

Docket: 2007-706(IT)I

BETWEEN:

RÉAL DAOUST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of *Nedjma Zidane*
(2007-705(IT)I), on July 18, 2007, at Montréal, Quebec

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Susan Shaughnessy

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is allowed, without costs, in accordance with the attached Reasons for Judgment, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that \$29,847 of the amount of \$54,565 that the Minister considered to be a capital expenditure is actually current in nature.

Signed at Ottawa, Canada, this 9th day of June 2008.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 25th day of July 2008.

Brian McCordick, Translator

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RÉAL DAOUST,
NEDJMA ZIDANE,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

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REASONS FOR JUDGMENT

Jorré J.

Issue

[1] These appeals, both of which pertain to the 2005 taxation year, were heard on common evidence.

[2] The Appellants purchased a building in July 2004, and had work done on it in 2005 and 2006. The issue is the nature of that work. Were the expenditures current expenditures, which are deductible in the year that they were made, or were they capital expenditures, which are deductible by means of the capital cost allowance mechanism contemplated in paragraph 20(1)(a) of the *Income Tax Act* and Part II of the *Income Tax Regulations*?

Facts

[3] In the paragraph below, I will set out the Respondent's assumptions of fact. I will add, in parentheses and in italics, the Appellants' position with respect to each of those assumptions. In Mr. Daoust's case, I am referring to his Reply to the Notice of Appeal.

[4] In making his decision, the Minister relied on the following facts:

- (a) The Appellant and his spouse Ms. Nedjma Zidane are co-owners of, *inter alia*, the building located at civic addresses 568 through 572 Théodore Street in the city of Montréal. (*admitted*)
- (b) The property in issue is a century-old triplex built in 1900. (*admitted*)
- (c) In respect of the taxation year in issue, the Appellant claimed his 50% share of the rental loss from the operation of the building bearing the addresses 568, 570 and 572 Théodore Street in Montréal. (*admitted*)
- (d) On July 22, 2004, the Appellant and Nedjma Zidane purchased the building for \$292,000. (*admitted*)
- (e) The building was in good condition, and the Appellant and his spouse paid the market price for it. (*admitted*)
- (f) The municipal evaluation of the property at the time of purchase was \$164,900. (*admitted*)
- (g) For the 2005 taxation year, the \$56,956 "maintenance and repair" expense claim in respect of the property was broken down in the following manner following an audit:

(i)	computation error	\$541
(ii)	capital expenditures	\$54,565
(iii)	disallowed expenditures	\$233
(iv)	allowed expenditures	<u>\$1,617</u>
		<u>\$56,956</u>

(The Appellant Daoust is not admitting that \$54,565 in expenses in point (ii) constitutes capital expenditures, but he is admitting the rest, including the amount of \$54,565.)

- (h) An amount of \$54,565, claimed as maintenance and repair expense for the property at 568, 570 and 572 Théodore Street in Montréal ("the Montréal property") for the 2005 taxation year, was for the following work:

- (i) check the foundations and make the floor level on the ground floor,
- (ii) consolidate the foundations,
- (iii) repair the brick cladding on two outer walls,
- (iv) raise the balcony railings,
- (v) roof membrane redone,
- (vi) replace the electrical panels with circuit-breaker panels,
- (vii) install fire alarms,
- (viii) redo the ventilation in the bathroom and kitchen, and
- (ix) wiring and plumbing of ground floor redone.

(The Appellant admits to this paragraph but adds the following particulars: The work was done over a two-year period (2005 and 2006), the work referred to in points (i) and (ii) was done in 2005, the work in point (iii) commenced in 2005, and all the rest was done in 2006.¹)

- (i) The supporting documents in relation to the \$54,565 claimed as maintenance and repair expenses in respect of the Montréal property for the 2005 taxation year were examined, and a list was prepared (see attachment). (*admitted*)
- (j) The said \$54,565 is part of a major renovation program, sponsored by the Ville de Montréal and the Société d'habitation du Québec. The program contemplated a total cost of \$159,689 for work to be done over a roughly 10-week period on the Montréal property. (*The Appellant admits to the paragraph but adds that the work was done in late 2005 and early 2006.*)
- (k) One objective contemplated by the program is to restore all components of the building in order to prevent the need for any work, other than normal maintenance, for a period of 15 years. (*denied*)
- (l) The program provides subsidies, but no subsidy was paid to the Appellant and his spouse during the 2005 taxation year. (*Admitted, though the Appellant adds that he and his spouse, the Appellant Ms. Zidane, received the subsidy in 2006.*)
- (m) An amount of \$54,565, claimed as maintenance and repair expenses in respect of the Montréal property for the 2005 taxation year, was disallowed for the following reasons:
 - (i) the work provided an enduring benefit to the building,
 - (ii) the renovation cost is very high in relation to the building's value,
 - (iii) revitalization of a century-old building,
added rental value,
subsidy granted on the condition, *inter alia*, that the Ville de Montréal [the municipal government] approve the leases, and
none of these facts result from work done as part of normal property maintenance (*denied*)

