

Docket: 2014-4503(IT)I

BETWEEN:

WILLIAM B. HUXHAM INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on February 2, 2016, at Victoria, British Columbia

Before: The Honourable Justice Valerie Miller

Appearances:

Agent for the Appellant: William Huxham

Counsel for the Respondent: Kristian DeJong

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**JUDGMENT**

The appeal from the reassessments made under the *Income Tax Act* for the Appellant's 2008 and 2009 taxation years is dismissed.

Signed at Ottawa, Canada, this 12<sup>th</sup> day of February 2016.

“V.A. Miller”

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V.A. Miller J.

Citation: 2016TCC36  
Date: 20160212  
Docket: 2014-4503(IT)I

BETWEEN:

WILLIAM B. HUXHAM INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

V.A. Miller J.

[1] The issue raised by the pleadings in this appeal was whether the Appellant was entitled to claim a business investment loss (“BIL”) of \$675,151 in 2008 and whether the Appellant was entitled to claim a carried-forward non-capital loss deduction of \$24,079 in 2009. The amount claimed in 2009 was the unused portion of the BIL claimed in 2008.

[2] The only witness at the hearing of this appeal was William B. Huxham who is an accountant.

Preliminary Matter

[3] The BIL claimed in 2008 consisted of two amounts. One was the amount of \$591,415 which the Appellant claimed was a debt owed to it by Elkhorn Developments Ltd. (“Elkhorn”) and the other was the amount of \$83,736 which the Appellant claimed was a debt owed to it by B&T Roadbuilders Ltd. (“B&T”). At the beginning of the hearing, Mr. Huxham stated that the Appellant was no longer proceeding with its claim for a BIL in respect of \$83,736, the amount owed by B&T. Mr. Huxham stated that the Appellant was abandoning its claim because B&T was struck from the corporate records on September 5, 2005.

## Facts

[4] The shareholders in the Appellant are Elsie Victoria Huxham who owns 80% of the shares and William Huxham who owns the remaining 20% of the shares. William Huxham and Elsie Huxham are spouses of each other.

[5] One hundred per cent of the shares in Elkhorn are owned by 232522 B.C. Ltd. ("232 B.C."). The shares of 232 B.C. are owned 25% by Mrs. Huxham, 25% by Mr. Huxham and 50% by Durken Enterprises Ltd. Neither the Appellant nor Mr. and Mrs. Huxham owned shares in Durken Enterprises Ltd.

[6] Elkhorn has not filed income tax returns since 2003. According to Mr. Huxham, no financial statements were prepared for Elkhorn after October 31, 2003. However, the October 31, 2003 financial statements were not submitted at the hearing of this appeal. Instead, documents entitled "Interim Financial Statements" dated March 31, 2003 for Elkhorn were submitted and they indicated that Elkhorn owed the Appellant \$458,916.

[7] Mr. Huxham submitted a "Statement of Financial Position" for the year ended December 31, 2007 for the Appellant. This document was not signed and I do not know if it was included with the Appellant's 2007 income tax return. However, it indicated that Elkhorn had a debt to the Appellant of \$591,415 in 2006 and 2007.

[8] I note that the evidence established that Elkhorn did not operate its business in 2006 and it was dissolved on January 15, 2007.

[9] Mr. Huxham stated that during the period, the books and records for Elkhorn and the Appellant were prepared by Mrs. Inga Woolsey who worked in "a public accounting environment" for over thirty years. She prepared the books to the trial balance stage and Mr. Huxham prepared the financial statements. Mrs. Woolsey was accepted for her integrity, understanding of accounting and fairness and it was Mr. Huxham's opinion that the court should accept her records as representing the true state of affairs. Mrs. Woolsey passed away in 2011.

## Law

[10] The Appellant is entitled to claim a business investment loss of \$591,415 provided (i) there was a debt of that amount owed to it by Elkhorn; (ii) the debt was incurred for the purpose of gaining or producing income; (iii) Elkhorn was an

eligible small business in 2008; and (iv) the debt became bad in 2008: *Rich v The Queen*, 2003 FCA 38. The Appellant must satisfy all of these conditions.

### Analysis and Decision

[11] With respect, I cannot accept that the records submitted at the hearing support the Appellant's claim that Elkhorn owed it \$591,415 and that the debt became bad in 2008.

