Docket: 2010-3562(IT)G
2010-3563(GST)I

BETWEEN:

KEVIN D'AMORE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on September 5, 2012, at Windsor, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	John Mill
Counsel for the Respondent:	Ryan Gellings

JUDGMENT

The Appeals against an income tax assessment pursuant to section 227.1 of the *Income Tax Act* (the "*Act*") and a GST assessment pursuant to section 323 of the *Excise Tax Act* (the "*ETA*") are allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant's liability as a Director is for the period August 1, 2007 to November 20, 2007. Each party shall bear its own costs.

Signed at Toronto, Ontario, this 22nd day of October 2012.

"Campbell J. Miller"

C. Miller J.

Citation: 2012 TCC 373
Date:20121022
Docket: 2010-3562(IT)G
2010-3563(GST)I

BETWEEN:

KEVIN D'AMORE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

C. Miller J.

[1] These are two appeals brought by Mr. Kevin D'Amore against an income tax assessment pursuant to section 227.1 of the *Income Tax Act* (the "*Act*") and a GST assessment pursuant to section 323 of the *Excise Tax Act* (the "*ETA*"). Both assessments are on the basis of a director's liability arising from Mr. D'Amore's position as a Director of 2110989 Ontario Inc. (the "Corporation"), carrying on business as Faces Roadhouse ("Faces") in Windsor, Ontario.

[2] The evidence at trial was a Partial Agreed Statement of Facts and the testimony of Mr. D'Amore. Until its demise in November 2007, Faces had operated as what I would describe as a University pub, near the University of Windsor, for at least a couple of decades. Mr. D'Amore had worked part-time at Faces while attending school as far back as 1989, serving as everything from a doorman, to bartender, to waiter. He was hired in 1989 by the manager, Linda Hughes, whose father and brother owned Faces. Mr. D'Amore and his wife became friends with Ms. Hughes and her husband. Mr. D'Amore went on to become involved in his own family's construction business and in 2000 became a shareholder, officer and director of D'Amore Construction 2000 Ltd. He worked as project manager and estimator for that company.

[3] In the early summer of 2006, Mr. D'Amore saw an ad for the sale of Faces and approached his friend, Ms. Hughes, who was still managing Faces. She had considered buying it from her family but was financially unable to do so. Mr. D'Amore negotiated a deal with Ms. Hughes' father and brother to buy Faces. He invited Ms. Hughes to join in on the deal by taking a 30% interest in the shares of the Corporation, which he had set up in August 2006 to accommodate the purchase of Faces. He also arranged for Ms. Hughes to stay on as general manager, as Mr. D'Amore had no experience in running a restaurant. He continued working in the family's construction business. Mr. D'Amore's wife was the 70% shareholder of the Corporation, while Mr. D'Amore and Ms. Hughes were the two directors. Ms. Hughes was Vice-President and Mr. D'Amore was Secretary of the Corporation. The purchase of Faces did not close until the end of December 2006.

[4] Mr. D'Amore and Ms. Hughes injected $50,000 working capital into the Corporation: Mr. D'Amore put in $35,000 and Ms. Hughes put in $15,000, $10,000 of which she had to borrow from Mr. D'Amore.

[5] Mr. D'Amore did a number of things upon acquiring Faces through the Corporation. He approached Mr. Russo, his chartered accountant, to set up the necessary Government accounts for GST, source deductions and provincial sales tax, as well as setting up accounts for his suppliers. Mr. Russo put Mr. D'Amore's name down as the contact person on all Government accounts. Mr. Russo and Mr. D'Amore determined it was preferable to make monthly remittances of GST rather than quarterly.

[6] Mr. D'Amore spoke to Ms. Hughes about her responsibilities and emphasized that remittances were critical, and you do not want to "piss off" the Government. He decided not to pay the Government by cheque but instead set up online remittances to ensure immediate payment, and more importantly, immediate receipt of payment. This meant he would not have to be tracked down for his signature on cheques, as cheques for suppliers, rent, payroll etc. required both his and Ms. Hughes' signatures.