¹ I would add that the Appellants incurred additional expenses in 2006.

(n) The capital cost allowance table for the Montréal property was revised in order to include capital expenditures of \$54,565 before adjustments, and deduct such amount, on account of capital cost allowance, as was necessary to cancel any income from the said property for the taxation year in issue. (*denied*)

[5] There is no real disagreement on the facts. The crux of the debate is the nature of the expenditures in question.

[6] The Appellants purchased the building, a residential triplex, in 2004 with the intention of leasing the units. The triplex was built in 1900.² According to Mr. Daoust, the building was in good condition.³

[7] In the second year, the Appellants decided to repair the brick cladding and asked for quotes. For better workmanship, it was recommended that new bricks be used.

[8] The Appellants decided to apply for a subsidy from a major renovation program sponsored by the Ville de Montréal and the Société d'habitation du Québec. In order to be eligible for the program, one must meet certain criteria and spend at least \$15,000 per dwelling. In this instance, the brick repairs opened the door to the subsidy.

[9] Eligibility for the program was subject to other conditions as well. Mr. Daoust explained that the entire building had to be restored in accordance with applicable regulations. Consequently, a whole series of repairs had to be done.

[10] The work was described in Exhibit A-4, a quote, reproduced below:

² Exhibit A-1, at page 2.

³ In addition, see Exhibit A-1, at page 3.

VILLE DE MONTRÉAL

May 13, 2005

BUILDING: 568–572 Théodore Street

Item	Description	Quantity	Unit price
1.	<u>EXTERIOR WALLS</u>	15,700 bricks	x \$0.55
1.1	Replace the brick cladding on the alley side wall and back walls as indicated in the plans Note: retain the horizontal alignment of the openings	2,100 ft. ²	\$10.00/ft. ²
1.2	Replace apron walls and rebuild lintels Note: rebuild lintels, 11 inches high, with bricks in soldier course and overhanging by ½ inch Note: the apron walls will be stone or concrete, with a water discharge 2 ½ inches high, and will extend past the opening by 4 inches	6 6	\$75.00 \$40.00
1.3	Note: submit a sample of the brick type for prior approval		
1.4	Repair the brick cladding (damaged bricks, hollowed joints) as indicated in the plans	100 ft. ²	\$20.00/ft. ²
		Subtotal	\$32,175.00
	<u>DOORS AND WINDOWS</u>		
2.1	Ventilate the cellar using doubled gooseneck, 4 inches in diameter, with grills and removable protective covers	2	\$100.00
2.2	Redo the sealing joint around the doors and windows	26	\$60.00
		Subtotal	\$1,760.00
	<u>OVERHANGS</u>		
3.1	Rebuild the balcony floors in plywood covered with fiberglass	2	\$815.00
3.2	Raise the balcony railings to 42 inches	44 LF	\$20.00/LF
		Subtotal	\$2,510.00

VILLE DE MONTRÉAL

May 13, 2005

BUILDING: 568–572 Théodore Street

Item	Description	Quantity	Unit price
4.	<u>ROOF</u>		
4.1	Lay new membrane (4-ply felt, asphalt and gravel) and all flashing	1,400 ft. ²	
4.2	Ventilate the roof space using gooseneck at 1 square foot every 300 square feet		
4.3	Note: a copy of the warranty for the new roof (10 years) must be submitted to the Division de soutien aux projets de logement social et abordable before the file is closed		
		Subtotal	\$8,000.00
5.	<u>CLEARING AND DEMOLITION</u>		
5.1	Clear the cladding from all walls and ceilings in the unit on the ground floor		\$500.00
5.2	Remove all floor covering in the unit on the ground floor		\$1,000.00
5.3	Demolish the chimney down to the roof decking		\$360.00
5.4	Remove the brick cladding from the adjoining alley side wall and from the back facades as indicated in the plans	2,330 ft. ²	\$4.00
5.5	Strip the balcony floors		\$54[illegible]
5.6	Demolish the back shed		\$360
5.7	Remove cladding from unit bathroom walls and ceilings on the floors		
5.8	Condemn the chimney at the ground floor		
5.9	<u>Control:</u>		
	If the demolition or stripping reveals a weakness or deficiency in the structure or any other component, immediately notify the service representative to decide on the work to be undertaken.		

