

Docket: 2005-404(IT)G

BETWEEN:

PARAMJIT THANDI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of Mandeep Thandi
(2005-405(IT)G) on August 15, 2007 at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Paul K. Lail

Counsel for the Respondent: Karen Truscott

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* with respect to Notice of Assessment Number 26352 dated June 14, 2002 is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 12th day of October 2007.

"L.M. Little"

Little J.

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Appellant,

And

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Citation: 2007TCC590
Date: 20071012
Dockets: 2005-404(IT)G
2005-405(IT)G

BETWEEN:

PARAMJIT THANDI,
MANDEEP THANDI,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS

[1] The Appellant, Paramjit Thandi (“Paramjit”), is the son of Jarnail Thandi.

[2] The Appellant, Mandeep Thandi (“Mandeep”), is married to Paramjit and is therefore the daughter-in-law of Jarnail Thandi

[3] Jarnail Thandi was employed in various capacities by National Aluminium Production (“NAP”) from 1976 until NAP closed its factory in 1994.

[4] After NAP discontinued its business operation in 1994, Jarnail Thandi and six friends decided to form a business and work together in operating that business.

[5] In June 1995 Jarnail Thandi and his six friends incorporated AC Vinyl Windows Manufacturing Ltd. (the “Company”) under the *British Columbia Company Act*.

[6] Jarnail Thandi and his six friends were directors, shareholders and employees of the Company.

[7] The Company was in the business of manufacturing vinyl windows.

[8] The Company ceased its business operation in February 1998.

[9] The Minister of National Revenue (the “Minister”) maintains that in paying wages to its employees in the 1997 taxation year the Company failed to remit the amount of \$39,571.42 (this sum includes tax, interest and penalties).

[10] A certificate representing the Company’s liability for federal income tax, interest and penalties was registered in the Federal Court of Canada on June 30, 1999.

[11] A writ of execution corresponding to the certificate was issued against the Company and was returned wholly unsatisfied on August 16, 1999.

[12] By Notice of Assessment dated October 14, 1999, the Minister assessed Jarnail Thandi with respect to federal income tax (plus interest and penalties) deducted at source by the Company but not remitted. This Assessment was issued under subsection 227.1(3) of the *Income Tax Act* (the *Act*). The total amount involved at that time was \$30,934.48.

[13] Jarnail Thandi did not file a Notice of Objection to the Assessment dated October 14, 1999.

[14] On or about May 15, 1998, Jarnail Thandi transferred a one-half interest in property located at 13302 88A Avenue, Surrey, British Columbia to the Appellant, Paramjit Thandi. The above property is hereinafter referred to as the “Property”).

[15] On or about May 15, 1998, Jarnail Thandi transferred a one-half interest in the Property to the Appellant, Mandeep Thandi.

[16] At the time of the transfer of a one-half interest in the Property to each of Paramjit and Mandeep the equity in the Property was estimated to be in excess of \$250,000.00.

[17] By Notice of Assessment No. 26352 dated June 14, 2002, the Minister assessed the Appellant, Paramjit, in the amount of \$39,571.42 in respect of the transfer of an interest in the Property to Paramjit by Jarnail Thandi. The Assessment was issued under section 160 of the *Act*.

[18] By Notice of Assessment Number 26351 dated June 14, 2002, the Minister assessed the Appellant, Mandeep, in the amount of \$39,571.42 in respect of the transfer of an interest in the Property to Mandeep by Jarnail Thandi. The Assessment was issued under section 160 of the *Act*.

B. ISSUES

[19] The issues are:

- (a) Whether the Appellant, Paramjit, is liable to pay the amount of \$39,571.42 pursuant to section 160 of the *Act* in respect of the transfer of an interest in the Property to him by Jarnail Thandi.
- (b) Whether the Appellant, Mandeep, is liable to pay the amount of \$39,571.42 pursuant to section 160 of the *Act* in respect of the transfer of an interest in the Property to her by Jarnail Thandi.

