

Docket: 2003-2189(IT)G

BETWEEN:

RICHARD POULIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeals heard on February 5, 2007, at Quebec City, Quebec.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Appellant: Frédéric Desgagnés

Counsel for the Respondent: Nicolas Simard

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**JUDGMENT**

The appeals from the reassessments made under the *Income Tax Act* for the 1995, 1996, 1997, 1998 and 1999 taxation years are dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 23rd day of February 2007.

"François Angers"

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Angers J.

Translation certified true  
on this 27th day of June 2008.

Erich Klein, Revisor

Citation: 2007TCC107  
Date: 20070223  
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### **REASONS FOR JUDGMENT**

Angers J.

[1] These appeals pertain to notices of reassessment issued on March 14, 2003, against the appellant, in respect of the 1995, 1996, 1997, 1998 and 1999 taxation years. By these reassessments, the Minister of National Revenue ("the Minister"), applying the net worth method of assessment, added to the appellant's income the amounts of \$44,410, \$72,730, \$115,273, \$12,426 and \$10,183 for those years respectively. In addition, penalties were imposed under subsection 163(2) of the *Income Tax Act* ("the Act") and a penalty was imposed under subsection 162(1) of the Act for late filing of the income tax return for the 1999 taxation year. The notices of reassessment in respect of the 1995 and 1996 taxation years were issued by the Minister after the normal reassessment period.

[2] As stated above, the appellant's unreported income for the taxation years in issue was determined using the net worth method. The appellant is not contesting the figures used in calculating the additional income, but is contesting the Minister's finding that the appellant advanced money to two corporations during the years 1995, 1996 and 1997, and objects to the fact that these amounts were taken into consideration in calculating his income using the net worth method. It is worth noting as well that the Minister also allowed the appellant an allowable business investment loss in relation to those two corporations for the 1996, 1997 and 1998 taxation years by reason of the advances imputed to the appellant.

[3] The two corporations in question are 9011-7821 Québec Inc. ("9011") and Pool Bar (Ste-Foy) Inc. ("Pool Bar").

[4] 9011 was incorporated on November 18, 1994. No corporate document was adduced in evidence, so the information regarding the shareholders of 9011 comes from the corporation's 1995 income tax return, its first. The appellant is identified as the sole shareholder on the return. The financial statements attached to the return were prepared by the firm Bussières Paquet ("Bussières"). It was through these financial statements that the Minister became aware of an \$18,497 advance from the shareholder for the year 1995. According to a note in the financial statements, the shareholder [TRANSLATION] "has indicated that he will not be asking for repayment in full of the amounts in question during the next fiscal year, which is why the amounts owed are shown as long-term liabilities in the attached financial statements." The appellant signed the income tax return. At trial, the appellant said that he purchased the shares of two other shareholders for next to nothing. However, he provided no further details in this regard.

[5] In the information obtained from the Inspecteur général des institutions financières ("IGIF"), the appellant alone is identified as a related person, in his capacity as president. The information also discloses that the corporation was struck off automatically on May 8, 1998.

[6] In 9011's 1996 income tax return, the Minister noticed in the financial statements prepared by Bussières that another advance from the shareholder, in the amount of \$18,431, was made that year. Once again, the documentation identifies the appellant as 9011's sole shareholder, and the appellant signed the tax return in question. There is a note identical to the one appearing in 9011's financial statements for the previous year. This is the second shareholder advance that the Minister used in computing the appellant's income by means of the net worth method.

[7] In the case of Pool Bar, the Minister also used the information contained in company's financial statements to attribute unreported income to the appellant. In 1996, the appellant advanced \$40,000 to Pool Bar, and in 1997, an individual advanced \$102,348 to Pool Bar.

[8] The auditor and the appeals officer determined, on the basis of the information available to them at the time that they issued the various notices of assessment, that both advances were attributable to the appellant because he was

the sole shareholder of Pool Bar in 1996 and only he could have made them, since he was never able to identify the individual who advanced \$102,348 in 1997.

[9] Pool Bar was incorporated on July 12, 1994. Its sole shareholder (holding 10 class "A" shares) is Novalcorp Inc. ("Novalcorp"). Pool Bar's head office is located at 570 Grande Allée Est in Quebec City. Its first income tax return includes financial statements for the period from July 12, 1994 to June 30, 1995, prepared by the accounting firm Audet, Beaudoin, Girard; the signing officer is Odile Vallières in her capacity as president. The financial statements show an amount of \$17,846 owing to a director.

