

Docket: 2013-4740(IT)I

BETWEEN:

JEAN-MARC LEFEBVRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 10, 2014, at Ottawa, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Gabrielle White

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the Appellant's 2008 and 2009 taxation years is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to deduct the amount of \$2,316.74 in 2009.

Signed at Ottawa, Canada, this 16th day of July 2014.

“V.A. Miller”

V.A. Miller J.

Citation: 2014TCC225
Date: 20140716
Docket: 2013-4740(IT)I

BETWEEN:

JEAN-MARC LEFEBVRE,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] This appeal relates to Mr. Lefebvre's 2008 and 2009 taxation years in which the Minister of National Revenue (the "Minister") disallowed certain expenses which he had claimed as business expenses of his law practice. The only amounts at issue in this appeal are \$14,257 and \$8,486 in 2008 and 2009 respectively as follows:

	2008	2009
Maintenance & Repair	\$9,048	\$3,718
Telephone and Utilities	\$3,226	\$3,287
Property Taxes	\$1,983	\$1,480
Total	\$14,257	\$8,486

Facts

[2] The Appellant practiced law as a sole practitioner under the name of "The Law Office of Jean-Marc Lefebvre, Q.C." ("Law Practice"). During the years at issue, the Law Practice operated out of a building owned by the Appellant's numbered company. The details with respect to the ownership of this building are as follows.

[3] In 1989 the Appellant purchased a 100 year old brick building in Alexandria, Ontario from the Royal Bank of Canada. In 1991, he transferred the building to his spouse and himself as joint tenants. In 1997, he and his spouse, as landlords, leased the building to the Appellant's Law Practice. The lease was a triple net lease ("Lease") under which the Law Practice became responsible for the property taxes, utilities, maintenance, insurance costs and "all other charges, impositions, costs and expenses of every nature and kind whatsoever" in respect of the "premises". In 1998, the building was sold to a numbered company which was owned by the Appellant.

[4] The building had office space on the ground floor and a residential apartment on the top two floors. During the relevant years, the Law Practice used the ground floor and the basement of the building for its business and the Appellant lived in the apartment on the top two floors of the building.

[5] The Law Practice paid an annual rent of \$25,000 to the numbered company and the Appellant paid a monthly rent of \$650 (annual amount of \$7,800) to the numbered company. The Appellant stated that both his personal rent and that of his Law Practice were at fair market value having regard to the location of the building and the quality of the premises.

[6] In 2008 and 2009, the Appellant reported gross professional income of \$265,284 and \$309,776 from his Law Practice and he claimed business expenses of \$235,616 and \$211,219.

[7] The expenses claimed by the Law Practice in 2008 and 2009 included expenses for telephone and utilities in the amount of \$15,931 and \$16,619; expenses for property taxes in the amount of \$7,082 and \$5,284; and, expenses for maintenance and repairs in the amount of \$40,634 and \$13,389, respectively.

[8] It was the Appellant's position that the Law Practice's Lease was continued with the numbered company as lessor and, as a result of the Lease, the Law Practice was responsible for all expenses in respect of the building. In his notice of appeal, he wrote that the Law Practice paid for all of the expenses which are at issue and it should be entitled to deduct them.

[9] It was the Minister's position that a portion of the expenses for the telephone, utilities and property taxes were personal expenses incurred by the Appellant in respect of his occupancy of the top two floors of the building. The Minister estimated that the area of the apartment was at least 38% of the area of the

building. However, the Minister accepted the Appellant's submissions that his Law Practice occupied 72% of the building and the apartment only occupied 28% of the building. The Minister disallowed 28% of the amounts claimed by the Law Practice for telephone, utilities and property taxes on the basis that they were the personal and living expenses of the Appellant.

[10] With respect to the expenses for maintenance and repairs, it was the Minister's position that the amount incurred in relation to the Law Practice was \$30,639 and \$9,671 in 2008 and 2009. He reassessed the Appellant on the basis that maintenance and repair expenses of \$9,047 in 2008 and \$248 in 2009 were related to the personal living quarters of the Appellant and the amount of \$3,455 in 2009 was a capital expenditure. The Minister found that \$15 of the amount claimed for maintenance and repairs in 2009 was not incurred by the Appellant.