[7] Mr. D'Amore also discussed with Ms. Hughes the bookkeeping and accounting duties. They agreed that to save money Ms. Hughes would take on those responsibilities and not keep Ms. Collins, the bookkeeper, although Ms. Hughes had not previously had access to the accounting programs, nor had any accounting or bookkeeping training. They acquired a computer accounting program, Quickbooks, with which Mr. D'Amore was familiar. He advised Ms. Hughes that if she had any difficulties with that program she should contact him due to his familiarity with it.

[8] Mr. D'Amore had weekly contact with Ms. Hughes primarily arising from having to sign cheques. He would always ask how things were going generally and see that cheque payments were current. He left all responsibility with Ms. Hughes for GST and source deductions, including remittances with no direct involvement with the financial, accounting or bookkeeping. He indicated he had complete trust in Ms. Hughes.

[9] In mid-August of 2007, Mr. D'Amore received a call from the Canada Revenue Agency (CRA) advising there had been no June remittances of GST. At this time, he also questioned Ms. Hughes about a small negative balance in the Corporation's bank account. She advised him that bar business was slow in summer and it was not unusual for Faces to run in the red during that time. He told her that Government remittances must be made when due and in priority to any other debts. In the Partial Agreed Statement of Facts, it was agreed that Ms. Hughes advised Mr. D'Amore that she had made an arrangement for payment of the GST arrears over the next couple of months in three instalments. Mr. D'Amore testified he instructed her to do so. In fact the instalments covered not only the missed June remittances but also the not yet due July remittances.

[10] In early September, Mr. D'Amore heard again from the CRA, indicating that source deductions had not been made to the tune of some $30,000. As Mr. D'Amore put it, he was flabbergasted as to how that could be possible. He immediately contacted his chartered accountant who reviewed the books and determined that another $30,000 was also owing on provincial sales tax. Mr. D'Amore could not fathom how a business with money in the bank nine months earlier could be in this position. He contacted his lawyer and ultimately dismissed Ms. Hughes on September 24, 2007. They have not spoken since.

[11] Mr. D'Amore injected $22,000 of his own money into the Corporation in September 2007 to enable it to pay food and bar supplies, rent, payroll and provincial sales tax. From September 24 until the business closed its doors on November 13, both he and his wife worked regularly at Faces. He drew no salary. He was aware that as a Director in control he was responsible for remittances. Although he filed on behalf of the Corporation the necessary paperwork for remittances in September, October and November, no remittances were actually paid until he personally was in a position to do so in August 2008.

[12] During September, October and November of 2007, until the business closed its door on November 13, Mr. D'Amore had the Corporation pay whatever could be paid to creditors to keep the business in operation.

[13] Mr. D'Amore could always have had access to the books, records and banking records of the Corporation. The Corporation's year end was July 31 so by the time he first heard from CRA there had been no financial statements of the Corporation.

[14] The corporation failed to remit to the Receiver General of Canada $49,773 of federal income taxes, Employment Insurance premiums and Canada pension Plan contributions (collectively "source deductions"), plus interest and penalties, for the 2007 calendar year as follows:

Date of (re)assessment	**Federal Tax Total**	**CPP**	**EI**	**Penalty**	**Interest**	
March 23, 2007				$556	$43	$600
Sept. 28, 2007	$11,307	$6,194	$6,649	$3,475	$3,546	$31,172
May 15, 2008	$4,258	$3,381	$2,963	$2,755	$1,244	$14,604
Aug. 27, 2008		$121			$0	$121
Accrued interest					$3,275	$3,275
Total	$15,566	$9,696	$9,613	$6,788	$8,109	**$49,773**

[15] The Parties since trial advised me that the $49,773 owing represents $35,995 that relates to the period up to the end of August 2007 and $13,778 that relates to the period from September 1, 2007 to November 20, 2007.