[12] Mr. Huxham submitted a document entitled "Detailed Analysis of Elkhorn Development Ltd. ABIL" (exhibit A2, Tab 6) ("Analysis"). It was clear that the Analysis was made specifically for the hearing. The majority of the entries were not supported by source documents and some of the entries which could be traced to source documents showed that the entry was incorrect or that the debt had been incurred by Mr. Huxham personally. For instance:

- a) There was an entry that the Appellant loaned Elkhorn \$70,000 in cash on August 18, 1995. The cheque which supported this entry showed that Mr. Huxham personally loaned this amount to Elkhorn.
- b) The Appellant allegedly loaned Elkhorn \$50,000 on September 11, 1995 and \$5,000 on January 31, 1995. These amounts were not supported by any documents.
- c) The Analysis listed that the Appellant had purchased a debt in the amount of \$55,000 from Ace Explosives in 1996. However, the supporting document showed that William Huxham personally purchased Elkhorn's debt of \$55,000 with Ace Explosives on February 1, 2000.
- d) There was an entry in the Analysis that the Appellant loaned Elkhorn the amounts of \$50,000 and \$9,880 in 1996. There were no supporting documents for these amounts.
- e) On July 6, 2001 Mr. Huxham personally paid Elkhorn's debt of \$60,000 with the Canadian Western Bank. He also personally paid Elkhorn's debt of \$10,500 with Gourlay Spencer Wade on May 23, 2003. These amounts were listed as loans from the Appellant.
- f) The Bank of Montreal and the HSBC Bank each called their loans to Elkhorn. In 2006, Mr. and Mrs. Huxham were required to pay \$70,250 and

\$20,000 pursuant to guarantees they had given the banks. In September 2008, Mr. Huxham also paid \$10,000 to Caterpillar Financial Services pursuant to his personal guarantee for a loan to Elkhorn. These amounts were also listed in the Analysis as loans from the Appellant to Elkhorn.

[13] In the Analysis, Mr. Huxham also listed numerous amounts for groceries, gasoline and hotels. The receipts for these entries were paid by cash or by debit by him or his spouse. He stated that these items were purchased for supplies for Elkhorn's workers.

[14] Any debts which arose on account of payments made by Mr. and Mrs. Huxham became debts owed by Elkhorn to them personally and not debts owed to the Appellant. Mr. Huxham stated that in 2005 he and his spouse claimed and were allowed an allowable business investment loss ("ABIL") of \$190,000 for the debt which Elkhorn owed to them. He gave no details of the various amounts which were included in the ABIL which he was allowed to deduct.

[15] There was evidence that the Appellant loaned Elkhorn \$3,000 on January 25, 1995. I have not allowed this amount because there was no evidence as to whether or not this amount was previously allowed to the Appellant.

[16] Mr. Huxham did not indicate specifically which documents in his exhibits were prepared by Mrs. Woolsey. However, I have assumed that some of the documents at Exhibit A-2, Tab 7 were prepared by her. The first two pages at Exhibit A-2, Tab 7 were from the general ledger for Elkhorn – one page was dated August 2002 and the other page was dated November 2000 to October 2001. Both pages have the account "Due to Shareholder – WB Huxham". The only entry for the Appellant indicated that it received an advance of \$17,000 from Elkhorn on October 1, 2001. The remaining documents at this exhibit indicated that Mrs. Huxham and Mr. Huxham loaned various amounts to Elkhorn.

[17] The Appellant has not provided evidence to satisfy the first condition to claim a business investment loss. It has not established that Elkhorn was indebted to it for the amount of \$591,415 or for any amount.

[18] The appeal is dismissed.

Signed at Ottawa, Canada, this 12<sup>th</sup> day of February 2016.

“V.A. Miller”

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V.A. Miller J.

CITATION: 2016TCC36  
COURT FILE NO.: 2014-4503(IT)I  
STYLE OF CAUSE: WILLIAM B. HUXHAM INC. AND HER MAJESTY THE QUEEN  
PLACE OF HEARING: Victoria, British Columbia  
DATE OF HEARING: February 2, 2016  
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller  
DATE OF JUDGMENT: February 12, 2016

APPEARANCES:

Agent for the Appellant: William Huxham  
Counsel for the Respondent: Kristian DeJong

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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