Law

[11] The relevant provisions of the *Income Tax Act* ("ITA") are paragraphs 18(1)(a), (b) and (h). They provide:

18(1) General Limitations —In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) General limitation —an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

(b) Capital outlay or loss —an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part;

...

(h) Personal and living expenses —personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

[12] According to paragraph 18(1)(a), in computing his income from business, a taxpayer can only deduct an expense if it was incurred for the purpose of gaining or producing income from the business. This involves analyzing the purpose for the expenditure: *Symes v Canada*, [1993] 4 SCR 695 at paragraphs 75 and 76.

[13] In *Symes (supra)*, Iacobucci, J. also set out a number of relevant factors to consider in deciding whether an expense will be deductible. Those factors were:

1. Whether the expense is one normally incurred by others involved in the taxpayer's business'
2. Whether the deduction is ordinarily allowed as a business expense by accountants.
3. Whether a particular expense would have been incurred if the taxpayer was not engaged in the pursuit of business income.

[14] It is the third factor which is most relevant to the present case. It is a "but for" test and was stated in *Symes* at paragraph 79 as follows:

...In particular, it may be helpful to resort to a "but for" test applied not to the expense but to the need which the expense meets. Would the need exist apart from the business? If a need exists even in the absence of business activity, and irrespective of whether the need was or might have been satisfied by an expenditure to a third party or by the opportunity cost of personal labour, then an expense to meet the need would traditionally be viewed as a personal expense.

[15] Paragraph 18(1)(h) of the *ITA* precludes a taxpayer from deducting personal or living expenses in calculating his business income except travel costs incurred while away from home in the course of carrying on his business.

Analysis

[16] I was not given any document to show that the Lease was continued with the numbered company as lessor. However, even if the numbered company became the lessor under the Lease, a review of the Lease does not support the Appellant's position that the Lease required his Law Practice to pay all maintenance and repair expenses, telephone, utilities and property taxes incurred in respect of the building.

[17] According to paragraph 2(4)(a) of the Lease, the Law Practice was responsible for the expenses in respect of the "Premises". The "Premises" were defined in Schedule A to the Lease as "all those portions of 32 Main Street North and 12 Kenyon Street West, Alexandria, which the law office of Jean-Marc Lefebvre will at any time wish to occupy...". It was the Appellant's testimony that the Law Practice only occupied the basement and the first floor of the building. It is my view that the Law Practice can deduct only those expenses which were

attributed to the space which it occupied. The Appellant agreed that the Law Practice occupied 72% of the building and it can only deduct 72% of the expenses incurred for the building.

Telephone, utilities, property taxes

[18] Twenty-eight percent of the telephone and utilities and property taxes add to \$5,209 and \$4,767 in 2008 and 2009. These expenses were incurred for the personal living quarters of the Appellant and they are not deductible in accordance with the Lease. These expenses are also not deductible in accordance with paragraphs 18(1)(a) and (h) of the *ITA*. They relate to the Appellant's apartment and his personal life. These needs would exist even in the absence of the Law Practice.

[19] In the circumstances of this appeal, the Law Practice did not earn income from the rental of the apartment. The Appellant paid his rent to the corporation. The telephone and utilities and property taxes of \$5,209 and \$4,767 in 2008 and 2009 are the personal and living expenses of the Appellant and the Minister was correct to not allow the Law Practice to deduct these amounts.

Maintenance and repairs

[20] In 2008, the Appellant renovated the bathroom in his apartment for a cost of \$1,461.29. This amount was totally disallowed by the Minister in accordance with paragraphs 18(1)(a) and (h) of the *ITA*. It is my view that the Minister was correct.

[21] In 2008, the Appellant made repairs to the roof and outside staircase to the building. The cost of these repairs was \$27,071. The Minister apportioned the expense for these repairs according to the percentage of the space occupied by the Law Practice and that occupied by the Appellant in his personal capacity. He allowed the Law Practice to deduct 72% of the expense incurred for these repairs. It is my view that the Minister was correct to apportion this expense. The Minister disallowed 28% of this expense which totalled \$7,580.