VILLE DE MONTRÉAL

May 13, 2005

BUILDING: 568–572 Théodore Street

Item	Description	Quantity	Unit price
	<u>Cleaning:</u>		
	Clean the site, inside and outside, as the work progresses.		
	<u>Safety:</u>		
	When doors and windows have been removed, block the openings in accordance with regulations.		
	<u>Health and safety:</u>		
	While work is being carried out, ensure that the Occupational Health and Safety Regulations are followed		
		Subtotal	\$16,080.00
6.	<u>STRUCTURE AND FRAMING</u>		
6.1	Have a structural engineer inspect the building framing and foundation and submit a copy of the report and/or plans on the condition of the framing and foundation, and, if necessary, the modifications to be made		
6.2	Correct the structure as indicated in the engineer's approved report *no engineer's plan on hand		\$6,750.00
6.3	Brick up openings in the foundation wall	3	\$125.00
		Subtotal	\$712[illegible]
7.	<u>FLOORS (SUBFLOOR AND FLOORING)</u>		
7.1	Cover all floors on the ground floor with 1/2-inch plywood nailed every 6 inches centre to centre along the edges and every 8 inches centre to centre everywhere else	1,400 ft. ²	\$3.00/ft. ²
7.2	Lay ceramic tile with marble thresholds on bathroom and kitchen floors on the ground floor	252 ft. ²	\$7.00/ft. ²
	*If crawlspace electrical panels need to be moved temporarily for underpinning work, additional costs will apply.		

VILLE DE MONTRÉAL

May 13, 2005

BUILDING: 568–572 Théodore Street

Item	Description	Quantity	Unit price
7.3	Lay select yellow birch parquet (or approved equivalent) on the ground floor as indicated in the plans	1,150 ft. ²	\$7.00
		Subtotal	\$15,014.00
8.	<u>ROUGH CARPENTRY</u>		
8.1	Construct dividers (2 in. x 4 in. to 16 in. centre to centre) on exposed walls in the ground floor unit	170 LF	\$10.00/LF
8.2	Refit the rooms in the unit on the ground floor in accordance with the project plans accepted by the person in charge of grants and renovations (new divisions in 2 in. x 4 in. to 16 in. centre to centre)	1	\$1,760.00
		Subtotal	\$3,640
9.	<u>ELECTRICITY</u>		
9.1	Replace distribution panels with circuit breaker panels. The existing lines are sufficient	3	\$1,500.00
9.2	Install: -outlets with breakers in building bathrooms -counter outlets in ground floor kitchens (on an independent circuit) -electrical outlets wherever needed on the ground floor -range outlets on the ground floor -washer/dryer outlets on the ground floor		
9.3	Install ceiling fixtures in building bathrooms and ground-floor corridors and kitchens		
9.4	Install adequate electric heating (baseboard) with a wall thermostat in each unit room		
9.5	Install an outside ventilation hood above the ranges (220 cubic feet per minute minimum) in each unit		
9.6	Install mechanical ventilation in all bathrooms (110 cubic feet per minute minimum) in each unit		

