the corporate/shareholder relationship is not incidental to the corporation's business. A shareholder benefit is more like a dividend and less like a business expense. Therefore, a benefit taxed under subsection 15(1) will usually result in some form of double taxation because the shareholder will be taxed on an amount which has not been deducted in computing the income of the corporation. In appropriate circumstances, this will be a harsh but necessary result.

[Emphasis Added]

[50] For the reasons described above, I find that Mr. Zibrik did not receive benefits from KMC pursuant to subsection 6(1) of the *Act*. As a result, I must allow all the appeals before the Court in their entirety.

Did Mr. Zibrik receive a benefit with the increase in his shareholder loan?

[51] I feel I should further comment on the issues of the car expenses and the Whistler ski pass. Mr. Zibrik paid for these expenses himself, and recorded the amounts as shareholder loans owing to him.

[52] The respondent argues that the increase in the shareholder loan account is a benefit received by Mr. Zibrik and he should be taxed pursuant to subsection 6(1) of the *Act* for receipt of these benefits. I do not accept this position.

[53] The evidence at trial was that Mr. Zibrik made no withdrawals from the shareholder loan account.

[54] In *Canada v Franklin*, Rothstein J.A. affirmed that no benefits were conferred on a shareholder resulting from bookkeeping errors as the shareholder had reinvested the monies (meant for the corporation) he received personally into the corporation.⁸

⁸ *Canada v Franklin*, 2002 FCA 38 at paras 2-3.

[55] Justice Rothstein cited the reasons of the lower court and held that he was unable to find any palpable or overriding error that would justify interference with the decision,⁹

However, had the sale to Yates been properly recorded by HVSL, its assets would have fallen by one half the value of the condominium as would the shareholders' loan to Mr. Franklin. Therefore, Mr. Franklin's total equity in his shares and his loan in HVSL would not have changed. Moreover Mr. Franklin's correct net loan position in HVSL never fell into a deficit position during the years under appeal. As a result, what has occurred is a series of bookkeeping errors in HVSL's statements which were caused by Mr. Franklin either on purpose or inadvertently. But none of them gave him any benefit that is in evidence. He did not withdraw any money from HVSL in excess of his correct loan balance during the years in question. Nor is there any evidence that he used the incorrect financial statements to obtain a benefit elsewhere for himself. There was no receipt of a benefit by Mr. Franklin.

[Emphasis added]

[56] By citing the reasons of the lower court and stating that there was no palpable or overriding error, the Federal Court of Appeal appeared to endorse that a shareholder loan account must fall into a deficit in order for a shareholder benefit to be recognized.¹⁰ Further, the reasons of the lower court state that the shareholder did “not withdraw any money from HVSL in excess of his correct loan balance during the years in question” meaning that the deficit calculation is a function of the proper amounts and not the incorrectly recorded amounts.

[57] A more recent case I find to be on all fours with the matter before the Court is *Chaplin*. In *Chaplin* the appellant paid for legal fees she incurred while trying to obtain control of a Corporation. In response, the Corporation deducted the legal fees paid for by Ms. Chaplin and increased the balance of her shareholder loan account. Justice Graham framed the issues as 1) did the appellant make a loan to the Corporation and 2) if not, did the Corporation confer a benefit on Ms. Chaplin when her shareholder loan was inappropriately increased.¹¹

[58] Justice Graham found the bookkeeping entry increasing the shareholder loan as “false” and determined that it was made by external accountants at the appellant's specific direction. The entry to the shareholder loan account did not

⁹ *Ibid* at para 6.

¹⁰ *Ibid* at para 5.

¹¹ *Chaplin v The Queen*, 2017 TCC 194.

reflect reality as “all that happened was that [the appellant] paid her expenses personally.”¹²

[59] Justice Graham went on to find as follows:¹³

I am not convinced that simply making a false bookkeeping entry, even knowingly, confers a benefit on a shareholder. It seems to me that the benefit is conferred when something of value is conferred on the shareholder. At most, a false bookkeeping entry lays the groundwork for disguising a future appropriation or hiding an outstanding debt owed to a company by a shareholder. It is not, in itself, a benefit.

[60] Concerning the auto expenses for each of 2012, 2013 and 2014, as well as the Whistler ski pass in 2012, Mr. Zibrik paid these amounts. The only possible benefit he received was that the shareholder loan account was increased.

[61] While I find the entries concerning the car expenses and ski pass are false bookkeeping entries, I cannot ignore the fact that no payments were made to Mr. Zibrik by KMC for these items. While the accounting entries in question are false, I agree with the analysis provided in *Chaplin*. No benefit has yet been received by Mr. Zibrik.

[62] For these reasons, the appeals are allowed. Both parties shall be responsible for their own costs.

Signed at Ottawa, Canada, this 30th day of April 2019.

“R. MacPhee”

MacPhee J.

¹² *Ibid* at para 112.

¹³ *Ibid* at para 114.

CITATION: 2019 TCC 97

COURT FILE NOS.: 2018-1544(CPP), 2018-1546(IT)I and 2018-1549(IT)I

STYLE OF CAUSE: KOOTENAY MANAGEMENT CONSULTANTS LTD. and THE MINISTER OF NATIONAL REVENUE and RAY ZIBRIK (Intervener); KOOTENAY MANAGEMENT CONSULTANTS LTD. and HER MAJESTY THE QUEEN; RAY K. ZIBRIK and HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: February 12, 2019 and March 20, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Ronald MacPhee

DATE OF JUDGMENT: April 30, 2019

APPEARANCES:

Agent for the Appellants:	Ray K. Zibrik
Counsel for the Respondent:	Spencer Landsiedel
For the Intervener:	The Intervener himself

COUNSEL OF RECORD:

For the Appellants:	
Name:	n/a
Firm:	
For the Respondent:	Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Canada
For the Intervener:	n/a