

Docket: 2006-445(IT)G

BETWEEN:

3087-8730 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeal heard on September 26, 2007, at Montréal, Quebec

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Appellant: Jean Trottier

Counsel for the Respondent: Claude Lamoureux

---

**JUDGMENT**

The appeal from the assessment made under subsection 160(1) of the *Income Tax Act* is dismissed with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, the 5th day of December 2007.

"François Angers"

---

Angers J.

Translation certified true  
on this 20th day of February 2008.

François Brunet, Revisor

Citation: 2007TCC599  
Date: 20071205  
Docket: 2006-445(IT)G

BETWEEN:

3087-8730 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

#### **Angers J.**

[1] On November 12, 2003, the Minister of National Revenue ("the Minister") assessed the Appellant 3087-8730 Québec Inc. (hereinafter "3087") under section 160 of the *Income Tax Act* ("the Act") in the amount of \$42,000. The assessment was made because of a non-arm's length transfer of assets on January 23, 1995. The transferor, according to the Minister, is Transport et Excavation MNM Inc. (hereinafter "MNM"). 3087 duly objected to the assessment and has now appealed from it before this Court.

[2] In its pleadings, 3087 had cited the limitation period as a ground of appeal, but it informed the Court at the outset of the hearing that it was abandoning this ground. The Appellant likewise acknowledged the existence of a non-arm's length relationship between it and MNM, in that the principal shareholders of both companies are spouses and the market value of the transferred assets, \$42,000, is no longer at issue in the case at bar. According to the Appellant, the issue is whether MNM was the owner of the assets at the date of the transfer, and, if it was, whether

the Appellant may deduct from the \$42,000 the payments it made on the assets after their acquisition.

[3] The assets in question are a 1987 Case excavator, model 580K, bearing serial number 17421011 (hereinafter "the 580K") and a 1986 Case excavator, model 125B, bearing serial number 1274589 (hereinafter "the 125B").

[4] It is also admitted that at the time of the transfer, MNM owed the Minister in unpaid taxes, penalties and interest an amount greater than the value of the transferred assets; that amount was \$88,688.49 at the time the assessment was made on November 12, 2003. MNM ceased operating a business in 1990 and did not file income tax returns for the 1989 and 1990 taxation years.

[5] 3087 was incorporated on April 6, 1993. According to its majority shareholder, Mary Hutow, 3087 owned only three assets in 1993, 1994 and 1995: a semitrailer and the 125B and 580K excavators. The value of those assets, according to the financial statements of 3087, was \$100 as at July 31, 1993, \$24,311 before depreciation as at July 31, 1994, and \$24,940 before depreciation as at July 31, 1995. I should point out that, under long-term liabilities in the financial statements, a loan from Credit Case appears only in the balance sheet dated July 31, 1995. The balance sheet dated July 31, 1994 refers to a bank loan and there is no long-term debt in the balance sheet dated July 31, 1993, other than an amount owing to the director.

[6] Ms. Hutow testified that she purchased the 125B and 580K excavators from Credit Case and made payments on these assets to Credit Case starting November 5, 1993. She filed a series of nine cheques dating from November 5, 1993 to June 30, 1995: the first five are in identical amounts, \$2,787.32; the last three, made in June 1995, are for \$1,498.96; and one more, for \$2,392.80, was made on December 8, 1994. The cheques bear a Credit Case account number and, according to Ms. Hutow, are related to her purchase contract for the two excavators. She was unable to produce her contract with Credit Case to purchase the 125B and 580K excavators, but she claimed that she had signed a contract similar to the one in Exhibit A-3. That is a standard contract with a clause to the effect that Credit Case retains its ownership until all amounts owing by the purchaser have been paid in full.

[7] She explained, and acknowledged, that these two excavators had been purchased by MNM in the past and that they had been covered by a similar financing contract with Credit Case. She also stated that Credit Case had repossessed the two excavators close to two years before she made her purchase.

[8] When 3087 made its final payment on June 30, 1995, therefore, it became the owner of the two excavators, Ms. Hutow said. She subsequently traded the 125B excavator in 1997 for another asset and a consideration of \$18,000 and she also traded the 580K excavator in April 1998 for a consideration of \$24,000. These two amounts were used to establish the value of the two excavators for assessment purposes.

[9] According to the information pertaining to a registration file obtained by the Minister from the SAAQ, MNM is identified as the registered owner of the 125B excavator from March 31, 1988 to January 23, 1995. The same information indicates that MNM received licence plates on March 31, 1994 for a period of 12 months for the two excavators. The registration file also indicates that 3087 purchased the two excavators on January 23, 1995 and that the 125B excavator was sold by 3087 on May 13, 1997, the date of the transaction that occurred in 1997 according to the testimony of Ms. Hutow and Exhibits A-3 and A-4.