C. ANALYSIS AND DECISION

[20] Counsel for the Appellants argued that the assessments issued against the Appellants should be vacated because the underlining assessments are flawed. Counsel for the Appellants said that there is legal authority for the proposition that an individual can challenge a “cascading type” of assessment even though no Notice of Objection was filed to the initial underlining assessment.

[21] Counsel for the Appellants maintains that the central issue to be decided is whether Jarnail Thandi exercised the level of care, skill and diligence that a reasonable person would exercise in the circumstances.

[22] In support of his argument Counsel for the Appellants referred to the decision of Mr. Justice Robertson in *Soper v. The Queen*, 97 DTC 5407.

[23] Counsel for the Appellants said that the *Soper* case stands for the following principles:

1. A director is not to be equated with a trustee.

2. A director need not exhibit in the performance of his duties, a greater degree of skill and care than may be expected from a person of his knowledge or experience.
3. A director is not obliged to give continuous attention to the affairs of the Company.
4. In the absence of grounds for suspicion it is not improper for a director to rely on Company officials to perform the duties that they have been delegated to perform.

[24] Counsel for the Appellants argued that Jarnail Thandi satisfied his obligation under section 227.1 of the *Act* and therefore he should not have been assessed as a director of AC Vinyl. Appellants' Counsel concludes that since the assessment issued against Jarnail Thandi under section 227.1 of the *Act* is improper the "cascading" assessments issued against the Appellants should be vacated,

[25] Counsel for the Respondent noted that in this situation we are dealing with "triple layer" assessment with the first assessment issued against AC Vinyl, the second assessment issued against Jarnail Thandi and the third assessment issued against each of the Appellants pursuant to section 160 of the *Act*.

[26] Counsel for the Respondent said that it would have been open to the Appellants to challenge the assessments issued against AC Vinyl. However, the pleadings never raised that issue.

[27] Respondent's Counsel referred to the decision in *Gaucher v. The Queen*, 2000 DTC 6678, and noted that the courts have said that taxpayers should be able to address the "underlining or initial assessments" to ensure that the federal tax, provincial tax, penalties and interest were issued correctly so that the subsequent person can be sure that the foundation of the assessment is correct. However, she questioned whether the Court could review the assessment issued against Jarnail Thandi in determining the validity of the section 160 assessment issued against the Appellants.

[28] I have reviewed the legal authorities referred to by counsel. In *Gaucher (supra)*, Justice Rothstein speaking for the Court said at paragraph 1:

1. The issue in this appeal is whether a taxpayer assessed under a derivative assessment pursuant to subsection 160(1) of the *Income Tax Act* may object to that

assessment by challenging the primary assessment on which the derivative assessment is based.

At paragraph 7, Justice Rothstein said:

7. When the Minister issues a derivative assessment under subsection 160(1), a special statutory provision is invoked entitling the Minister to seek payment from a second person for the tax assessed against the primary taxpayer. That second person must have a full right of defence to challenge the assessment made against her, including an attack on the primary assessment on which the second person's assessment is based.

At paragraph 8, Justice Rothstein said:

8. This view has been expressed by Judges of the Tax Court. See, for example, *Acton v. The Queen* (1994), 95 DTC 107, at 108 *per* Bowman T.C.C.J.; *Ramey v. The Queen* (1993), 93 DTC 791, at 792 *per* Bowman T.C.C.J.; *Thorsteinson v. M.N.R.* (1980), 80 DTC 1369, at 1372 *per* Taylor T.C.C.J. ...

[29] I have concluded that these Court decisions give the Appellants the authority to review or challenge the underlining or primary assessment issued against Jarnail Thandi in the course of determining the validity of the assessments issued against the Appellants.

[30] I have carefully considered the assessment issued against Jarnail Thandi on October 14, 1999 under section 227.1 of the *Act*.