VILLE DE MONTRÉAL

May 13, 2005

BUILDING: 568–572 Théodore Street

Item	Description	Quantity	Unit price
9.7	Install a 110-volt (A.C.) automatic smoke detector near the bedrooms in each unit		
9.8	Install all telephone and television cables in the unit on the ground floor		
		Subtotal	\$4,500.00 or \$7,500.00
10.	<u>MECHANICS AND PLUMBING</u>		
10.1	Equip the unit on the ground floor with new fixtures: kitchen sink, bathtub with shower enclosure, sink, toilets with insulated tank and seat		
10.2	Install connections for the washer on the ground floor		
10.3	Install rigid exhaust ducts leading outside for mechanical ventilation in bathrooms, range hoods and dryers		
		Subtotal	\$4,400.00
11.	<u>SOUNDPROOFING</u>		
11.1	Install wool around the plumbing waste stacks on the ground floor	1	\$70.00
11.2	In the ceilings separating the occupied areas, install resilient bars, 16 in. centre to centre, and acoustical wool, 3 ½ in. (5/8 in. type X plasterboard; see section 13 – interior cladding)	1,400 ft. ²	\$2,500.00
		Subtotal	\$2,570.00
12.	<u>THERMAL INSULATION</u>		
12.1	Insulate the roof space with blown glass fibre wool in 8-inch granules (R-28)	1,400 ft. ²	\$2.50/ft. ²
12.2	Install insulation on exposed walls: fibre glass wool in 3 ½ in. weave (R-12) with a 2-foot return on party walls	90 LF	10 LF
		Subtotal	\$4,400.00

VILLE DE MONTRÉAL

May 13, 2005

BUILDING: 568–572 Théodore Street

Item	Description	Quantity	Unit price
13.	<u>INTERIOR CLADDING</u>		
13.1	Rebuild the interior cladding on all walls and ceilings on the ground floor Note: ½ in. type X plasterboard on all load-bearing walls. 5/8 in. type X plasterboard on walls separating housing units from one another and on walls separating housing units from common areas. 5/8 in. type X plasterboard on all ceilings required to be fire-resistant.		
13.2	Rebuild the interior cladding on the walls and ceilings of the bathrooms on the floors Note: water-resistant plasterboard in bathrooms		
13.3	Repair the interior cladding on walls and ceilings following plumbing, electrical and ventilation work, and in other areas, as necessary	4,500 ft. ²	[illegible]
		Subtotal	\$495
14.	<u>TRIM FINISHING</u>		
14.1	Replace all baseboards, quarter round and framing on doors and windows on the ground floor and in bathrooms on the floors	800 LF	\$1,500.00
14.2	Replace the interior doors on the ground floor	18	\$150.00 each
		Subtotal	\$4,200.00
15.	<u>CABINETS AND VANITIES</u>		
15.1	Install cabinets in the kitchen on the ground floor, as shown in the approved plans (minimum counter space of 2.5 square feet per housing unit and storage space of 10.5 cubic feet per housing unit)	1	\$4,000.00
15.2	Install cabinets above washers and dryers	1	\$250.00
15.3	Install a vanity under the sink in bathrooms	1	\$250.00
		Subtotal	\$4,500.00

VILLE DE MONTRÉAL

May 13, 2005

BUILDING: 568–572 Théodore Street

Item	Description	Quantity	Unit price
16.	<u>BATHROOMS</u>		
16.1	Install ceramic tile on the walls around bathtubs at least 6 feet above the tub, and exceed the tub area by one tile (provide for bathroom accessories: roll holder, towel holder, soap holder, curtain rod, etc.)	60 ft. ²	[illegible]
16.2	Install a recessed medicine cabinet in bathrooms	1	\$135.00
		Subtotal	\$495.00
17.	<u>PAINT</u>		
17.1	Paint the ground floor interior (3 coats)		\$2,500.00
17.2	Repaint the walls and/or ceilings where repairs have been made, and other areas as necessary (2 coats)		
17.3	Paint all exterior building projections (2 coats)		\$4,000.00
17.4	Clean the units and common areas prior to delivery	1	\$300.00
		Subtotal	\$6,800.00

If you wish to have the work covered by a guarantee plan, contact the Association provinciale des constructeurs d'habitation du Québec (APCHQ) at 514-353-1120.



Service de la mise en valeur du territoire et du patrimoine
 Direction de projet – Développement du logement social et abordable
 Division de soutien aux projets de logement social et abordable
 303, rue Notre-Dame Est, 4^e étage
 Montréal (Québec) H2Y 3Y8