[16] A certificate for the amount of $49,773 was registered in the Federal Court of Canada on February 20, 2009 and execution for such amount has been returned wholly unsatisfied. All the requirements of paragraph 227.1(2)(a) of the " "*Act* were satisfied.

[17] The corporation failed to remit to the Receiver General of Canada $8,583 of net Goods and Service Tax ("GST"), plus interest and penalties, as follows:

Period	**Net Tax**	**Interest**	**Penalty**	**Total**
2007-08-01 to 2007-08-31	$768	$232	$21	$1,022

2007-09-01 to 2007-09-30	$2,814	$406	$0	$3,221
2007-10-01 to 2007-10-31	$2,527	$347	$50	$2,926
2007-11-01 to 2007-11-30	$1,233	$158	$21	$1,413
Total	$7,342	$1,143	$92	$8,583

[18] The Parties since trial advised me the $8,583 owing represents $1,021 that relates to the period up to the end of August 2007 and $7,556 relates to the period from September 1, 2007 to November 20, 2007.

[19] A certificate for the amount of $8,583 was registered in the Federal Court of Canada on February 18, 2009 and execution for such amount has been returned wholly unsatisfied. All the requirements of paragraph 323(2)(a) of the *ETA* were satisfied.

[20] On August 14, 2008, Mr. D'Amore paid $20,780 to the Government, with the attached explanation in the letter from his lawyer, Dimitry Beluli:

> Please be advised that we shall today be making payment on the arrears of GST and Source Deductions with respect to 2110989 Ontario Inc., with BN 846102762. This payment is being made by the former director of 2110989 Ontario Inc., Kevin D'Amore, with respect to the period from September 2007 through November 2007. This payment is not an admission of liability save with respect to the above noted period, in accordance with our position under Section 227.1(3) of the Income Tax Act of Canada. We acknowledge that acceptance of such payment is not an acceptance by the Canada Revenue Agency with respect to our claims under Section 227.1(3) of the Income Tax Act of Canada.
>
> It is our understanding that with respect to GST, the amount of arrears with penalties and interest as of July 14, 2008 is $7,004.67, and with respect to Source Deductions, the amount of arrears with penalties and interest is $13,778.69. We have asked for, but have not been provided with, an updated amount that may be payable with respect to that period, and accordingly, we shall be making payment in the aggregate amount of $20,783.36.

[21] The Parties advised me that of the $13,778.69 paid by Mr. D'Amore, $10,433 was credited to the period to the end of August 2007 and $3,345 was credited to the period from September 1, 2007 to November 20, 2007. Also, all of the $7,004.67 paid by Mr. D'Amore was credited to the period up to the end of August 2007.

Issue

Did Mr. D'Amore exercise sufficient due diligence as a Director to absolve himself of liability pursuant to section 227.1 of the *Act* and section 323 of the *ETA*?

[22] Those provisions read in part as follows:

Section 227.1 of the *Income Tax Act*

(1) Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or 135.1(7) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay that amount and any interest or penalties relating to it.

(2) A director is not liable under subsection (1), unless

(a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part;

…

(3) A director is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

…

Section 323 of the *Excise Tax Act*

(1) If a corporation fails to remit an amount of net tax as required under subsection 228(2) or (2.3) or to pay an amount as required under section 230.1 that was paid to, or was applied to the liability of, the corporation as a net tax refund, the directors of the corporation at the time the corporation was required to remit or pay, as the case may be, the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay the amount and any interest on, or penalties relating to, the amount.

(2) A director of a corporation is not liable under subsection (1) unless

(a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 316 and execution for that amount has been returned unsatisfied in whole or in part;

…

(3) A director of a corporation is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

…

Analysis

[23] A good starting point for the analysis is the summary from the Federal Court of Appeal in the case of *Balthazard v. Canada*[1], relying on its earlier decision in *Canada v. Buckingham*[2]. The Court stated at para. 32 of the *Balthazard* decision:

> [32] In *Buckingham*, this Court recently summarized the legal framework applicable to the care, diligence and skill defence under subsection 323(3), as follows:
>
> a. The standard of care, skill and diligence required under subsection 323(3) of the *Excise Tax Act* is an objective standard as set out by the Supreme Court of Canada in *Peoples Department Stores Inc.(Trustee of) v. Wise*, 2004 SCC 68 (CanLII), 2004 SCC 68, [2004] 3 S.C.R. 461. This objective standard has set aside the common law principle that a director's management of a corporation is to be judged according to his or her own personal skills, knowledge, abilities and capacities. However, an objective standard does not mean that a director's particular circumstances are to be ignored. These circumstances must be taken into account, but must be considered against an objective "reasonably prudent person" standard.
>
> b. The assessment of the director's conduct, for the purposes of this objective standard, begins when it becomes apparent to the

---

1 2011 FCA 331.

2 2011 FCA 142.

director, acting reasonably and with due care, diligence and skill, that the corporation is entering a period of financial difficulties.

c. In circumstances where a corporation is facing financial difficulties, it may be tempting to divert these Crown remittances in order to pay other creditors and thus ensure the continuity of the operations of the corporation. That is precisely the situation which section 323 of the *Excise Tax Act* seeks to avoid. The defence under subsection 323(3) of the *Excise Tax Act* must not be used to encourage such failures by allowing a care, diligence and skill defence for directors who finance the activities of their corporation with Crown monies, whether or not they expect to make good on these failures to remit at a later date.

d. Since the liability of directors in these respects is not absolute, it is possible for a corporation to fail to make remissions to the Crown without the joint and several, or solidary, liability of its directors being engaged.

e. What is required is that the directors establish that they were specifically concerned with the tax remittances and that they exercised their duty of care, diligence and skill with a view to preventing a failure by the corporation to remit the amounts at issue.

[24] It is also helpful to note the Federal Court of Appeal's comment in *Buckingham v. R.*:[3]

56. A director of a corporation cannot justify a defence under the terms of subsection 227.1(3) of the *Income Tax Act* where he condones the continued operation of the corporation by diverting employee source deductions to other purposes. The entire scheme of section 227.1 of the *Income Tax Act*, read as a whole, is precisely designed to avoid such situations. In this case, though the respondent had a reasonable (but erroneous) expectation that the sale of the online course development division could result in a large payment which could be used to satisfy creditors, he consciously transferred part of the risks associated with this transaction to the Crown by continuing operations knowing that employee source deductions would not be remitted. This is precisely the mischief which subsection 227.1 of the *Income Tax Act* seeks to avoid.

---

[3] 2011 FCA 142, para. 56.

[25] With this recent legal backdrop, I suggest there are two periods of significance to review: the period from the start of Mr. D'Amore's involvement with Faces, around January 1, 2007, to when he first heard from CRA that there were remittance issues in August 2007, or perhaps when a person acting reasonably and with due care, diligence and skill should have known there could be financial difficulties (the "first period"): and the period from then to the close of business in November 2007 (the "second period").

[26] I will deal with the second period first. From the time that Mr. D'Amore knew or should have known there were remittance problems, I am satisfied that he did not exercise due diligence. As he acknowledged, he paid creditors to keep the business afloat. He intentionally did not pay the Government notwithstanding Faces was collecting GST during this period and was continuing to pay employees and make source deductions from their pay. He injected $22,000 in September 2007 not to pay arrears of remittances owed, nor to cover future remittances. As he put it: "no liquor, no food – no business".