[10] For the fiscal year beginning July 1, 1995, and ending June 30, 1996, Pool Bar's tax return shows the same shareholder, the same accounting firm, the same head office address, the name of Odile Vallières (who did not sign the return), an amount of \$25,681 owed to a director, and an amount of \$24,181 owed to a related corporation. The financial statements are dated July 31, 1996.

[11] A few months later, on September 26, 1996, Novalcorp's board of directors adopted a resolution authorizing the sale of all of its shares in Pool Bar to the appellant for \$50,000 and authorizing Michel Noël to sign, on behalf of Novalcorp, any document required in order to carry out the sale.

[12] The following day, Novalcorp accepted the appellant's offer to purchase the 10 Class "A" shares issued by Pool Bar to Novalcorp for \$0.10 per share. However, the appellant agreed to [TRANSLATION] "repay all the Advances to Pool Bar (Ste-Foy) Inc., that is to say, the sum of \$50,000, through Pool Bar (Ste-Foy) Inc." The terms of payment provide for the transfer of two shares and a cash payment of \$20,000 upon the closing of the sale in exchange for a discharge of \$20,000 for the advances to the corporation and the two shares. The balance of the price offered was to be paid in two instalments of \$15,000 due November 15, 1996, and January 15, 1997. On November 15, 1996, two shares were to be given to the purchaser, along with a discharge in respect of the advances to the corporation; on January 15, 1997, the six remaining shares were to be handed over to the purchaser.

[13] The offer of purchase contemplated that possession of the building housing the business was to be taken on September 30, 1996. It also provided, in clause 6.14, that [TRANSLATION] "upon the purchaser's request, the current directors and officers of [Pool Bar] shall resign effective from the time of the final payment on January 15, 1997."

[14] According to the documentation tendered in evidence, the appellant did indeed withdraw \$20,000 from his account at the Caisse populaire de Maizerets on September 27, 1996. This amount was allegedly paid to Novalcorp and deposited into its account on September 28, 1996.

[15] On October 23, 1996, the appellant made a \$20,000 transfer from his account No. 20579 to account No. 60475 of Pool Bar. This amount came from a personal loan taken out by the appellant at the Caisse populaire St-Pascal de Maizerets.

[16] Thus, the appellant did indeed inject \$40,000 into Pool Bar in 1996. On November 15, 1996, Pool Bar tendered a \$15,000 cheque payable to Michel Noël (Novalcorp) as the second instalment contemplated by the offer of purchase. The cheque is signed by the appellant alone, who noted thereon that the remaining balance was \$15,000.

[17] According to the testimony of Michel Noël, Odile Vallières's husband, and the person authorized by Novalcorp to sign any documentation related to the offer of purchase, the third instalment took the form of a repossession of equipment that had been sold to Pool Bar and equal in value to the amount of the last instalment provided for. However, this repossession took place on or about December 15, 1996, and constituted the last payment due from the appellant. According to Michel Noël, the shares and all the documentation related to Pool Bar, such as the minutes and resolutions, were delivered to the appellant on September 27, 1996. He testified that he stayed on as a passive director for a while in order that the liquor and video lottery licences could be transferred to the new management and in order to obtain a release from his personal guarantee with respect to an hypothecary loan taken out by Pool Bar.

[18] Pool Bar's income tax return for the period from July 1, 1996 to June 30, 1997 is dated October 29, 1997. It is unsigned and the head office address indicated, namely, 570 Grande Allée Est, Quebec City, is the same as previously. The return identifies Novalcorp as the sole shareholder. The financial statements were, however, prepared by Bussièrès Paquet, the appellant's accounting firm. There is no amount entered under the heading [TRANSLATION] "Advances from a director", and it can be seen that there is still \$22,647 in advances from related corporations and the parent corporation. Also shown is \$102,348 in advances from an individual.

[19] It is interesting to note that Pool Bar's provincial income tax return for the same fiscal year, ending June 30, 1997, refers to the same Pool Bar financial statements prepared by Bussières Paquet, shows the same head office address on Grande Allée, and names Novalcorp as the shareholder, but indicates that Richard Poulin is the person authorized to sign on behalf of Pool Bar. The form is unsigned, but Richard Poulin's position is stated to be that of director.

[20] It is also worth pointing out that in the documentary evidence adduced at trial, there are copies of five documents filed with the IGIF by Pool Bar. The first document is Pool Bar's annual return for the year 1995. The return identifies the majority shareholder as Novalcorp and the directors as Jean Linteau, Odile Vallières and Michel Noël, and the document is signed by Odile Vallières and dated November 16, 1995. The second document is the annual return for 1996. The only shareholder identified is Novalcorp, and the directors named are Michel Noël and Odile Vallières. The document is signed by Odile Vallières and dated December 3, 1996. There is no reference to the appellant.

[21] On July 31, 1997, an amending return was filed. It is dated July 1, 1997, and is signed by Michel Noël. In it, Odile Vallières's name has been removed as a director and the names of the appellant and Michel Noël have been added.

[22] Pool Bar's annual return for 1997 was filed with the IGIF on February 4, 1998. The director is identified as Michel Noël and the appellant is named as the principal officer. The head office is still stated to be on Grande Allée and the document is signed by Michel Noël.

[23] An amending return signed by Michel Noël on September 30, 1999, indicates a change of Pool Bar's head office address and states that the appellant is the main shareholder with more than 50% of the votes. The document was filed with the IGIF on October 13, 1999.

[24] Pool Bar was audited by the Quebec Minister of Revenue in 1999. On August 17, 1999, the appellant provided the Minister with his answers to a questionnaire that had been sent to him. In this response, the appellant said that Pool Bar ceased operations on March 15, 1997, and that he was never appointed a director of Pool Bar. He was a salaried manager. He never attended the directors' meetings, and denies having received the financial statements or reports concerning Pool Bar's activities. He states that Michel Noël and Odile Vallières were the ones who looked at them. He could sign Pool Bar's cheques, but needed either Michel Noël or Odile Vallières to co-sign them. He says that all the minutes

and records of the directors and shareholders were kept by those two people as well.

[25] During the audit, Michel Noël and Odile Vallières were asked to fill out a questionnaire. They sent in their answers on October 22, 1999. According to them, the corporation was sold on September 27, 1996 (I suppose this is a reference to the sale of the shares). Pool Bar's minutes book and other records were delivered to the appellant on September 27, 1996. Mr. Noël and Ms. Vallières specify that they had no role of any kind, as directors or otherwise, in Pool Bar. In their letter to the Minister, they state that, upon the signing of the contract of sale, everything was given to the appellant, including possession of the premises, the keys, and the alarm code, and that the appellant took possession of the business.

[26] They stated as well that they agreed to stay on as directors until the completion of the liquor and lottery licence transfer to the appellant. Further on, they add that, following payment of the last instalment in January 1997, and despite the fact that it had been agreed in the contract of sale that they would resign when the last payment was made, they agreed to give the appellant more time so that he could settle the matter of the licences. They further state that a few months later, when they found out that it was impossible to transfer the licences and realized that the appellant was in bad faith, they themselves had their names removed as directors by the IGIF.

[27] Michel Noël said essentially the same thing in his testimony at trial. He stayed on as a passive director in order that the licences could be transferred and in order to obtain a release from his guarantee with respect to the hypothec on the building. He delivered the corporation's shares and records to the appellant on September 27, 1996. He testified that Bussièrès Paquet was the appellant's accounting firm and that he had had nothing to do during the time until he was paid and the licences were transferred.

[28] As for the appellant, he testified that he does not have the financial means to make an advance of \$102,000. He says he cannot fathom any of this, and does not know where the \$102,000 and the other amounts come from. He knows nothing about the papers. He says that his income is as reported in his income tax returns. However, he says that he did take \$150 per week from the till. Upon being questioned about certain other amounts that he may have borrowed, he was very evasive, just as he was concerning the reasons for his apparently losing the liquor licence for 9011.



[29] The appeals officer explained the conclusions drawn from the financial statements referred to in these reasons, and the treatment that these statements were given. She went over the documentary evidence and the statements made by the appellant and by Michel Noël and Odile Vallières. Ultimately, she relied on the fact that the shares were sold and that only the appellant could have been the shareholder and the "individual" who made the advances at issue to Pool Bar. She asked the appellant to provide her with Pool Bar's records, and his response was that they were all destroyed in a fire. She examined everything, and offered the appellant the opportunity to provide explanations, in particular concerning the identity of the individual who made the \$102,000 advance to Pool Bar. Having received nothing, she allowed allowable business investment losses for the two businesses and imposed penalties under subsections 163(2) and 162(1) of the Act.

[30] The appellant's position is based mainly on the argument that he has made out a prima facie case, that the assumptions of fact on which the assessment was based are inaccurate, and that additional income is being attributed to him because the Minister made an assessment based on the net worth method. The respondent, for her part, defends her assessment on the basis that it is up to the appellant to provide explanations capable of demolishing the foundation of the assessment, and that the net worth calculations in the case at bar are based on information from the financial statements of the two corporations of which the appellant is the sole shareholder. This last point is precisely what the parties' arguments deal with.

[31] In my opinion, 9011's financial statements clearly show that there was an injection of money by the shareholder, and the evidence also clearly establishes that the appellant was the sole shareholder. Insofar as the advances owed by 9011 to the shareholder for the years 1995 and 1996 are concerned, no explanation was given on the basis of which I could change anything in the calculation of the appellant's income using the net worth method.

[32] With respect to Pool Bar, the \$40,000 in advances made by the shareholder in 1996 also remained unexplained, except for the half obtained through the loan from the Caisse populaire. The net worth calculations made during the audit took account of this \$20,000 loan taken out by the appellant. The question is whether the appellant is the shareholder who made this advance. As for the \$102,348 advance by an individual, the question is whether the appellant is that individual.

[33] From the testimony of the witnesses and the documents tendered in evidence, it can be seen that this is without a doubt a classic case of written and oral evidence contradicting each other and of the main players acting in a manner

contrary to the agreements that were made. The auditor chose, in this instance, to accept that the shares of Pool Bar were indeed sold to the appellant on September 26, 1996, and that the appellant did indeed control and manage that corporation. She also concluded that in view of the total absence of information making it possible to identify the individual who advanced \$102,348 to Pool Bar, it could only have been the appellant.

[34] The appellant's testimony shed absolutely no light on any point that could allow a different probable inference to be drawn, or that could permit me to intervene. The explanations that he provided were uncertain, imprecise and highly unreliable. He contented himself with saying that he understood nothing and, when it came to more thorny questions, he hesitated a great deal.

[35] It is true that the information contained in the documents filed with the IGIF concerning Pool Bar's head office address and the names of the directors tends to suggest that the appellant was not involved in that corporation, but the offer to purchase the shares of Pool Bar and the testimony of Michel Noël provide us with an acceptable and plausible explanation. Although things were certainly not done by the book, it appears likely, in my view, that the appellant did acquire the shares of Pool Bar in the fall of 1996, and did take control of that corporation as its sole shareholder. Moreover, it was his accountants who prepared the financial statements following that transaction. It is obvious that the rules were circumvented in order to make sure that the bar could continue its operations with the necessary licences, and that this state of affairs lasted quite a while. Michel Noël and Odile Vallières continued to be signing officers at the Caisse populaire's request. The fact that the appellant declared that he did not have Pool Bar's records because they were destroyed in a fire seems to lend some credibility to Michel Noël's testimony that he handed Pool Bar's records over to the appellant. It must therefore be concluded that he did receive them at some point.

[36] To sum up, the appellant became the sole shareholder of Pool Bar in September 1996. He controlled and managed that entity. In my opinion, he is in the best position to know Pool Bar's affairs and to know the name of the individual who advanced funds in 1997. This information was sent to the appellant's accounting firm and cannot have shown up in the financial statements by magic. The appellant does not know who the individual is, and the accounting firm was not called as a witness at trial to provide explanations. I can only infer from this that the firm's testimony would not have been favourable to the appellant. In view of this absence of evidence, it is difficult to come to a conclusion in the appellant's favour.

[37] Thus, the advances were injections of money into two corporations of which the appellant was the sole shareholder, and the source of those advances was never explained. In my opinion, they can only constitute unreported income of the appellant.

[38] This state of affairs shows that the appellant misrepresented his income when filing his returns and the other required information; consequently, the Minister was justified in issuing an assessment after the normal reassessment period. These false statements regarding his income for the years in issue also warrant the penalties assessed. Lastly, the appellant's tax return for the year 1999 was filed on May 30, 2000, thereby warranting the assessment of a late filing penalty.

[39] The appeals are dismissed with costs.

Signed at Ottawa, Canada, this 23rd day of February 2007.

"François Angers"

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Angers J.

Translation certified true  
on this 27th day of June 2008.

Erich Klein, Revisor

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