

Docket: 2011-1792(IT)I

BETWEEN:

ESTATE OF GILLES NOISEUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent

[ENGLISH TRANSLATION]

Appeal heard on October 27, 2015, at Montréal, Quebec.

Before: The Honourable Justice B. Paris

Appearances:

Representative for the Appellant:	Sylvain Tessier
Counsel for the Respondent:	Grégoire Cadieux

JUDGMENT

The appeal from the reassessment under the *Income Tax Act* for the 2002 taxation year is dismissed for the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 1st day of March 2016.

"B. Paris"

Paris J.

Citation: 2016 TCC 51
Date: 20160301
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BETWEEN:

ESTATE OF GILLES NOISEUX,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] This is an appeal brought under the informal procedure against a reassessment for the 2002 tax year. The issues in dispute are as follows: Did the late Mr. Noiseux fail to report \$27,250 of his income and was the Minister of National Revenue ("the Minister") justified in making a reassessment after the normal reassessment period?

[2] The respondent maintains that the failure to report this income is a misrepresentation of the facts by the late Mr. Noiseux in his tax return, attributable to neglect, carelessness or wilful default, which gave the Minister the right to make the reassessment under subparagraph 152(4)a)(i) of the *Income Tax Act* (the "Act"). The respondent assumes the burden of proof to establish the facts justifying the reassessment in this case.

[3] The appellant's representative chose not to call any witnesses during the appeal hearing and maintains that the respondent failed to discharge the burden of proof to show that Mr. Noiseux had received the amount in question. I reject this argument.

[4] The respondent called upon Maurice Paradis to testify. Mr. Paradis confirmed that he had done business with Mr. Noiseux in 2002 and that Mr. Noiseux had invested funds withdrawn from his RRSP into valuable lumber. This investment was made through the Coopérative de producteurs de bois précieux Québec Forestales (the "Cooperative"). Michel Maheux was the

Cooperative's president. Mr. Paradis also testified that Mr. Maheux had given him sealed envelopes to give to investors and that the envelopes contained advances on the Cooperative's returns, equalling 40–50% of the amounts invested. He said that he had given at least one of these envelopes to Mr. Noiseux. Mr. Paradis' testimony was not contradicted.

[5] Next, Chantal Petit, an auditor for the Canada Revenue Agency (the "CRA"), testified that she had examined Mr. Noiseux's 2002 investments in the Cooperative. Based on documents seized through searches of the Cooperative, of the residence of its CEO and of Mr. Maheux, she was able to confirm that Mr. Noiseux had invested, in three installments, a total of \$54,500, via his self-directed registered retirement savings plan. According to these same documents, 50% of each of Mr. Noiseux's investments was returned to him. These elements of her testimony were not contradicted.

[6] Lastly, Jeannette Mercier, a tax avoidance auditor for CRA, testified that Mr. Noiseux had admitted (during a telephone conversation with her) that he had received one or more envelopes of money from Mr. Paradis, containing 50% of the amounts he had invested in the Cooperative. This conversation took place the day after a meeting between Mr. Noiseux and the senior investigator assigned to the Cooperative's file—a meeting which Ms. Mercier had attended.

[7] Although the appellant's representative did not object to this testimony or to the transcript of this conversation produced by Ms. Mercier following the exchange, the admissibility of this evidence must be examined, since it constitutes hearsay. Hearsay is the introduction by a witness of a third party's out-of-court statement, to establish the truth of the matter. However, under section 2870 of the *Civil Code of Québec*, a court may admit hearsay if it is impossible for the declarant to appear in court and if the statement is sufficiently guaranteed by the circumstances in which it is made. Section 2870 stipulates:

2870. A statement made by a person who does not appear as a witness, concerning facts to which he could have legally testified, is admissible as testimony on application and after notice is given to the adverse party, provided the court authorizes it.

The court shall, however, ascertain that it is impossible for the declarant to appear as a witness, or that it is unreasonable to require him to do so, and that the reliability of the statement is sufficiently guaranteed by the circumstances in which it is made.

Reliability is presumed to be sufficiently guaranteed with respect in particular to documents drawn up in the ordinary course of business of an enterprise, to documents entered in a register required by law to be kept, and spontaneous statements that are contemporaneous to the occurrence of the facts.

[8] The respondent informed the appellant prior to the hearing of its intention to produce this evidence, thus meeting the condition of providing notice, as outlined in section 2870. In this case, I find the statement to be credible, since Mr. Noiseux voluntarily made the statement to a CRA agent, and since the statement was recorded by the agent immediately thereafter.

[9] Ms. Petit also produced extracts from CRA computer systems, which prove the amount of income claimed by Mr. Noiseux in his 2002 tax return (filed electronically) and which also prove that Mr. Noiseux did not declare the revenue he received from the Cooperative.

[10] In light of all of this evidence, and especially in light of Mr. Noiseux's own admission to Ms. Mercier, I reject the appellant's argument that the respondent failed to discharge the burden of proof to show, based on the preponderance of evidence, that Mr. Noiseux received \$27,250 in revenue from the Cooperative in 2002. I therefore also find that Mr. Noiseux, a former university professor, should have known that sums from a commercial enterprise are taxable, or in case of doubt, he should have consulted a tax expert regarding the matter, and that his failure to declare this revenue was due, at minimum, to negligence.

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

Signed at Ottawa, Canada, this 1st day of March 2016.

"B. Paris"

Paris J.

CITATION: 2016 TCC 51
COURT FILE NO.: 2011-1792(IT)I
STYLE OF CAUSE: ESTATE OF GILLES NOISEUX AND
HER MAJESTY THE QUEEN
PLACE OF HEARING: Montréal, Quebec
DATE OF HEARING: October 27, 2015
REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris
DATE OF JUDGMENT: March 1, 2016

APPEARANCES:

Representative for the Appellant: Sylvain Tessier
Counsel for the Respondent: Grégoire Cadieux

SOLICITORS OF RECORD:

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