[22] In 2009, the Law Practice's claim for maintenance and repair expenses consisted of the following:

Description	Claimed	Allowed	Disallowed
Tapis Richard Ranger Carpet	\$1,140.33		\$1,140.44

Electricom	\$2,314.64		\$2,314.64
A&C Upholstery	\$200.70		\$200.70
Canadian Tire	\$333.48	\$286.00	\$62.48

[23] The expense of \$200.70 was incurred to have a valance made for one of the bedroom windows in the apartment. It was the Appellant's evidence that the valance would not fit any other window and would have to remain with the building.

[24] It is my view that the cost of the valance is totally a personal expense and the Minister was correct to disallow its deduction. It is immaterial that the Appellant cannot use the valance other than for the window for which it was made.

[25] The Canadian Tire Statement showed that the Appellant purchased spikes for houseplants, a patio shrink kit, shrink film for windows and an unknown item for \$15. It was the Appellant's evidence that he only had houseplants in his office and the patio shrink kit and shrink film were used to insulate the windows in his apartment. There was no evidence with respect to item which cost \$15.

[26] The Appellant will be allowed to deduct \$2.10 for the cost of the spikes for the houseplants. All other disputed items on this statement were personal to the Appellant.

[27] The expense of \$1,140.33 was incurred to supply and install linoleum flooring in the bathroom in the Appellant's apartment. The expense of \$2,314.64 was incurred to change the ballast on the light fixtures in the premises occupied by the Law Practice. The Minister considered that both of these amounts were capital expenditures.

[28] There is no set test for determining the characterization of an expense but generally, one must consider the following factors:

- a) It is the purpose of the expenditure rather than the result which determines whether an expense is a capital outlay or a current expense: *Marklib Investments II-A Ltd. v The Queen*, [2000] CTC 2513 (TCC).
- b) An expenditure which maintains or restores an asset is a current expense.

- c) If the purpose of the expense is to replace an asset by a new one, the expense will be on account of capital: *Bergeron v Minister of National Revenue*, [1990] 2 CTC 2200 (TCC).
- d) An expenditure which is made to bring into existence an asset for the enduring benefit of a trade is considered to be capital in nature.

[29] The Appellant stated he covered the bathroom floor in his apartment with linoleum because the existing wood floor could not be repaired. It was his opinion that this expense was current and should be deductible. The expenditure only maintained the asset; it did not improve it.

[30] It is my view that the expense of installing linoleum in the Appellant's apartment would have been a current expense of the numbered company if it had been paid by the numbered company. In the circumstances of this appeal, it is not an expense of the Law Practice because it was not incurred by the Law Practice to earn income and it is not deductible by the Law Practice.

[31] With respect to the light fixtures, the Appellant stated that he participated in a program offered by the Government of Ontario. Fifty-six ballasts were replaced in his fluorescent lighting with the aim that it would make the lighting more efficient and reduce his hydro bills. The Appellant complained that he has not seen any savings on his hydro bills and his Law Practice should be able to deduct the amount of \$2,314.64 as a current expense. Only the light fixtures in the space occupied by the Law Practice were updated.

[32] It is my opinion that the replacement of the ballasts on the light fixtures was not capital in nature. It was a current expenditure of the Law Practice.

[33] In conclusion, the Minister correctly disallowed the Law Practice to deduct the entire charges for telephone, utilities and property taxes. Some of these charges were incurred by the Appellant in his personal capacity. The ratio of business versus personal use of the building was given to the Minister by the Appellant. The appeal is allowed and the Appellant is entitled to deduct the amount of \$2,316.74 in 2009.

Signed at Ottawa, Canada, this 16th day of July 2014.

Page: 8

“V.A. Miller”

V.A. Miller J.

CITATION: 2014TCC225

COURT FILE NO.: 2013-4740(IT)I

STYLE OF CAUSE: JEAN-MARC LEFEBVRE AND HER
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PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: June 10, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: July 16, 2014

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Gabrielle White

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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