

Docket: 2005-309(IT)I

BETWEEN:

DIANE LÉPINE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Sogécharles Ltée*
(2005-323(IT)I) and *Claude Gagnon* (2005-324(IT)I)
on November 15, 2005, and October 12, 2006, at Québec, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Appellant:

Jacques Côté

Bernard Gaudreau

Counsel for the Respondent:

Marie-Claude Landry

JUDGMENT

The appeal from the assessment under the *Income Tax Act* for the 2001 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 5th day of January 2007.

“Louise Lamarre Proulx”

Lamarre Proulx J.

Translation certified true

on this 31st day of August 2007.

Daniela Possamai, Translator

Docket: 2005-323(IT)I

BETWEEN:

SOGÉCHARLES LTÉE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeals of *Diane Lépine*
(2005-309(IT)I) and *Claude Gagnon* (2005-324(IT)I)
on November 15, 2005, and October 12, 2006, at Québec, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Appellant:

Jacques Côté

Bernard Gaudreau

Counsel for the Respondent:

Marie-Claude Landry

JUDGMENT

The appeals from the assessments under the *Income Tax Act* for the 2000 and 2001 taxation years are allowed, without costs, to the extent set out in the attached Reasons for Judgment. The assessments are referred back to the Minister of National Revenue for reconsideration and reassessment, in accordance with these reasons.

Signed at Ottawa, Canada, this 5th day of January 2007.

“Louise Lamarre Proulx”

Lamarre Proulx J.

Translation certified true

on this 31st day of August 2007.

Daniela Possamai, Translator

Docket: 2005-324(IT)I

BETWEEN:

CLAUDE GAGNON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Diane Lépine*
(2005-309(IT)I) and *Sogécharles Ltée* (2005-323(IT)I)
on November 15, 2005, and October 12, 2006, at Québec, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

Counsel for the Appellant:

Jacques Côté

Bernard Gaudreau

Counsel for the Respondent:

Marie-Claude Landry

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2000 and 2001 taxation years are allowed, without costs, to the extent set out in the attached Reasons for Judgment. The assessments are referred back to the Minister of National Revenue for reconsideration and reassessment, in accordance with these reasons.

Signed at Ottawa, Canada, this 5th day of January 2007.

“Louise Lamarre Proulx”

Lamarre Proulx J.

Translation certified true

on this 31st day of August 2007.

Daniela Possamai, Translator

Citation: 2007TCC3
Date: 20070105
Dockets: 2005-309(IT)I
2005-323(IT)I
2005-324(TI)I

BETWEEN:

DIANE LÉPINE,
SOGÉCHARLES LTÉE,
CLAUDE GAGNON,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Lamarre Proulx J.

[1] These appeals were heard on common evidence under the informal procedure.

[2] The facts assumed by the Minister of National Revenue (the “Minister”) for the assessment of the Appellant Claude Gagnon for the 2000 and 2001 taxation years are set out at paragraphs 8 and 9 of the Amended Reply to the Notice of Appeal (“Reply”) as follows:

[TRANSLATION]

8. ...

- (a) During the 2000 and 2001 taxation years, the Appellant was shareholder and director of Sogécharles Inc., hereinafter called the “company,” which is a management company for construction projects;

- (b) In filing his income tax return for the 2000 taxation year, the Appellant did not report any T4 income from the company;
- (c) The expenses incurred by the company, for the personal benefit of the Appellant, were not included in his income tax return;
- (d) We submit that the expenses incurred by the company for the Appellant were for his personal benefit. (See appendices 1, 2, 3, 4, 5, and 6 attached hereto.)

FEDERAL PENALTY FOR NEGLIGENCE

9. The Minister determined that the Appellant knowingly, or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in the making of, a false statement or omission in the returns of income filed for the 2000 and 2001 taxation years as a result of which the tax that he would have been required to pay, based on the information provided in the returns of income filed for those years, was less than the amount of tax payable for those years:
- (a) Most of the disallowed expenses are derived from the Appellant's personal credit card statements and are paid by the "company;"
 - (b) The Appellant is no stranger to tax matters as he holds a degree in administration from the Université Laval and has already been the subject of many tax assessments in the past;
 - (c) The Appellant is the sole director of the "company" and should be familiar with the revenue and expenses of the "company;"
 - (d) The Appellant signed the income tax return of the "company;"
 - (e) The total amount of disallowed expenses represents a significant percentage of the expenses claimed by the "company" in 2000 and 2001, that is 52.3% and 59.6%, respectively, and represents 208% and 131.8% of the gross revenue for the 2000 and 2001 taxation years, respectively;

[3] The facts assumed by the Minister for the assessments of the Appellant Sogécharles are set out at paragraphs 9 and 10 of the Reply as follows:

[TRANSLATION]

9. In establishing and retaining the determination of losses for the 2000 taxation year and the reassessments in issue for the 2000 and 2001 taxation years, the Minister assumed the same following facts:
- (a) The Appellant is a company whose activity is the management of construction projects;
 - (b) Claude Gagnon, hereinafter “Gagnon,” is the sole director and a shareholder of the company;
 - (c) During the taxation years ending on October 31, 2000 and 2001, the Appellant claimed office expenses in the amount of \$6,348 and \$1,193, respectively, for which no acceptable receipts were submitted;
 - (d) During the taxation year ending on October 31, 2000 and 2001, the Appellant claimed maintenance and repair expenses in the amount of \$4,291 and \$4,510, respectively, for which no acceptable receipts were submitted;
 - (e) During the taxation year ending on October 31, 2000 and 2001, the Appellant claimed advertising and entertainment expenses in the amount of \$4,095 and \$4,876, respectively, for which no acceptable receipts were submitted;
 - (f) With respect to the items contained in paragraphs c, d, and e, the Minister concluded that the Appellant did not incur those expenses for the purpose of earning income from a business or property but that the expenses incurred were rather payment of the shareholder’s personal expenses;
 - (g) During the taxation year ending on October 31, 2000, horse expenses were disallowed, expenses which consisted of the write-off of an account receivable from Ecuries Chakrika;
 - (h) The taxpayer was unable to prove that the account receivable had already been previously included in the income;
 - (i) The disallowed expense was \$3,000. The deduction was disallowed pursuant to paragraph 20(1)(p) of the ITA as the taxpayer was unable to provide the Minister with the documents and evidence indicating that it made every effort to recover the amounts.

- (j) During the taxation year ending on October 31, 2001, the Appellant claimed professional fees in the amount of \$22,000 for which no voucher was submitted. What is more, the Appellant was unable to determine what exactly the fees were charged for.
10. With regard to the reassessments of January 19, 2004, for the 2000 and 2001 taxation years, the Minister applied penalties pursuant to subsection 163(2) of the Act, in respect of expenses not deductible from the income of the “company” on the amount of \$17,734 and \$32,579, respectively, for the following reasons:
- (a) Most of the disallowed expenses are derived from the personal credit card statements of the shareholder Gagnon;
 - (b) The expenses are paid by cheque by the company and the cheques are signed by Gagnon and the nature of the invoice is identified by Gagnon;
 - (c) Gagnon is no stranger to tax matters as he holds a degree in administration from the Université Laval;
 - (d) Gagnon is the sole director of the company and therefore is familiar with the revenue and expenses of the company. He states that he claims all his expenses through the management company and charges fees accordingly when the project works. However, he does not have a list of expenses;
 - (e) Gagnon signed the income tax returns of the company;
 - (f) The company did not provide any receipts supporting the expenses claimed. Gagnon also mentions that he does not keep any exhibits and that this is not how he wishes to utilize his time;
 - (g) The total amount of disallowed expenses is 52.3% of the expenses of the company in 2000 and 59.6% in 2001. The disallowed expenses also represent 208% of the gross revenue of the company in 2000 and 131.8% in 2001.

[4] As for the assessment of the Appellant Diane Lépine for the 2001 taxation year, the facts assumed by the Minister are set out at paragraphs 7 and 8 of the Reply as follows:

[TRANSLATION]

7. ...
- (a) During the 2001 taxation year, the Appellant was shareholder of Sogécharles Inc., hereinafter called the “company,” which is a management company for construction projects;
 - (b) In filing her income tax return for the 2001 taxation year, the Appellant did not report any professional fees received from the company.

FEDERAL PENALTY FOR NEGLIGENCE

8. The Minister determined that the Appellant knowingly, or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in the making of, a false statement or omission in the returns of income filed for the 2001 taxation year as a result of which the tax that she would have been required to pay, based on the information provided in the returns of income filed for that year, was less than the amount of tax payable for that year:
- (a) The professional fees received by the Appellant from the company were paid in a lump sum of \$22,000, unlike the other types of income received by the Appellant during that year;
 - (b) The Appellant did not receive other income of this kind in the 2001 taxation year, and so could not have mistaken that payment for other income;
 - (c) The income represented 54.9% of the Appellant’s total income for 2001;
 - (d) The Appellant filed her income tax return for 2001 electronically;
 - (e) The Appellant did not provide the company with an invoice for professional fees to justify the amount received;
 - (f) The Appellant has already been audited before and should therefore be somewhat knowledgeable about tax matters.

[5] I do not refer to the content of the Notices of Appeal as they were prepared by the accountant and were very cryptic.

[6] There are two important issues in these appeals, the characterization of the expenses claimed by Sogécharles and disallowed by the Minister, and the \$22,000 in fees received by Ms. Lépine.

[7] The expenses of Sogécharles were disallowed by the Minister on the ground that they were the personal expenses of the principal shareholder, Claude Gagnon. Given that those expenses were paid by Sogécharles, the amounts were included in the income of the Appellant Mr. Gagnon as a benefit conferred on the shareholder under subsection 15(1) of the *Income Tax Act* (the “Act”). The deduction of the fees paid to Ms. Lépine was also disallowed. The amount was included in her income.

[8] The challenged expenses were produced in a book of documents filed as Exhibit A-1. It basically includes the amounts shown on the personal credit card statements of Mr. Gagnon. There is no invoice that supports the amounts claimed.

[9] Two written documents were filed at the request of the Court, one explaining each of the expenses claimed by Sogécharles and the other provided by the Respondent explaining why the expenses cannot be allowed.

[10] I am of the opinion that the primary ground justifying the Respondent’s disallowance is reasonable. Mere entries on a credit card statement do not suffice to prove that the charges are business expenses despite the taxpayer’s assertions and explanations to that effect.

[11] Invoices or other acceptable proof that the expense was in fact incurred for business purposes must be submitted. The mere assertion of the taxpayer does not suffice. If it was just amounts spent at a business the taxpayer deals with regularly it would not matter. But what is involved here is a series of disparate amounts.

[12] Furthermore, with regard to the entertainment expenses, too many of the expenses claimed are not, considering their amount, typically receipts for meals consumed by more than one person and are incurred in restaurants that are not settings generally considered to be conducive to business discussions either. There are too many assertions that undermine the overall credibility of the Appellant’s testimony. (See *Chrabolowski v. R.*, [2005] 1 C.T.C. 2054.)

[13] To conclude, despite the valiant work done by the Appellant’s counsel, I am not convinced, on a preponderance of evidence, that the expenses claimed were business expenses.

[14] As for the \$22,000 paid to the Appellant Ms. Lépine as fees for professional services, the Respondent's auditor based her decision to disallow the payment on the fact that Ms. Lépine did not provide an invoice. However, the evidence revealed that Ms. Lépine was very involved in her husband's business managing the building and its landscaping. I am of the opinion that Sogécharles was entitled to pay her fees for services rendered and that, accordingly, it was entitled to deduct them.

[15] The Appellant Ms. Lépine did not include those fees in her income tax return. She is willing to do so now and claims that it was an oversight and that she trusted the accountant. She challenges the imposition of the penalty. I find it hard to believe that she did not notice that the income was missing from the tax return when it represented more than half of her income for that year. Accordingly, the penalty should be upheld.

[16] The appeals of Sogécharles are allowed so as to enable Sogécharles to deduct the \$22,000 paid to Ms. Lépine in computing its income. It may also deduct the expenses allowed by the Minister for fuel and stamps in computing her income.

[17] As for the Appellant Mr. Gagnon, the amounts paid by Sogécharles and whose deduction was disallowed, should be included in computing his income as a benefit conferred on a shareholder.

[18] In each of the cases, the imposition of the penalty under subsection 163(2) of the Act complies with the facts and the law.

Signed at Ottawa, Canada, this 5th day of January 2007.

“Louise Lamarre Proulx”

Lamarre Proulx Justice

Translation certified true

on this 31st day of August 2007.

Daniela Possamai, Translator

CITATION: 2007TCC3

COURT FILE NOS.: 2005-309(IT)I, 2005-323(IT)I
and 2005-324(IT)I

STYLES OF CAUSE: DIANE LÉPINE v. THE QUEEN
SOGÉCHARLES LTÉE v. THE QUEEN
and CLAUDE GAGNON v. THE QUEEN

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: November 15, 2005
October 12, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Louise Lamarre
Proulx

DATE OF JUDGMENT: January 5, 2007

APPEARANCES:

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Bernard Gaudreau

Counsel for the Respondent: Marie-Claude Landry

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