

Docket: 2006-1306(IT)I

BETWEEN:

CARLYLE LEBLANC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on April 24, 2007, at Vancouver, British Columbia, by  
The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant:                      The Appellant himself  
Counsel for the Respondent:        Sara Fairbridge

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2000 taxation year is allowed and the assessment is referred back to the Minister of National revenue for reconsideration and reassessment on the basis that the Appellant's business expenses in 2000 were \$1,909.81.

Signed at Toronto, Ontario, this 8th day of May 2007.

"Campbell J. Miller"

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Miller J.

Citation: 2007TCC274  
Date: 20070508  
Docket: 2006-1306(IT)I

BETWEEN:

CARLYLE LEBLANC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Miller J.

[1] Mr. Leblanc appeals by way of the informal procedure the assessment of his 2000 taxation year in which the Minister of National Revenue (the Minister) denied \$4,783 of business losses and \$2,314 of business loss carry-forwards. Mr. Leblanc relies heavily on an agreement he claims he reached with the Department of Justice and Canada Revenue Agency (CRA) at a hearing before the Tax Court of Canada in connection with his 1996 and 1997 taxation years.

[2] It is clear that Mr. Leblanc has been troubled by this matter for several years. He has earned his living primarily as an auto mechanic, though in the mid-90s through to the end of April 2000, he tried his hand at real estate sales. In October 2002, he appeared in the Tax Court of Canada before Justice Rip (as he then was) in connection with business expenses for 1996 and 1997 relating to the real estate business. That trial did not proceed because Mr. Leblanc and counsel for the Department of Justice, Mr. Grewal and an officer of CRA, Ms. Oliver, reached a settlement agreement on the courthouse steps. When they appeared before Justice Rip they advised him of the agreement reached. For 1996 and 1997, Justice Rip directed the parties to proceed under section 169(3) of the *Income Tax Act* (the *Act*). Mr. Grewal sent Mr. Leblanc a letter dated December 9, 2002 with the agreed terms for 1996 and 1997, which indicated, in part, that the Appellant was allowed to deduct capital cost allowance on 85% of his automobile, to increase home office

expenses to represent 38% of property taxes paid and to carry-forward business losses suffered in 1996 to 1997. Mr. Leblanc signed that letter on December 31, 2002 and then signed a discontinuance on January 17, 2003. Mr. Leblanc maintains that the agreement struck with the Government extended to the 1998, 1999 and 2000 taxation years.

[3] All parties knew in October 2002 that Mr. Leblanc had ceased business at the end of April of 2000. Mr. Leblanc explained that the agreement with the Government was that he need not provide supporting documents for expenses for 1998, 1999 and 2000, but could simply list all of his expenses, business and personal, and attach certain percentages to them. He referred to this as a "third party method". He claimed most categories were deductible at 100%, although home telephone and promotional expenses were deductible at 50% and any other expenses in connection with the home such as utilities and property taxes were deductible at 38%. Mr. Leblanc indicated that he then proceeded to file his 1998, 1999 and 2000 returns on this agreed basis. For 2000, he claimed expenses as follows:

<b>GROSS INCOME</b>	<b><u>\$0.00</u></b>
<b><u>EXPENSES</u></b>	
Interest	\$323.15
Vehicle expenses	\$956.23
Office expenses	\$1,994.76
Telephone, utilities	\$705.92
Cell phone	\$83.62
Pager	\$16.53
Promotional	<u>\$702.90</u>
<b>Total Expenditures</b>	<b><u>\$4,783.11</u></b>
<b><u>Business Use of Home</u></b>	
Insurance	\$123.60
Mortgage Interest	<u>\$3,112.82</u>
Total	\$3,236.42
Amount carried forward from previous year	<u>\$33,129.79</u>
Business use of home available for future	<b><u>\$36,366.21</u></b>

[4] The Respondent produced a listing of all of Mr. Leblanc's expenses, both business and personal, for the first four months of 2000. The Respondent also produced copies of certain telephone and utilities receipts that Mr. Leblanc had previously provided. It was clear that the amount of business expenses that Mr. Leblanc claimed on his 2000 return reflected 100% of all the expenses listed for the four-month period, other than the mortgage interest of \$3,112 and insurance of \$123 which he reported as business use of home, available for future deductions. Mr. Leblanc's explanation for claiming 100%, rather than the percentages he believed he had agreed to, was that this must simply be an accounting error.

[5] Mr. Leblanc provided no further supporting documentation for the 2000 expenses claimed, as he stressed that was not the deal reached with the Government.

[6] Mr. Leblanc found the real estate business difficult, to the point that he acknowledged he could not properly focus on it in 2000. He could not recall if, in the first four months of 2000, before he ceased the business altogether, whether he even had any listings. He did not think so, though he said he may or may not have shown homes on other agents' listings. His real estate business activity in 2000 was certainly limited.

[7] The Respondent's Reply raised two arguments for denying Mr. Leblanc's claimed business expenses: first, that he was not carrying on a real estate business in 2000, and second, that even if he was, the expenses claimed were personal or living, not incurred for the purpose of earning or producing income. At trial the Respondent conceded that Mr. Leblanc still operated the real estate business in the first four months of 2000.

[8] Mr. Leblanc's approach to his case was to ask the Court to order the Government to honour the agreement it purportedly entered into with Mr. Leblanc in October 2002. Given the amount of time Mr. Leblanc spent on this approach and the intensity with which he feels wronged by the Government, I shall first address this aspect of his case, notwithstanding I had advised him that his view of the issue was somewhat different from mine, mine being simply the correctness of the assessment of his 2000 taxation year regarding the expenses of \$4,783 and loss carry-forward of \$2,314.

[9] The only evidence Mr. Leblanc put forward regarding an agreement with the Government was the transcript of the Court proceeding before Justice Rip in

October 2002, in which Mr. Leblanc's 1996 and 1997 taxation years were at issue. Specifically he relies on the following passage:<sup>1</sup>

Mr. Leblanc: Then I can send my '98s and '99s in?

His Honour: You haven't done that yet?

Mr. Leblanc: Well, no, it's all in the same business. I'm no longer in that business, and I needed to know what the final numbers were for the carryover. This way, we agree that this will be fine. But there was – it was based on percentages allowed, and stuff like that, that, you know, there was no way to know. It could have gone –

His Honour: Well, have you agreed – has there been an agreement that the percentages for '98 and '99 will be the same thing as in previous years?

Mr. Leblanc: I can file them that way. It doesn't make any difference because I'm going to be way, way in the red on them, anyways, like as far – not owing any income tax, but way – in them all. You know, this thing has been a problem right from the beginning.

[10] Mr. Leblanc argued that the transcript was not accurate, and that an accurate transcript would somehow assist him. With respect, he is unable to make it clear to me how his recollection of the proceeding would have proven the alleged agreement. I find his testimony in this regard confusing. What is clear however, is that Justice Rip inquired about the 1998 and 1999 years, and Mr. Leblanc responded, without any correction from Mr. Grewal, that he could file those years based on the same percentages. This does lend some credence to Mr. Leblanc's position that there was an agreement based on percentages.

[11] There remains however a vagueness and uncertainty in my mind as to what was agreed to for the 1998, 1999 and 2000 years. I have no evidence of Mr. Grewal or Ms. Oliver. I have assertions from Mr. Leblanc that CRA agreed no supporting documentation would be required – an agreement that I find highly suspect. Finally, Mr. Leblanc's testimony regarding what percentage applied to what category was not presented when he first mentioned the agreement, but was only given by him after cross-examination had been completed and I asked him questions regarding the nature of the agreement.

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<sup>1</sup> Exhibit A-3, page 6 line 11, to page 7 line 3, of the Transcript of Proceedings of October 24, 2002.

[12] Mr. Leblanc's conversation with Mr. Grewal and Ms. Oliver prior to finalizing the 1996 and 1997 taxation years in Justice Rip's court led to an agreement for the 1996 and 1997 taxation years based on certain percentages. This was confirmed in Mr. Grewal's letter of December 9, 2002. I also accept that Mr. Leblanc's conversation with Mr. Grewal and Ms. Oliver touched on 1998, 1999 and 2000 as returns for those years had not yet been filed. I do not find however that such conversation constituted an agreement, although I accept Mr. Leblanc may have viewed it that way. I equate the conversation Mr. Leblanc had in October 2002 with Mr. Grewal and Ms. Oliver with conversations taxpayers have with CRA officials when they phone seeking advice as to how to fill in their tax returns. Such advice is just that, advice. One hopes that the CRA officials are correct in that advice. When they are not, what prevails is not their advice, but the law as correctly interpreted in this Court.

[13] I have not been convinced that Mr. Grewal and Ms. Oliver entered an agreement with Mr. Leblanc regarding the 2000 taxation year. Had they done so, and had they breached that agreement, Mr. Leblanc may well have a remedy, but not in this Court. I am satisfied they discussed how he might file in those years, but the detail of that discussion has not been made crystal clear to me by Mr. Leblanc. So, even if I found they provided incorrect guidance (for example, no need to provide supporting documents), their advice does not bind me in determining the correctness of the 2000 assessment.