[27] I was not made aware of any case in which a director successfully relied on a due diligence defence in circumstances where the director of a corporation in financial difficulties intentionally had the corporation pay creditors, other than the CRA, to keep the business afloat, in the hope that the business will ultimately turn profits and then be in a position to pay Government remittances. I put this to the Appellant's counsel and he referred me to the case of *Campbell v. The Queen*.[4] With respect, that case is not close to the situation before me. The following describes what steps the director took in *Campbell*:

> 42. … At this point, the Appellant proposed a further informal arrangement in which CRL would pay $1,000 three times monthly. This was accepted by Jim Fitzgerald, a collections officer at CRA. The Appellant testified that he was in constant contact with CRA, and particularly Mr. Fitzgerald, throughout this period. To honour some of these cheques, the Appellant testified that he engaged in a strategy in which he would ensure that client payments to CRL were deposited to the corporate account on the same day that payment to CRA would be clearing. This ensured that the bank would not have time to stop the payment on the cheques earmarked for CRA. Up until the time that the bank stopped this practice, the Appellant testified that this practice included watching and hoping for bad weather so that the planes carrying the cheques to a Nova Scotia clearing house would be delayed by the weather which frequently occurred in the province. This provided a

[4] 2010 TCC 100.

> further day's grace period to ensure CRA's cheques cleared. Steve Lawlor confirmed this practice as well as the ongoing involvement of the Appellant in ensuring that CRA was paid. In addition, the Appellant stated that he assisted CRA by proposing that a requirement to pay be placed against one of CRL's larger debtors, likely the Hibernia account. In addition, he ensured that CRL facilitated CRA's efforts to collect directly from other third-party accounts of the company.
>
> 43. In a further attempt to ensure priority to CRA, the Appellant testified that CRL maintained a separate account for its source deductions, number 106-2017, which was closed in December, 2000. Generally, funds would be deposited into CRL's general account and then transferred immediately to the account designated for remittances. According to the Appellant, the bank, however, would not permit transfers to this account unless the company was current with its loan obligations.
>
> 44. During 1995, the Appellant convinced CRL's account manager at the Royal Bank to allow the company to go into an overdraft in order that source deductions could be made. Later, in 1996, the bank's auditors put a stop to this and converted the overdraft to a secured loan. The bank suggested that CRL seek professional accounting advice, which it subsequently did. However, CRL was unable to continue those services due to the higher fees which were being charged to CRL.
>
> …
>
> 46. The Appellant also considered having cheques being paid to CRL from its customers endorsed directly over to CRA, but because the bank was monitoring the company receivables so closely, the Appellant felt the bank would simply stop this practice if it were to be initiated.
>
> …
>
> 49. Throughout this period, the Appellant invested over $140,000 of his personal savings into the company to meet CRA remittances and loan payments and, in addition, made attempts to obtain funding from other sources. The Appellant also testified that he voluntarily did not take a salary from CRL so that priority again could be given to the CRA remittances. The Appellant's name is not in fact present on any of the corporate payroll lists for 1996 (Exhibit A-1, Tab 7), 1997 (Exhibit A-1, Tab 15), 1998 (Exhibit A-1, Tab 17) and 1999 (Exhibit A-1, Tab 23).

[28] The last paragraph quoted is most significant. The director in the *Campbell* case injected funds "to meet CRA remittances". Mr. D'Amore acknowledged that he injected funds to pay other creditors. This is the very mischief the Federal Court of Appeal described in the *Buckingham* case that the provision in the *Act* and the *ETA*

are designed to address. No, Mr. D'Amore, during the second period, took no steps to prevent the failure but intentionally continued the company's failure to remit. It is clear from his lawyer's letter in August 2008 that Mr. D'Amore indeed acknowledged this responsibility and ensuing liability.

[29] Does Mr. D'Amore remain liable for the second period remittances, including interest and penalties, given that in August 2008 he paid what he believed to be the full amount owing to CRA for that period? The only guidance I have in this regard is the Parties' agreement that "if the Court determines that the Appellant was duly diligent for either of the periods:

1. the August 14, 2008 payments will need to be re-allocated to the period, if any, that the Appellant was not duly diligent."[5]

[30] I turn now to the first period, being the time from when Mr. D'Amore took over the business at the end of December 2006 to the earlier of:

i) when he was contacted in August 2007 by the CRA advising of the failed remittances; and

ii) when, acting reasonably and with due care, skill and diligence he should have known the Corporation was in financial difficulties.

[31] As Justice Campbell pointed out in the *Campbell* decision, a director has a higher duty to ensure remittances are made when a company is experiencing financial difficulties. I have already concluded that Mr. D'Amore did not meet that standard in the second period. So, the first step is to determine when Mr. D'Amore should have been aware of the Corporation's financial difficulties. Was it before that first call from the CRA? As the Federal Court of Appeal made clear, to assess the due diligence one looks at the director's conduct "when it becomes apparent to the director, acting reasonably and with due care, diligence and skill, that the corporation is entering a period of financial difficulties". This approach appears to accord with Justice Campbell's view that there is a higher burden at the stage of a corporation with financial difficulties and the director is or should reasonably be aware of that. However, to determine whether it is apparent to a director acting with due diligence that a corporation is entering a period of financial difficulties requires an assessment

---

5 Letter of September 21, 2012 from Mr. Gellings at Department of Justice to the Tax Court of Canada, contents agreed to by Mr. Mill, counsel for the Appellant.

of the director's conduct prior to the financial difficulties. I interpret the Federal Court of Appeal's direction in this regard as effectively endorsing an approach that financial difficulties is a significant circumstance demanding greater attention by a director to prevent a failure to remit. In effect, the onus on a director to ensure compliance is simply not as great during a period of financial stability as it is during a period of financial difficulties simply due to the circumstances.

[32] I am satisfied that Mr. D'Amore acted with due diligence to stay on top of the general financial position of the company for the first several months of his involvement with the business, as there was no reason to suspect the company was facing any financial difficulties. The Respondent appears to take the position that the efforts of a director to meet the due diligence test, both before the Director is or should be aware of financial difficulties and after, is the same. The Respondent argues that in failing to inquire specifically of the General Manager, Ms. Hughes, as to whether she had remitted source deductions, Mr. D'Amore has not met the objective standard of due diligence required by the principles set up in *Buckingham*. With respect, I believe that misinterprets the direction of the Federal Court of Appeal in *Balthazard*. The assessment of a director's conduct prior to deemed or actual knowledge of financial difficulties should simply not be as demanding. I agree with the Respondent that a director should ask specific questions about remittances during a period of financial difficulties. I do not believe though that such level of diligence is required up to that point in determining the director's due diligence. What a court needs to determine in looking at the director's conduct prior to the financial difficulties is when was it reasonable for the director to have been made aware of those financial difficulties.

[33] This exercise is made difficult by neither the Appellant nor Respondent presenting any evidence to indicate that the financial difficulties in fact started prior to June. The only breakdown of the time period to which the $49,000 of failed source deductions related simply refers to a pre and post August 31, 2007 period - nothing more specific. The Respondent's counsel advised me that Ms. Hughes was waiting outside the courtroom, but he decided not to call her. I heard nothing to collaborate or refute Mr. D'Amore's story. As I indicated to counsel in argument, I am left in a quandary as to just what happened to give rise to such significant failed remittances. Did Ms. Hughes unilaterally decide not to pay the Government and to not bring this to Mr. D'Amore's attention? Was she simply incompetent? Was she raiding the till? Just what happened to the money? Why did neither side call Ms. Hughes? I find it impossible to draw any inference one way or the other from her failure to provide evidence. I am left with Mr. D'Amore's story that he simply was not aware of

financial difficulties until mid to late August. In early September, he had Mr. Russo review the books.