[10] We note from the MNM financial statements for the 1986, 1987 and 1988 taxation years that the amount under the heading [TRANSLATION] "equipment leased under a capital-lease contract" is \$112,648 in 1986, \$96,556 in 1987 and \$80,464 in 1988, with an initial cost of \$128,740. Under the heading [TRANSLATION] "specialized machinery", there is an appreciable increase between 1987 and 1988, from \$246,240 to \$335,520. The Minister's representative, who testified at the trial, found that MNM had repaid its debt in full by June 30, 1988, and that it was now the owner of the 125B and 580K excavators as of that date. No representative of Credit Case testified at the hearing.

[11] Counsel for 3087 argued that at the time of the transfer of the 125B and 580K excavators, MNM was not the owner of these two assets because they were subject to an instalment sales contract and ownership passed to MNM only when the final payment was made. He argued, therefore, that at the time of the transfer, Credit Case was the owner of both excavators and that MNM could transfer only its commitments under the instalment contract and its eventual right to obtain ownership from Credit Case on completion of the payments. That explains why the Appellant is asking that the amount of the assessment be reduced by the amount of the payments made by 3087.

[12] Counsel for the Respondent acknowledges that if such a contract existed at the time of the transfer, Credit Case would be the owner and the matter would be closed. However, he argues that the evidence adduced is insufficient to support that finding, given the information appearing in the registration records for the assets in

question, the financial statements of MNM and 3087, and the contradictions noted in Ms. Hutow's testimony.

[13] According to Ms. Hutow, MNM ceased operating a business in 1990. The excavators in question had been seized by Credit Case and were in its possession for close to two years before their purchase. She testified that she purchased the excavators from Credit Case in November 1993 under an instalment sales agreement. She did not testify about the price that 3087 paid for the excavators, but she did make payments pursuant to that agreement if we rely on the cheques tendered in evidence and on her statement that she made further payments by cheques that she is unable to trace.

[14] According to Ms. Hutow's testimony, therefore, 3087 became the owner of the 125B and 580K excavators once all the payments had been made, in June 1995, as she submits. However, if 3087 purchased these excavators from Credit Case in November 1993, how is it that the excavators were not registered in the Appellant's name until January 23, 1995, more than one year after the date that Ms. Hutow claims 3087 purchased them and more than five months after the final payment made to Credit Case which, at that point, no longer had ownership? In my opinion, the instalment sale does not preclude the registration of the excavators in the instalment purchaser's name, as of the date on which the excavators were purchased. So the records should have indicated the registration of the two excavators in the name of 3087 as of the date of their acquisition, that is, November 1993 according to Ms. Hutow. Now, in the instant case the two excavators were registered in 3087's name on January 23, 1995. Furthermore, according to the register, the previous owner was MNM. It is therefore hard to reconcile Ms. Hutow's version of the facts with the information contained in the registration file.

[15] Ms. Hutow's testimony that MNM ceased to operate a business in 1990, that the purchase was made in November 1993, and that the assets were seized by Credit Case two years before their purchase by 3087, raises some questions. The documents tendered in evidence indicate that MNM received licence plates for the two excavators for the period from March 31, 1994 to March 31, 1995. If MNM ceased operating a business in 1990 and the excavators were seized by Credit Case two years prior to November 1993, how is it that MNM was still in the picture on March 1, 1994, and needed to register these excavators? The probable answer is that this company was still the owner.

[16] I find, therefore, that the transfer of the two excavators was made on January 23, 1995, and that, on a preponderance of evidence, the owner and transferor was MNM and the transfer was made without consideration to the Appellant, 3087, a company with which MNM had a non-arm's length relationship. Consequently, 3087 was jointly liable for the taxes payable by MNM on an amount equivalent to the value of the assets in question. I am not satisfied, either, that the payments made by 3087 from November 1993 to June 1995 under a contract between 3087 and Credit Case related to the two excavators or that they were made for the purpose of fulfilling MNM's obligations to Credit Case, judging by the information appearing in MNM's financial statements.

[17] The appeal is therefore dismissed with costs.

Signed at Ottawa, Canada, the 5th day of December 2007.

"François Angers"

---

Angers J.

Translation certified true  
on this 20th day of February 2008.

François Brunet, Revisor

CITATION: 2007TCC599

COURT FILE NO.: 2006-445(IT)G

STYLE OF CAUSE: 3087-8730 Québec Inc. and Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 26, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice François Angers

DATE OF JUDGMENT: December 5, 2007

APPEARANCES:

Counsel for the Appellant: Jean Trottier

Counsel for the Respondent: Claude Lamoureux

COUNSEL OF RECORD:

For the Appellant:

Name: Jean Trottier

City: Montréal, Quebec

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada