

Docket: 2008-3450(IT)G

BETWEEN:

SAM SAAD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 1, 2011, at Montreal, Quebec

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Antonia Paraherakis

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the reassessment of the Appellant's 2002 taxation year made by the Minister of National Revenue under the *Income Tax Act* is dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 2nd day of August 2011.

“G.A. Sheridan”

Sheridan J.

Citation: 2011TCC376
Date: 20110802
Docket: 2008-3450(IT)G

BETWEEN:

SAM SAAD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan J.

[1] The Appellant, Sam Saad, is appealing the reassessment by the Minister of National Revenue which, following an audit by Revenu Québec, added \$46,000 to his 2002 income.

[2] The Appellant represented himself and was the only witness to testify on his behalf. For the reasons discussed below, I did not find the Appellant to be a particularly convincing witness nor was his supporting documentation sufficiently reliable to justify interfering with the Minister's assessment.

[3] Testifying for the Respondent were Mr. Stéphane Sigouin, an auditor with Revenu Québec ("Quebec Auditor") and Mr. Alain Marcoux, an auditor with the Canada Revenue Agency ("Federal Auditor"). Both were thorough, candid and credible in the presentation of their evidence regarding their involvement in the Appellant's file.

[4] The reassessment arose as a result of a Revenu Québec audit of a third party, 9115-5028 Québec Inc. (also known as Karma Distributions¹) during which it was discovered that 9115-5028 Québec Inc. had made a payment of \$46,000 to the Appellant. That led, in turn, to an audit of the Appellant's 2002 taxation year and ultimately, to a reassessment of provincial tax on that amount. Revenu Québec then reported its findings to the Canada Revenue Agency and federal tax was reassessed in respect of the \$46,000 payment.

[5] In his Notice of Appeal, the Appellant admitted that a cheque from 9115-5028 Québec Inc. for \$46,000 had been deposited into his personal account on July 30, 2002 but denied that it was income in his hands. In support of his position, he pleaded that the payment had been immediately transferred to 141075 Canada Inc. on August 2, 2002. At the hearing, however, the Appellant presented an unpleaded alternative version of events; briefly put, that the \$46,000 had been retained by the Appellant as part of a duly authorized shareholder's loan which he later paid back to the company.

[6] The Appellant's company, 141075 Canada Inc., was in the business of producing identification and security cards. His wife, Lila Pardiak, was its sole shareholder.

[7] In 2001, the Appellant, as the principal of 141075 Canada Inc., was seeking a \$50,000 loan from BDC to upgrade the company's equipment. To assist him in this initiative, the Appellant retained the services of a "consultant" known only as "Fadi" whose whereabouts at the time of the trial were unknown to the Appellant. Fadi held himself out as a "friend" of the BDC representative handling the company's loan application and was to act as a liaison between the BDC representative and the Appellant and his accountant. The Appellant could not remember the name of either the BDC representative or his accountant.

[8] Fadi charged a flat fee of \$2,000 for his services with a further commission payable upon financing having been obtained. According to the Appellant, Fadi told him that before BDC would agree to the loan, the Appellant would have to prove that he had sufficient cash in his personal account to secure the company's loan of approximately \$50,000. Furthermore, the money could not be seen to have been placed in the Appellant's personal account by 141075 Canada Inc. To get around this snag, the enterprising Fadi proposed that 141075 Canada Inc. write a cheque to his

¹ Exhibit R-1, Tab 14.

(Fadi's) company, the third party subsequently audited by Revenu Québec, 9115-5028 Québec Inc./Karma Distributions. Then, he said, 9115-5028 Québec Inc. would immediately make a payment back to the Appellant for deposit into his personal account. Apparently to gild these transactions with a patina of the everyday, Fadi suggested that 141075 Canada Inc. make the cheque to 9115-5028 Québec Inc. in the amount of \$50,611 rather than \$50,000, the additional \$611 making it seem "taxes" had been paid.

[9] This was done on July 30, 2002² and the same day, 9115-5028 Québec Inc. wrote a cheque to the Appellant personally for \$46,000³. The Appellant said he received less than the full \$50,000 advanced by 141075 Canada Inc. because Fadi retained \$4,000 of it as his commission; he did not explain why Fadi was entitled to do so when the financing for 141075 Canada Inc. had not yet been (and, as it turned out, never would be) obtained. He testified that on August 2, 2002, \$45,000 was then transferred from the Appellant's personal account to an account numbered 3228860. The Appellant explained that he kept \$1,000 of the \$46,000 for himself as a management charge of some sort.

[10] When first asked about the \$46,000 payment by the Quebec Auditor in September 2004, the Appellant had difficulty remembering it. He initially denied having received it and asked to see a copy of the cancelled cheque from 9115-5028 Québec Inc. Such a request was not in itself unreasonable as the inquiry came some two years after the fact and numbered companies often operate under other names. After having examined the cheque, however, the Appellant again denied its receipt. It was not until some two months later when the Quebec Auditor informed the Appellant that Revenu Québec inquiries had confirmed the cheque from 9115-5028 Québec Inc. had been deposited into his personal account that the Appellant finally admitted its receipt.

[11] At the objection stage, the Appellant told the Federal Auditor that the \$46,000 payment had been immediately transferred to 141075 Canada Inc. and provided bank statements⁴ for his personal account showing a transfer of \$45,000 to another account numbered 3228860 on August 2, 2002. On the basis of this information, the Minister initially assumed that the account numbered 3228860 was that of 141075 Canada Inc.

² Exhibit R-1, Tab 8.

³ Exhibit R-1, Tab 9.

⁴ Exhibit R-1, Tab 11.

The Appellant made the same allegation in his Notice of Appeal and attached the relevant pages of the bank statements.

[12] However, at the hearing, the Federal Auditor testified that, contrary to the impression left that the account numbered 3228860 belonged to 141075 Canada Inc., information subsequently obtained by the Canada Revenue Agency from TD Canada Trust under paragraphs 231.2(1)(a) and (b) of the *Income Tax Act*⁵ revealed that it was, in fact, a line of credit jointly held by the Appellant and his wife.

[13] Confronted with the Federal Auditor's evidence, the Appellant explained firstly, that he did not think of a line of credit account as an account *per se*, suggesting the inference that it was simply by oversight that he had incorrectly identified account numbered 3228860 as the account of 141075 Canada Inc. However, the Appellant produced no other records to show that the \$45,000 was ever transferred from the line of credit account back to 141075 Canada Inc.

[14] Apparently abandoning his initial defence, the Appellant went on to say that the payment had not been transferred back to 141075 Canada Inc. on August 2, 2002; rather, it was retained by the Appellant as part of a shareholder's loan which, coincidentally, had been approved in July 2002. He then brought to light a Shareholder's Resolution⁶ which purported to show that on July 1, 2002, 141075 Canada Inc. had authorized a loan to the Appellant for \$50,000 "for the purchase of a new house". Neither the loan nor the document had been mentioned to the Quebec Auditor or the Federal Auditor during their inquiries. The loan was not pleaded nor was the Shareholder's Resolution disclosed to the Respondent in the Appellant's List of Documents or at any time prior to the trial. The Appellant said he had suddenly come across the document just before the hearing. He contended that it supported his claim that, whatever the original reasons for the \$46,000 finding its way from 141075 Canada Inc. to 9115-5028 Québec Inc. and ultimately into the Appellant's personal account, the payment was ultimately treated as a loan from 141075 Canada Inc. as contemplated by the Shareholder's Resolution. The Appellant repaid the money to 141075 Canada Inc. in 2002 (or at the very worst, in the following years) by making advances of varying amounts to keep the faltering company afloat. Because he had no other documentation to support his claims, when asked about the purposes of such advances, the Appellant could only speculate that they would have been for such expenses as rent and salaries.

⁵ Exhibit R-1, Tab 12.

⁶ Exhibit A-1.

[15] Taxpayers have an obligation under the *Act* to keep adequate books and records. Failing to do so is not only contrary to a taxpayer's legislative duty but also makes significantly more difficult the task of recreating and justifying possibly legitimate transactions several years after the fact. While it is not always necessary to the success of his appeal for a taxpayer to support his testimony with documentary evidence, it certainly makes it easier for him to meet the onus he bears of proving his claims. This is no more true than when, as in the present case, the taxpayer's testimony suffers from a lack of credibility.

[16] Here, in addition to overlooking the procedural deficiencies of his appeal, the Appellant effectively asked the Court to take him at his word - no easy task given the inconsistencies in his testimony and his generally blasé attitude to ethical conduct. I was in no way reassured by the Appellant's easy recital of his role in what effectively amounted to tricking BDC into lending a substantial amount of money to 141075 Canada Inc. In providing the Federal Auditor with (and later, attaching to his Notice of Appeal) copies of statements for his personal account showing a transfer of the payment to an unidentified account number, the Appellant was gambling that no one would bother verifying that it was not that of 141075 Canada Inc. When that strategy proved unsuccessful, the Appellant tried another tack: the suddenly remembered shareholder's loan. Even if I were to believe that the Shareholder's Resolution was a legitimate document that had suddenly been located on the eve of trial, it does not explain the Appellant's failure ever to mention the existence of a loan. And even if I were to accept the fact of the shareholder's loan, there is no reliable evidence that any of that amount was ever repaid to 141075 Canada Inc. thus making it income in the hands of the Appellant. All in all, the Appellant's version of events is just not credible. In these circumstances, there is no justification for the Court's interference with the Minister's reassessment.

Penalties

[17] Penalties were assessed against the Appellant under subsection 163(2) of the *Act*. The Minister bears the onus of proving their imposition was justified⁷. The Federal Auditor cited the fact that the undeclared amount was nearly double the Appellant's reported income, \$46,000 and \$24,500, respectively. He relied as well on the fact that the Appellant was an experienced businessman and that he had signed his 2002 return certifying it to be true. The Appellant made no response to the

⁷ *Lacroix v. Canada*, 2008 FCA 241. (F.C.A.)

Minister's position. In all the circumstances, I am satisfied that the Minister met his onus and accordingly, the penalties stand as assessed.

Conclusion

[18] For the reasons set out above, the appeal from the Minister's reassessment of the 2002 taxation year is dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 2nd day of August 2011.

“G.A. Sheridan”

Sheridan J.

CITATION: 2011TCC376

COURT FILE NO.: 2008-3450(IT)G

STYLE OF CAUSE: SAM SAAD AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: June 1, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: August 2, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Antonia Paraherakis

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
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