Société
 d'habitation
 du Québec



RENOVATION QUEBEC PROGRAM APPLICATION

Building 568-572 Théodore Street		
Company name Robco Renovation/Construction Inc.		General Contractor's Licence No. 8300-5470-18
Address 767 Moffat, Verdun		Q.S.T. No. 1205143595
	Postal code [illegible]	Telephone 514-765-8747
Signature:		Date
		Application valid for <u>30</u> days
	Indicate the subtotal for each section of the work program	This space reserved for the City
1. Exterior walls	\$32,175.00	
2. Doors and windows	\$1,760.00	
3. Overhangs	\$2,510.00	
4. Roof	\$8,000.00	
5. Clearing and demolition	\$16,080.00	
6. Structure and framing	\$7,125.00	
7. Floors (subfloor and flooring)	\$15,014.00	
8. Rough carpentry	\$3,460.00	
9. Electricity	\$4,500.00	
10. Mechanics and plumbing	\$4,400.00	
11. Soundproofing	\$2,570.00	
12. Thermal insulation	\$4,400.00	
13. Interior cladding	\$4,950.00	
14. Trim finishing	\$4,200.00	
15. Cabinets and vanities	\$4,500.00	
16. Bathrooms	\$495.00	
17. Paint	\$6,800.00	+10%+7%+7.5%
18. —	\$122,939.00	Total before taxes and profit
19. Non-residential areas		
20. Non-grant-aided work		
Total Including profit, administration, taxes	\$155,551.64	

[11] Exhibit I-1, the agreement with the contractor, provides some additional details, but is not as detailed as Exhibit A-4. Moreover, the agreement stipulates one overall price and does not break down the amounts for the different work to be done. I would note that there is a small price difference between Exhibits A-4 and I-1. The total amount quoted is \$155,551.64,⁴ whereas the price contemplated in the agreement is \$159,689.08 and includes an amount of \$8,000 payable on signing (2005) and an amount of \$40,000 payable when the work begins (in 2005).

[12] Mr. Daoust testified that most of this work could have been spread out over a period of several years, but that, in order to meet the requirements of the major renovation program, the Appellants had to do all the work at the same time.

[13] The work can be divided into three major categories:

- (a) complete renewal of the exterior brick walls;⁵
- (b) work stemming from the fact that the ground floor was too sloped;⁶
- (c) miscellaneous work, such as painting of exterior overhangs, soundproofing, thermal insulation and replacement of the fuse boxes with circuit-breaker panels.

Analysis

[14] In accounting, the role of depreciation is to spread out, over several years, the deduction of expenses that will be useful to a business for several years in order to provide a more accurate idea of the benefits.

[15] Where the expenses will provide a benefit that will last several years, the purpose of categorizing certain of them as capital expenditures is similar to the purpose of the capital cost allowance contemplated in paragraph 20(1)(a) of the *Income Tax Act*, even though the accounting and taxation mechanisms differ from each other.

⁴ In fact, the difference is minor, because an amount of \$3,000 must be added to the quote to cover electrical work (the possibility of which was referred to in the quote) plus 24.5% to cover taxes and profit. Mr. Daoust testified that the additional \$3,000 was spent.

⁵ The rear wall and lane-side wall (the front wall is in stone). On the other side, there is no space between the building in question and the adjacent building (photo on the left, Exhibit A-3). This work includes items 1.1 through 1.4 of the quote and item 5.4 of the quote (Exhibit A-4).

⁶ Not only did the slope of the floor need to be corrected (Exhibit A-4, section 6), but this created a need to do additional work on the ground floor, such as work on the ground-floor walls and doors (items 8 and 14.2) which did not have the effect of altering the ground-floor dwelling.

[16] The case law regarding the distinction between a current expense and a capital expenditure is extensive.⁷ In *Bergeron et al. v. M.N.R.*⁸, Judge Lamarre Proulx considered that case law:

The principles I draw from these cases are the following:

- income-related expenses include repairs the purpose of which is to make the part or the property repaired suitable for normal use again;
- capital expenses include work the purpose of which is to replace an asset by a new one and work which involves such a degree of improvement to an asset that it becomes a new one. This asset must have significant value compared to the rest of the property or be an asset in itself; work to change the use of premises or a room or to add new premises or a new room is usually capital in nature; the same is true of a change in the heating system;
- although the factor of recent purchase is not significant when there is no change of use, the increase in value of the real property over the purchase price, as a result of the repairs, is an indication that the cost or part of the cost of the expenses is in the nature of the purchase price of property;
- expenses must also be reasonable in the circumstances (section 67 of the Act): the question is whether they were reasonably incurred to derive income or to increase the value of the property, and in what proportion; future profits can be taken into account if the expenses in question reduce subsequent expenses¹ and also I suppose the unforeseen scale of the costs.

¹ *Halsbury's Laws of England*, 4th ed., vol. 23, para. 310.

[17] In *Johns-Manville Canada Inc. v. The Queen*,⁹ a decision of the Supreme Court of Canada, Estey J. wrote as follows, at paragraphs 31 and 32:

31 We must also remember the previously cited words of Lord Pearce in *B.P. Australia Ltd.*, *supra*, at p. 264:

⁷ The parties cited the following cases: *Bowland v. Canada*, [1999] T.C.J. No. 588 (QL), *Fiore v. Canada*, [1992] T.C.J. No. 360 (QL), [1993] F.C.J. No. 250 (QL), *Minister of National Revenue v. Haddon Hall Realty Inc.*, [1962] 2 S.C.R. 109, 62 DTC 1001, *Leclerc v. Canada*, [1997] T.C.J. No. 479 (QL), *Jean Méthé v. Minister of National Revenue*, 86 DTC 1364, *O'Rourke Marketing Corp. v. The Queen*, [2006] 3 C.T.C. 2248 (T.C.C.), *Marklib Investments II-A Limited v. The Queen*, 2000 DTC 1413, *Di Fruscia v. The Queen*, 2007 TCC 310. I was also referred to the document entitled "Current and capital expenditures", which is an excerpt from the brochure *Individuals and Rental Income*, published by Revenu Québec; a document entitled "Capital Expenditures on Depreciable Property versus Current Expenditures on Repairs and Maintenance", which is an excerpt from the Canada Revenue Agency's Interpretation Bulletin IT-128R; and excerpts from what I believe to be Canada Revenue Agency publication T4036, entitled *Rental Income*.

⁸ 90 DTC 1505, at pages 1505-1511.

⁹ [1985] 2 S.C.R. 46.

It is a commonsense appreciation of all the guiding features which must provide the ultimate answer.¹⁰

32 . . . The same judge in *Hallstroms Pty. Ltd.*, *supra*, at p. 648, reminds us that the classification of such expenditures "... depends on what the expenditure is calculated to effect from a practical and business point of view, rather than upon the juristic classification of the legal rights. . . ." ¹¹

[18] In light of these principles, certain work can be characterized as repairs and is therefore current in nature, whereas other work is capital in nature. Given the scope of the work, some of it consists of improvements, and the rest constitutes repairs.¹²

The brick walls

[19] The work on the brick walls involved the complete replacement of old walls with new ones. The old lane-side and rear walls of the building were completely removed and rebuilt using new bricks. Thus, the work described in sections 1.1 to 1.4 and 5.4 consists of capital expenditures, which amount to \$41,495.¹³

[20] I would note that the facts of the instant case are different from those in *Di Fruscia v. The Queen*,¹⁴ where Rip A.C.J. stated as follows at paragraph 9 of his decision:

The repair of a floor is a current expense. There is no addition of an asset. An old asset, because of its use, has been repaired.^[4] Similarly, the replacement of bricks to the exterior wall of a building is a repair. No wall is being replaced. Old, damaged brick has been replaced by new bricks to make the building suitable for normal use.^[5]

^[4] See *Canada Steamship Lines Limited v. M.N.R.*, 66 DTC 5205, at p. 5207, *per* Jockett P.

¹⁰ The French translation reads: "C'est une appréciation saine de toutes les caractéristiques directrices qui doit apporter la réponse finale."

¹¹ The French translation reads: "Le même juge nous rappelle, dans l'arrêt *Hallstroms Pty. Ltd.*, précité, à la p. 648, que la caractérisation de ces dépenses [TRADUCTION] « ... dépend de l'effet envisagé de la dépense d'un point de vue pratique et commercial plutôt que de la classification juridique des droits.»"

¹² The Appellant cited *Marklib Investments II-A Limited v. The Queen*, 2000 DTC 1413, where Judge Brulé held that the expenses were small in relation to the value of the building and that all of them were for current repairs (see paragraph 49). That situation is different from the instant case, where, firstly, the expenses are major in relation to the value of the property — they amount to roughly \$160,000 (Exhibit I-1, last page) compared with a purchase price of \$292,000 which included the land — and where, secondly, I am satisfied that these were not merely simple repairs, because some of the expenditures improved the building.

¹³ Before taxes and profits.

¹⁴ 2007 TCC 310; in addition, see the Canada Revenue Agency publication entitled *Rental Income*.

^[5] *Gold Bar Developments Ltd. v. Canada*, [F.C.T.D., T-952-85, March 5, 1987], 87 DTC 5152.

[Emphasis added.]

In the instant case, two outer walls of a house built in 1900 were completely removed, and two completely new walls were built in their place. That expense will endure for a very long time.

