

Docket: 2009-545(IT)I

BETWEEN:

DARWIN A. CLAEYS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on October 18, 2010, at Brandon, Manitoba.

Before: The Honourable Justice Robert J. Hogan

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nalini Persaud

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**JUDGMENT**

The appeal from the reassessments made under the *Income Tax Act* with respect to the 2004 and 2005 taxation years is dismissed, without costs.

Signed at Ottawa, Canada, this 12th day of November 2010.

"Robert J. Hogan"

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Hogan J.

Citation: 2010 TCC 586

Date: 20101112

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BETWEEN:

DARWIN A. CLAEYS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Hogan J.**

[1] This is an appeal heard in Brandon, Manitoba, on October 18, 2010, under the informal procedure.

[2] The Minister of National Revenue (the “Minister”) reassessed Darwin Claeys (the “Appellant”) for the 2004 and 2005 taxation years, disallowing net business losses of \$15,020 and \$1,319 claimed by the Appellant for the 2004 and 2005 taxation years respectively.

[3] The Appellant was the only witness to testify at trial. He explained that his wife, Theresa Claeys, was interested in starting a new business and prepared a business plan to that end in 2003. According to the witness, Theresa Claeys discovered in 2004 an organization called StoresOnline International, Inc. (“StoresOnline”) that was promoting Internet marketing workshops. She attended a seminar in Winnipeg. Following the seminar, she entered into an agreement with StoresOnline to acquire six websites that would be hosted by StoresOnline. The websites would be used by Theresa Claeys to advertise products for sale through an Internet-based marketing strategy. The witness explained that Theresa Claeys also signed up for online training with StoresOnline for the purpose of learning how to advertise on, and maintain, the websites. StoresOnline apparently encountered financial difficulties and ceased its activities before Theresa Claeys had chosen products for sale on the websites. Following the shutdown of StoresOnline, Theresa Claeys did not pursue the Internet sales activity.

[4] The Appellant explained that he advanced funds to his wife to allow her to fund her activities. His intention was for the advance to be repaid from the cash flow of the business. His wife was to carry on the business and be entitled to all profits. In the Appellant's words, he claimed the expenses because he was the one who financed those expenses.

[5] On the basis of the evidence, I conclude that the Appellant's role in this affair was to loan his wife the funds to finance her activities. The Appellant was not a partner of his wife in those activities as it was clear from the evidence that the profits, if any, from the business would accrue to his wife. A partnership can exist only if both partners are entitled to share in the profits of the business. The Appellant's wife entered into all of the contracts with StoresOnline. There was no legal relationship between StoresOnline and the Appellant. A lender is not entitled to deduct the expenses incurred by a borrower.

[6] The Appellant's wife has filed an appeal for her 2004 and 2005 taxation years. In light of my findings, the Appellant's wife could amend her appeal so as to have the deductibility of the expenses that were erroneously claimed by her husband considered under her appeal as expenses incurred by her.

[7] The Appellant claimed a terminal loss of \$1,319.37 with respect to an automatic telephone dialling machine that he allegedly acquired in 1997. The automatic dialler was left in the possession of the seller (the "seller"), who was engaged as a telemarketer by the Appellant. The Appellant testified that the seller moved away some time in 1999 and did not return the automatic dialler. Apparently he stole it. Under the Canadian *Income Tax Act* (the "*Act*"), a terminal loss can be claimed only in the year that all of the depreciable assets of the class are disposed of, as provided in subsection 20(16) of the *Act*. According to the Appellant's evidence, that was 1999 and not 2005.

[8] For all of these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 12th day of November 2010.

"Robert J. Hogan"

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Hogan J.

CITATION: 2010 TCC 586

COURT FILE NO.: 2009-545(IT)I

STYLE OF CAUSE: DARWIN A. CLAEYS v. HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Brandon, Manitoba

DATE OF HEARING: October 18, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan

DATE OF JUDGMENT: November 12, 2010

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nalini Persaud

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada