

TAX COURT OF CANADA

RE: EXCISE TAX ACT

2006-1956(GST)I

BETWEEN: **LES ENTREPRISES M.A.J. INC.**
 Appellant

-and-

HER MAJESTY THE QUEEN
Respondent

[OFFICIAL ENGLISH TRANSLATION]

Held before the Honourable Justice **BRENT PARIS**, Tax Court
of Canada, Chicoutimi, Quebec, on **May 28, 2007**.

REASONS FOR JUDGMENT

APPEARANCES:

ANDRÉ MARTEL
for the Appellant

ROBERTO CLOCCHIATTI
Counsel for the Respondent

Registrar/technician: Claude Lefebvre

RIOPEL, GAGNON, LAROSE & ASSOCIÉS
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GST-4984

Per: **JEAN LAROSE**

1 START OF REASONS FOR JUDGMENT: 1:49 p.m.

2 REASONS FOR JUDGMENT

3 HIS HONOUR:

4 These are the reasons for judgment in
5 Les Entreprises M.A.J. inc. v. Her Majesty the Queen,
6 2006-1956(GST)I. It is an appeal from a reassessment made
7 by the Minister of National Revenue for the GST payable
8 by the Appellant for the period from June 1, 2001, to
9 February 28, 2005.

10 The issue is whether the Appellant
11 failed to report \$25,860 in taxable supplies during the
12 said period.

13 The facts assumed by the Minister in
14 making the reassessment are found at paragraph 6 of the
15 Reply to the Notice of Appeal, which will form an
16 integral part of these reasons even though I will not
17 read it.

18 The burden is on the Appellant to
19 prove on a balance of probabilities that these facts are
20 not correct. In particular, the Appellant in this case
21 must satisfy me that the \$25,860 deposited in its bank
22 account on June 21, 2004, did not come from taxable
23 supplies it made in the course of its business.

24 The Appellant's sole shareholder,
25 André Martel, testified that the deposit in question was

1 an investment made using money he kept in a safe at home.
2 At the time the deposit was made, he was in the hospital
3 and wanted to make sure his corporation had enough
4 liquidity to pay the amounts that came due.

5 He allegedly asked his son to get the
6 money at his home and deposit it in the bank. After doing
7 so, his son allegedly prepared a resolution of the
8 Appellant's board of directors, Exhibit A-2, to record
9 the loan made to the corporation.

10 Mr. Martel initially maintained that
11 the deposit had never been entered in the Appellant's
12 records as income, but on cross-examination he had to
13 admit that his accountant had included the amount as
14 income at one point. This resulted from the fact that the
15 accountant had reclassified the amount as a deposit of
16 funds by Mr. Martel on November 30, 2004.

17 Mr. Martel was unable to provide the
18 date or the amount originally entered in the
19 corporation's income. He said that he had always kept
20 cash at home and that the amounts were his savings. He
21 said that he had already invested some of the money in
22 the Appellant, but he had no details on those deposits.
23 In any event, the other investments allegedly involved
24 much smaller amounts than the investment on June 21,
25 2004.

1 The question I must decide is a
2 question of fact based on all the evidence adduced.

3 For the reasons that follow, I am of
4 the opinion that the Appellant has been unable to
5 demolish the Minister's assumption that the amount in
6 question came from taxable supplies made by it.

1 To begin with, the circumstances in
2 which the \$25,860 was deposited in the bank and entered
3 in the Appellant's records as income were not properly
4 explained. They were not supported by any corroborative
5 evidence from Mr. Martel's son or accountant. As noted by
6 counsel for the Respondent, it was not clear why
7 resolution A-2, Exhibit A-2, supposedly prepared by
8 Mr. Martel's son at the time the deposit was made or
9 shortly thereafter, showed an investment of \$25,000 even
10 though the correct amount was \$25,860. The suggestion
11 that Mr. Martel's son was not aware of the exact amount
12 of the deposit is implausible given that his son
13 supposedly went to get the money and deposited it in the
14 bank.

15 Nor is it clear when the resolution
16 was prepared, even though Mr. Martel said that his son
17 did so in June 2004. The auditor, Mr. Riou, did not
18 remember seeing it during his audit, and his audit report
19 states that the deposits, including the one at issue
20 today, remained unexplained and unsupported by vouchers
21 at the conclusion of the audit.

22 Absent evidence that a copy of the
23 resolution was provided by the Appellant's
24 representatives who met with Mr. Riou, I infer that that
25 document was not submitted by the Appellant at the

1 objection stage, well after the time when one would have
2 expected it to be produced.

3 The fact that the Appellant's
4 accountant initially recorded the amount as business
5 income was not sufficiently explained. It seems more
6 likely to me that, if the amount was an investment,
7 Mr. Martel would have given his accountant instructions
8 to this effect from the outset, but this was apparently
9 not done, nor did the accountant receive a copy of the
10 resolution of June 21, 2004.

11 These inconsistencies are all the more
12 striking given that the Appellant's reported income for
13 the year in question was only \$28,000 and that the amount
14 of the deposit classified as income by its accountant was
15 nearly the same as its total income for the year.

16 Mr. Martel's testimony that the
17 \$25,860 consisted of his savings is difficult to accept
18 without additional evidence. Although he had a personal
19 bank account, he did not attempt to show that he kept no
20 money in that account. Nor did he specify the period
21 during which he had amassed the funds or the level of his
22 own income that allowed him to amass that money.

23 When all is said and done, I consider
24 Mr. Martel's testimony too vague and, at times, too
25 implausible to find that he has succeeded in reversing

1 the burden of proof resting on him.

2 For all these reasons, the appeal is
3 dismissed.

4 END OF REASONS FOR JUDGMENT

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8 Translation certified true
9 on this 14th day of February 2008.
10 Monica F. Chamberlain, Reviser