[34] I do have the agreed fact that Ms. Hughes advised Mr. D'Amore in answer to his concern over a small negative balance in August, that the bar business was slow in the summer and that was not unusual for Faces to run in the red during that time.

[35] So, did Mr. D'Amore act reasonably and with due diligence to ensure he would know when the company was entering financial difficulties. I believe he did at least until June or July when he should have known that Faces was historically entering a down time. To this point he had done the following to stay apprised of the company's finances:

- had himself as co-signer of all expense cheques
- signed such cheques weekly
- weekly asked his General Manager how business was doing
- had $50,000 of working capital injected into the company at the outset
- asked his General Manager to approach him with any accounting problems on Quickbooks

[36] I add to these actions the fact that the Corporation's first year end was not until the end of July, which is presumably when the Director would have a closer opportunity to consider the financial situation of the company.

[37] Until the summer of 2007, that is, only seven months into the new ownership of a business that had been operating for a couple of decades and had received some significant funding, I find that Mr. D'Amore's actions are sufficiently diligent to keep him apprised of the company's welfare.

[38] I am also of the view, however, that it would not be unreasonable for a director of a pub whose business is concentrated on University students to recognize that summer months may be slower. This is a significant circumstance that would require greater attention to the business' financial matters, including more careful overseeing of the company's financial responsibilities and Ms. Hughes' duties in that regard. It is at this stage that Mr. D'Amore's complete trust in Ms. Hughes becomes suspect. It is difficult to pinpoint exactly when in the summer of 2007 Mr. D'Amore's conduct should be subjected to greater scrutiny; that is, when does the second period commence. As indicated, the Parties gave no direct evidence of exactly when the Corporation failed to remit source deductions.

[39] I also wish to address the Respondent's argument that because Ms. Hughes was not a qualified accountant or bookkeeper there was a greater onus on Mr. D'Amore in delegating such responsibilities to her to oversee her work. While certainly this is a factor raised in the jurisprudence (see *Snively v. Her Majesty the Queen*)[6], it is important to bear in mind that Ms. Hughes was no simple employee: she was also a co-Director, sharing the same potential liability as Mr. D'Amore, as well as a 30% owner of the business: she had also been the General Manager of the business for 20 years. In these circumstances it is not unreasonable to put some trust in her, but depending on other circumstances (slow down in summer business or actual notification of default) greater scrutiny of her work should reasonably be expected.

[40] I conclude Mr. D'Amore should have known no later than the end of July that slow business could be problematic and it is from that time on that his conduct is to be scrutinized with a more demanding assessment. His actions to that point, I find, were sufficient to meet the due diligence test, but due to shifting circumstances, those actions were not sufficient thereafter. And, within a few weeks, his actions, as I have already concluded fell far short by favouring other creditors over the CRA.

[41] I allow the Appeals and refer the matters back to the Minister for reassessment on the basis Mr. D'Amore's liability as a Director is for the period August 1, 2007 to November 20, 2007. I presume the Parties can agree on how the payments made by Mr. D'Amore in August 2008 will impact on the reassessments. I also presume the Respondent can specifically identify pre and post August 1, 2007 liabilities. Each party shall bear its own costs.

Signed at Toronto, Ontario, this 22nd day of October 2012.

"Campbell J. Miller"

C. Miller J.

---

6 2011 TCC 196.

CITATION:	2012 TCC 373
COURT FILE NO.:	2010-3562(IT)G and 2010-3563(GST)I
STYLE OF CAUSE:	KEVIN D'AMORE AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Windsor, Ontario
DATE OF HEARING:	September 5, 2012
REASONS FOR JUDGMENT BY:	The Honourable Justice Campbell J. Miller
DATE OF JUDGMENT:	October 22, 2012

APPEARANCES:

Counsel for the Appellant:	John Mill
Counsel for the Respondent:	Ryan Gellings

COUNSEL OF RECORD:

For the Appellant:

Name:	John Mill
Firm:	Mill Professional Corporation
For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada