

Docket: 2007-2904(IT)I

BETWEEN:

BRAD STEVENS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 10, 2008, at Calgary, Alberta
By: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Gregory Perlinski

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years are allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to deduct 50% of the interest amounts claimed in 2003 and 2004 of \$9,274 and \$14,622, being \$4,637 and \$7,311, in accordance with subsection 20(1)(c) of the *Act*.

Signed at Ottawa, Canada, this 22nd day of January, 2008.

“Campbell J. Miller”

C. Miller J.

Citation: 2008TCC47
Date: 20080122
Docket: 2007-2904(IT)I

BETWEEN:

BRAD STEVENS,

Appellant,

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Respondent.

REASONS FOR JUDGMENT

Miller J.

[1] In this informal procedure, Mr. Stevens maintains that he is entitled to deduct interest of \$9,274 and \$14,622 in his 2003 and 2004 taxation years, respectively. The Minister of National Revenue denied any deduction to Mr. Stevens for these carrying charges in 2003 and 2004.

[2] Mr. Stevens testified that in the mid to late-1990s, he established two lines of credit with RBC for the sole purpose of investing in stock, specifically Pacific Cassiar and later Tathacus Resources Ltd. He provided statements from RB Action Direct dated March 31, 1999 showing an existing investment in Pacific Cassiar valued at \$158,125, and dated December 31, 1999 showing Pacific Cassiar with a value of \$130,625 and 12,000 Tathacus shares with no price attached. There were no details of how these stocks were acquired.

[3] Mr. Stevens provided statements from RB Direct for March, June, September, October and December 2000, January, February, March, April, June, December 2001, March and December 2002, March, June, December, 2003, and March, June and December 2004. All statements were for accounts in his wife's name, Constance Stevens. Some highlights from these statements are:

- (i) September 2000 is the first time a value was attached to the Tathacus shares of \$109,000; Pacific Cassiar was shown with a value of \$158,125;
- (ii) December 2000 shows a disposition of Pacific Cassiar for \$166,375;
- (iii) January 2001 shows an acquisition of 1,600 Tathacus shares for \$42,000;
- (iv) February 2001, shows an acquisition of 4,500 Tathacus shares for \$29,835;
- (v) March 2001 shows an acquisition of 8,400 Tathacus shares for \$50,863; and
- (vi) From April 2001 to March 2002, the Tathacus shares show again as unpriced and thereafter are shown at a minimal value.

[4] The only other documentation to support investments provided by Mr. Stevens were Wolverton Security statements for three accounts: two in his name and one in his wife's name for transactions from 2000 to 2007. The highlights from these statements are:

- (i) transfer of \$42,569 from Mr. Stevens to Mrs. Stevens in September 2000;
- (ii) cheques deposited in Mr. Stevens' account for \$43,000 in June 2003, \$16,000 in March 2003 and \$10,000 in December 2002: all were used to buy Tathacus stock; and
- (iii) total purchases from 2000 to 2004 in Mr. Stevens' account total approximately \$95,000, mainly, but not all, Tathacus.

That is the extent of the documentary detail of Mr. Stevens' investments.

[5] In 2001, Mr. Stevens borrowed \$114,000 from his parents, documented by a loan agreement dated June 1, 2001. The preamble to the loan agreement states as

follows:

WHEREAS the borrower desires to make investments in stocks, bonds and other equities and to repay a loan to the Royal Bank of Canada;

AND WHEREAS the lenders are prepared to provide the required funds according the interest payment and other conditions set out in this agreement;

[6] In 2003, Mr. Stevens again entered a funding arrangement with his parents whereby he obtained \$105,000 on their Scotiabank line of credit, obliging himself to make all monthly payments directly to Scotiabank. In the preamble to this loan agreement between Mr. Stevens and his parents, it was stipulated:

WHEREAS the borrower has need to take a loan to pay off debt to the Royal Bank of Canada which has been incurred to purchase securities of publicly trading companies and to purchase other equities;

AND WHEREAS the lenders are prepared to provide the required funds according the interest payment and other conditions set out in this agreement.

[7] Mr. Stevens claims that he used these monies to pay down his RBC lines of credit. There is no documentation provided with respect to either the establishment or pay down of the two lines of credit. Canada Revenue Agency, however, did indicate the following to Mr. Stevens in a letter dated March 15, 2006:

Of the \$219,000 that was borrowed in 2001 and 2003, we understand that \$125,386.45 was used to closed the RBC line of credit. You still require documentation supporting the purchases to the advances from the line of credit for both the \$125,386.45 and the remaining \$93,613.55.

Later, in May 2006, CRA wrote to Mr. Stevens:

You supported the ability for a number of your investments to earn dividends or interest income and although you provided an affidavit stating that you had made the investments, you did not supply any documentation to support the purchases to the advances from the line of credit.

[8] From these less than exhaustive facts and documents, I am asked to determine the deductibility of Mr. Stevens' interest charges of \$9,274 in 2003 and \$14,623 in 2004. I am satisfied these numbers are not in dispute. If the amounts are deductible, they are deductible pursuant to paragraph 20(1)(c) of the

Income Tax Act which reads as follows:

20(1) Notwithstanding paragraphs 18(1)(a), 18(1)(b) and 18(1)(h), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto

- (a) ...
- (c) an amount paid in the year or payable in respect of the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income), pursuant to a legal obligation to pay interest on
 - (i) borrowed money used for the purpose of earning income from a business or property (other than borrowed money used to acquire property the income from which would be exempt or to acquire a life insurance policy),
 - (ii) an amount payable for property acquired for the purpose of gaining or producing income from the property or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy),

or a reasonable amount in respect thereof, whichever is the lesser;

[9] The Crown makes two arguments: first, there is simply not enough evidence, especially in written form, to substantiate that Mr. Stevens' borrowing on the two lines of credit went to qualifying investments. The Crown takes no issue with the fact that Mr. Stevens borrowed from his parents to pay down the two lines of credit; second, the investments are in his wife's name, not his name and he cannot claim deductions on investments for which his wife reports a gain or income.

[10] I will deal with the second issue first, as it was clearly upsetting to Mr. Stevens that this was raised, as he maintains it was the first that he had heard of such an argument. I agree with Mr. Stevens that neither the pleadings nor any of the correspondence in evidence from CRA makes any mention that this was an issue for the Crown. The gist of the communications between the parties and the pleadings would lead an objective observer, and it certainly led Mr. Stevens, to the view that it was the lack of documentation connecting these two lines of credit to qualifying investments that was only in issue. In these circumstances, I am not at all surprised that Mr. Stevens would feel ambushed at trial. Regrettably, that can be

the disadvantage of the informal procedure. I have on many occasions allowed the taxpayer in an informal procedure to bring forward any evidence or argument that may assist his or her case, notwithstanding it is clearly the first time that the Minister has seen or heard of such materials or argument. Am I to hold the Government of Canada to a higher standard in these informal procedures, and not permit at this stage the introduction of what I believe to be a new argument? Mr. Stevens indicated that had he known this position earlier, he may well have retreated or taken a different tact. Subsection 152(9) of the *Act* reads as follows:

- 15(9) The Minister may advance an alternative argument in support of an assessment at any time after the normal reassessment period unless, on an appeal under this *Act*
- (a) there is relevant evidence that the taxpayer is no longer able to adduce without the leave of the court; and
 - (b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

[11] I am satisfied it is open to the Respondent to raise this argument and I am going to take into account the fact that Mrs. Stevens owns some of the investments, but I am not going to rely on that basis to completely dismiss Mr. Stevens' appeals. While there is not the specificity of documentation that would be determinative in a case such as this, there is enough evidence to conclude the following:

- (i) in the late 1990s, Mr. Stevens established two lines of credit and borrowed against them to make qualifying investments in Tathacus;
- (ii) Pacific Cassiar was sold in 2000 and duly reported by Mrs. Stevens;
- (iii) Mr. Stevens did borrow from his parents to pay down the two lines of credit in 2001 and 2003; and
- (iv) Mr. Stevens made additional stock purchases after borrowing from his parents;
- (v) by 2003 - 2004, the major investment held by the Stevens was Tathacus for which they paid at least \$250,000, as best as I can gather from the records;
- (vi) Mr. and Mrs. Stevens made roughly equivalent investments in Tathacus.

[12] I am not going to explore the circumstances surrounding the \$160,000 Pacific Cassiar investment and sale by Mrs. Stevens, as to whether that was Mr. Stevens' borrowed money and consequently repaid to him on sale. I was not provided any great detail in this regard. As those shares were purchased and sold at roughly the same price, long before the years in question, and before monies were borrowed from Mr. Stevens' parents to pay down the lines of credit, I am simply not going to consider that investment for purposes of determining Mr. Stevens' entitlement to deduct interest on his parents' loan in 2003 and 2004. I find the major investment, for which monies were borrowed in 2001 and 2003, when the parents lent money was in Tathacus.

[13] The Crown argued that Mr. Stevens had other means to finance his investments. They also suggested that Mr. Stevens may have used borrowed funds for the purposes of investing in his sister's property. Mr. Stevens denied both these suggestions. I believe him. Yet, I cannot also find with certainty that the full amount borrowed from his parents can be traced to qualifying investments.

[14] I conclude that Mr. Stevens is entitled to deduct some interest on the loans from his parents, as I am satisfied approximately half of the amount borrowed relates to Mr. Stevens' investment in Tathacus. I have made this comment before and it bears repeating in a case such as this: one can only expect a rough and ready result in informal procedures where the input is itself rough and ready. Sometimes that lack of detail and documentation will prove fatal to the taxpayer, but where, as here, I find the taxpayer credible, some success is achievable. The appeals are allowed and the matter is referred back to the Minister for reassessment on the basis that Mr. Stevens is entitled to deduct 50% of the interest amounts claimed in 2003 and 2004 of \$9,274 and \$14,622, being \$4,637 and \$7,311, in accordance with subsection 20(1)(c) of the *Act*.

Signed at Ottawa, Canada, this 22nd day of January, 2008.

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CITATION: 2008TCC47

COURT FILE NO.: 2007-2904(IT)I

STYLE OF CAUSE: BRAD STEVENS and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: January 10, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller

DATE OF JUDGMENT: January 22, 2008

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Gregory Perlinski

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

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