[14] The import of the conversation of October 2002 between Mr. Leblanc and Mr. Grewal and Ms. Oliver is that it suggests to me that the Government was prepared to make more concessions, not just for 1996 and 1997 but also for 1998, 1999 and 2000. This fits with the Government's concession at the trial before me, that yes, Mr. Leblanc was still in business in the first four months of 2000. What remains to determine is the quantum of the expenses claimed by Mr. Leblanc that were not personal or living expenses. Notwithstanding the Government's Reply denied all the expenses on the basis they are all personal, Justice's counsel acknowledged that some of them may well have been related to Mr. Leblanc's struggling business. But she argued that Mr. Leblanc has been unable to provide supporting material to assist the Court in apportioning the expenses between business and personal. And, relying on *Njenga v. R.*<sup>2</sup> she argued Mr. Leblanc is required to maintain books and records to enable him to support his deductions. Mr. Leblanc has acknowledged that he was doing less business-wise in the first

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<sup>2</sup> [1997] 2 C.T.C. 8 (FCA).

four months of 2000 than previously. He also admitted he has not brought forth supporting documents other than the listing of all the expenses taken from his bank statements for the first four months of 2000. Further, rather than following any agreement which he believed he had, he in fact claimed 100% of his expenses, suggesting that not relying on the agreed percentages must have been an accounting error.

[15] Taking all these factors into account, I find that Mr. Leblanc did incur the listed expenses taken from his bank records: no further documentation is required. Those expenses represent both personal and business expenses. I further find that his business activity in the first four months of 2000 was minimal and yielded no income. This is quite different from early years where his activity resulted in income of \$35,000 in 1998 and \$30,000 in 1999. Any percentage of expenses that may have been appropriate and reasonable in 1996, 1997, 1998 and 1999 may not be appropriate and reasonable in 2000. Mr. Leblanc's evidence was he could not focus on business in 2000, had no listings and may or may have not shown other agents' listings.

[16] Mr. Leblanc is entitled to a deduction for reasonable expenses. I allocate them as follows:

Vehicle:

Given his limited activity in 2000, I allow 25% of vehicle expenses, or \$239.06.

Office Expenses:

These consist of computer leases, life insurance, bank charges, security system charges and furnishings. I have no direct evidence regarding the amount of business computer usage, though I am prepared to accept there was some. I also have no evidence to describe the business connection of the life insurance or furnishings. It is logical to accept that bank charges and security systems has some relation to Mr. Leblanc's business. On balance I am prepared to allow 50% of the office expenses claimed by Mr. Leblanc, being \$997.38.

Utilities

The Government previously accepted 38% in 1996 and 1997 as representing the business usage of expenses connected to the home. Given that the Government has conceded Mr. Leblanc continued to carry on business, albeit in a limited fashion, in 2000, I am prepared to accept that percentage, resulting in utilities expenses of \$268.24.

Cell phone and Pager

I am prepared to accept these charges were only in connection with the business and therefore are deductible at 100%, being \$83.62 and \$16.53.

Promotional

I am prepared to accept 25% of the amount claimed by Mr. Leblanc, \$175.72.

Not including interest, these expenses represent approximately 40% of the total expenses claimed by Mr. Leblanc. I am therefore prepared to accept 40% of his credit card interest as pertaining to business. This results in an accepted claim of \$129.26.

[17] The totals therefore are allowed as follows:

Vehicle	\$239.06
Office Expense	\$997.38
Utilities	\$268.24
Cellular telephone	\$83.62
Pager	\$16.53
Promotional	\$175.72
Interest	<u>\$129.26</u>
Total	\$1,909.81

[18] This is a rough and ready approach in an informal procedure appeal, reflecting the nature of the evidence and the acknowledgement by the Respondent that some of the expenses claimed did most likely represent business expenses.

[19] As none of the business use of home expenses of insurance and mortgage interest was claimed in 2000, I make no finding with respect to them. Finally, with



respect to the business loss brought forward from 1998 of \$2,314, the only evidence I have of the nature of that loss is Mr. Leblanc's 1998 tax return claiming that amount as a business loss, based on \$37,415 of expenses. I also have a copy of CRA's fairness request response allowing only \$16,455 of expenses in that year. There is simply insufficient evidence to satisfy me that Mr. Leblanc has a \$2,314 business loss available from 1998 to be applied to 2000.

[20] The appeal is allowed and the matter is referred back to the Minister for reassessment on the basis that Mr. Leblanc's business expenses in 2000 were \$1,909.81.

Signed at Toronto, Ontario, this 8th day of May 2007.

"Campbell J. Miller"

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Miller J.

CITATION: 2007TCC274

COURT FILE NO.: 2006-1306(IT)I

STYLE OF CAUSE: CARLYLE LEBLANC AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: April 24, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller

DATE OF JUDGMENT: May 8, 2007

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Sara Fairbridge

COUNSEL OF RECORD:

For the Appellant:	
Name:	N/A
Firm:	N/A
For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada