Docket: 2004-4726(GST)I

BETWEEN:

RÉMY THERRIEN,

Appellant,

and

HER MAJESTY THE QUEEN

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on January 25, 2007 at Québec, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Roberto Clocchiatti

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated August 19, 2003, and bears the number PQ-2003-7222 for the period from April 1, 1997 to December 31, 1998, is dismissed.

Signed at Ottawa, Canada, this 7th day of February 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of July 2007.
Gibson Boyd, Translator

Citation: 2007TCC124
Date: 20070309
Docket: 2004-4726(GST)I

BETWEEN:

RÉMY THERRIEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Delivered orally from the bench on January 25, 2007, at Québec, Quebec.

Tardif J.

[1] This is the appeal from an assessment bearing the number PQ-2003-7222, dated August 19, 2003, pertaining to the Goods and Services Tax ("TPS").

[2] These are the issues:

(a) As director of the company, is the Appellant solidarily liable to pay, together with the company, the net tax payable as well as interest and penalties?

(b) Did the Appellant, as director of the company, exercise the degree of care, diligence and competence to prevent the company's failure to pay the net tax payable that a reasonably prudent person would have exercised in comparable circumstances?

[3] To establish and confirm the assessment under appeal, the Minister of National Revenue, (the "Minister") relied on the assumptions of fact listed in the Reply to the Notice of Appeal (the "Reply"); they read as follows:

[TRANSLATION]

(a) During 1997 and 1998, the Appellant was a director of the company Pro-Co Beauce Ltée (the "Company).

(b) During the years mentioned above, the Company was registered for application of the GST.

(c) Following the audit of the Company's tax returns, it was noted that the Company had collected GST without delivering it to the Respondent during the period from April 1, 1997, to December 31, 1998.

(d) On February 8, 1999, a certificate against the Company for $9,880.28, bearing the number GST-463-99, was registered in the Federal Court and a writ of seizure was reported in part unfulfilled in respect of this sum on July 13, 2002.

(e) The Appellant was the Company's only director during the periods when it was required to pay the net tax to the Respondent and looked after the Company's day-to-day management.

(f) On February 24, 2000, the Appellant stood surety towards the Department of Revenue for the payment of the Company's debt.

(g) In addition, on April 4, 2000, the Appellant signed, as president of the Company, an engagement by the Company to respect an agreement.

(h) Also, on March 29, 2001, the Appellant signed, as president of the Company, the Company's tax return.

(i) The Appellant acted as director of the Company throughout the negotiations with the Respondent for settlement of the Company's debt.

(j) The Appellant, as director of the Company, did not act with the degree of care, diligence and competence to prevent the failure that a reasonably prudent person would have exercised in similar circumstances.

(k) In particular, the Appellant was aware of the Company's defaults of payment during the period at issue and took no concrete or positive measures to prevent the Company's failures.

[4] I first explained to the Appellant the procedure for presenting his case. I also mentioned to him that he had the burden of proof, that is that he had to clearly

demonstrate that the assessment was not justified and should be set aside for reasons that he had to prove.

[5] In support of his appeal, the Appellant essentially argued that the statute of limitations had expired and that the assessment should be set aside for that reason alone.

[6] To support his claims, he submitted that he had a Quebec notary prepare a document entitled " Pro-Co Beauce Ltée – Resignation" (Exhibit A-1) and signed it in his presence.

[7] I then asked the Appellant, and even repeated, whether that was the only point that he wished to submit to the Court. He stated that it was the only argument that he was submitting in support of his appeal.

[8] The Respondent gave convincing evidence that the Appellant had never ceased to look after the business of the Company, of which he was the sole shareholder. He had negotiated and signed agreements on the payment of the amounts due. What is more, he agreed personally to pay these amounts, thereby conferring contractual rights on the Minister for the collection of the amounts described in the agreement.

[9] Although it seems obvious to me that this written agreement confers rights on the Respondent, it is not up to this Court to define the rights inherent to this agreement.

[10] In this case, the Appellant never demonstrated the ground of his claims as to the statute of limitations. Indeed, the document that he signed before the Quebec notary has no legal value as concerns the Respondent, who is in no way bound by this document; it is essentially a private document with no impact or effect as to the rights of third parties. Moreover, the evidence established that Appellant had never truly ceased his business with the Company.

[11] To terminate a company, it is imperative to follow certain rules; it is not sufficient to see a legal professional and to indicate readiness to sign a declaration to the effect that operations have ceased. To declare one's resignation from one's position privately and unilaterally does not discharge the resignee of all obligations.

[12] In this case, the Appellant did nothing of the sort, on the contrary, after attesting, by only his signature, that he was resigning and that the business had ceased its operations, he ostensibly carried on as though he had never signed such a document.

[13] The Appellant did not submit any evidence as to the legal basis of the assessment, even though the Court had indicated to him the importance of this aspect.

[14] The Respondent gave proof that all of the assumptions of fact mentioned in the Reply were exact, thereby completely validating the grounds of the assessment.

[15] The Appellant essentially argued that the assessment was groundless and had to be set aside due to the statute of limitations. According to the Appellant the period of the statute of limitations had started when he signed before the Quebec notary the document that the notary had prepared for him upon his instructions.

[16] Not only did this document have no value as concerns third parties including the Respondent, it also had no effect as to the end of the Company's operation, since the balance of probabilities shows that the Appellant continued, after signing this document, to look after the company's business as if nothing had happened.

[17] Although the Appellant did not submit any evidence as to the grounds of the assessment, the Respondent gave very convincing and well-supported evidence to the effect that the Appellant had acted negligently, carelessly and even abusively, in that he had financed the Company's business with amounts that he should have delivered to the Minister. He acted knowingly and with no excuse to the point that there is no doubt that he engaged his personal liability, the basis of the assessment.

[18] For these reasons, the appeal is dismissed, with costs.

Signed at Ottawa, Canada, this 9th day of March 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 19th day of July 2007.
Gibson Boyd, Translator

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REASONS FOR JUDGMENT BY:	The Honourable Justice Alain Tardif
DATE OF JUDGMENT:	February 7, 2007

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Roberto Clocchiatti

COUNSEL OF RECORD:

For the Appellant:

Name:
Firm:

For the Respondent: John H. Sims, Q.C.
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