[31] Section 227.1 of the *Act* provides that in certain situations directors of a corporation are jointly and severally liable with the corporation if the corporation fails to deduct or withhold or remit or pay tax as required by certain provisions of the *Act*.

[32] Subsection 227.1(3) of the *Act* provides that a director is not liable if he exercised the degree of care, diligence and skill to prevent the failure of the corporation to deduct or withhold and remit the tax that a reasonably prudent person would have exercised in comparable circumstances.

[33] After considering the evidence that was presented, I have concluded that Jarnail Thandi does not satisfy the due diligence defence that is contained in subsection 227.1(3) of the *Act*.

[34] I have reached this conclusion for the following reasons:

1. Jarnail Thandi was very vague in his answers to the questions put to him. His recollection was uncertain and, at times, inconsistent with his previous answers.
2. Jarnail Thandi was asked whether he had asked questions of the “inside directors” (i.e. Messrs. Bagri and Dardi) about the operation of the Company. Mr. Thandi was not able to provide any examples of questions that he had asked the inside directors.
3. There were very few documents presented to explain what was happening to the Company and the position that was taken by the directors with respect to the operation of the Company.
4. There was no corroborating evidence presented to establish the relevant facts. For example, Mr. Bagri, the managing director, did not testify and Mr. Alan Seabrook, the Company’s lawyer, did not testify.
5. Exhibit A-1 was filed in evidence. This is a letter to the directors from Mr. Seabrook, the Company’s lawyer. The letter refers to the sale of the business. However, Jarnail Thandi stated that he was not sure if he had read the letter.
6. The corporate records show that Jarnail Thandi remained a director of the Company until March 1998 (See Exhibit R-3).
7. Exhibit A-2 is a letter of resignation signed by Jarnail Thandi on November 20, 1997. However, there is no receipt stamp on the letter. Furthermore, the letter appears to be an original.
8. Jarnail Thandi said that he did not attempt to obtain any assurance from the income tax department that the Company’s tax liability was paid.
9. Jarnail Thandi said that he had no knowledge of the bookkeeping system that was used by the Company.

10. Jarnail Thandi said that he took no steps to determine his duties as a director of the Company. Counsel for the Respondent asked the following questions of Jarnail Thandi:

Q. What did you understand your duties to be as a director?

A. I knew nothing. I just had faith in him (i.e. Mr. Bagri), whatever he was doing was right.

(Transcript - page 43, lines 23 – 25 and page 44, line 1)

Q. What steps did you take to find out what you needed to be doing?

A. I didn't take any steps.

(Transcript – page 44, lines 2-4)

[35] In summary, the evidence clearly indicates that Jarnail Thandi did nothing to satisfy his duties as a director of the Company.

[36] Based on the comments referred to above and the additional evidence that was presented, I have concluded that the assessment issued against Jarnail Thandi under section 227.1 was a valid assessment.

[37] As I have noted above the only argument raised by counsel for the Appellants related to the assessment issued against Jarnail Thandi under section 227.1 of the *Act*, Appellants' counsel did not object to the assessments issued under section 160 of the *Act* but confined his argument to the assessment issued against Jarnail Thandi under section 227.1.

[38] The appeals are dismissed, without costs.

[39] Before closing, I wish to note that each of the Appellants was assessed on a joint and several basis, i.e. the total tax assessed is \$39,571.42 times two. However, the tax liability is limited to the total amount of \$39,571.42. The Minister must keep this point in mind when he reassesses each of the Appellants.

Signed at Vancouver, British Columbia, this 12th day of October 2007.

“L.M. Little”

Little J

CITATION: 2007TCC590

COURT FILE NOS.: 2005-404(IT)G
2005-405(IT)G

STYLE OF CAUSE: Paramjit Thandi and Mandeep Thandi
v. Her Majesty The Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: August 15, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: October 12, 2007

APPEARANCES:

Counsel for the Appellants: Paul K. Lail
Counsel for the Respondent: Karen Truscott

COUNSEL OF RECORD:

For the Appellant:

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