Repairs related to the excessively sloped ground floor

[21] This work merely levelled the floor and the ground-floor unit.¹⁵ The expenditure is therefore a current one.

The other expenditures

[22] The other expenditures are varied. I will list those that are capital in nature.

- (a) the electrical work (Exhibit A-4, items 9.1 to 9.8) constituted improvements: for example, circuit-breaker panels were installed instead of fuse panels, and a ventilation system and smoke detectors were installed; this work totalled \$7,500;¹⁶
- (b) soundproofing, at a cost of \$2,570 (Exhibit A-4, item 11);
- (c) insulation, at a cost of \$4,400 (Exhibit A-4, item 12);
- (d) ventilation of the basement at a cost of \$200 (Exhibit A-4, item 2.1); and
- (e) raising the balcony railings to 42 inches, at a cost of \$880 (Exhibit A-4, item 3.2).¹⁷

The remainder of this group of expenditures is current in nature.

¹⁵ In *Shabro Investments Limited v. The Queen*, 79 DTC 5104, the Federal Court of Appeal accepted the argument that the mere repair of a floor and of pipes damaged by reason of a slump in the ground constituted current expenditures. However, in *Shabro*, the floor that was built was more solid and better suited to the nature of the ground than the original floor. Consequently, the Federal Court of Appeal determined that the expenditures on the floor were capital in nature, but the rest — including the expenditures on the pipes — was current in nature.

¹⁶ This amount does not include taxes and profits. Mr. Daoust testified that the work ultimately cost \$7,500, not \$4,500.

¹⁷ Expenditures (b) through (e) are improvements. The amounts do not include taxes and profits.

The agreement

[23] Although the quote (Exhibit A-4) provides the details of the different work, the agreement stipulates an overall amount that is not broken down into the different tasks. Moreover, the amount of the contract is somewhat different, and simply contemplates payments

- (a) upon signing,
- (b) upon commencing the work,
- (c) mid-way between the commencement and completion of the work,
- (d) upon commencing the finishing work, and
- (e) upon completion.

An amount of \$48,000 was paid in 2005, and the rest was paid later.

[24] Consequently, the payments cannot be broken down by specific job. The capital portion of the payments must be deemed to be a prorated amount of the total.

[25] Since the total amount of the quote was practically identical to the contract amount, one can simply use the quote to calculate the percentage of expenditures that were capital in nature. The capital expenditures listed in paragraph 19 and 22, *supra*, amount to \$57,045, before taxes and profits.¹⁸ This represents approximately 45.3% of the costs.¹⁹

Conclusion

[26] In view of the circumstances, 45.3% of the amount of \$48,000 paid to the contractor must be considered a capital expenditure, and 54.7% of that amount must be considered current in nature.²⁰ In addition to the amount of \$48,000, there is an additional \$6,565 on account of expert fees, architect's fees, notary's fees, application processing fees and permit fees incurred in order to enable the Appellants to qualify for the major renovation program which subsidized the work.²¹ Since these expenditures were essential to the entire project's realization, this amount must be allocated between current and capital expenditures in the same fashion.

¹⁸ See the last page of Exhibit A-4, entitled [TRANSLATION] "Renovation Quebec Program – Application"

¹⁹ The total quote is \$122,939, not including taxes and profits, but \$3,000 must be added because the work in item 9 (electrical) was \$7,500, not \$4,500. The amount of \$57,045 corresponds to 45.3% of the costs of \$125,939. Since taxes and profits are merely a percentage added on, they have no effect on the percentage that the capital expenditures account for. .

²⁰ Although this appeal does not cover the 2006 taxation year, logic would dictate that the same percentages will apply to the remaining payments under the agreement (Exhibit I-1) in 2006.

²¹ See Exhibit I-6.

[27] Consequently, the appeals are allowed, without costs, and the matters are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that \$29,847 of the amount of \$54,565 which the Minister considered to be a capital expenditure was actually current in nature.²²

Signed at Ottawa, Canada, this 9th day of June 2008.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 25th day of July 2008.

Brian McCordick, Translator

²² 54.7% of \$54,565 = \$29,847.

CITATION: 2008TCC316

COURT FILE NOS.: 2007-706(IT)I, 2007-705(IT)I

STYLE OF CAUSE: RÉAL DAOUST v. HER MAJESTY
THE QUEEN, NEDJMA ZIDANE v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 18, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: June 9, 2008

APPEARANCES:

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