Docket: 2006-2241(IT)G

BETWEEN:

LYMAN LANGILLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of
Alland Developments Incorporated (2006-2240(IT)G)
on October 9, 2008, at Halifax, Nova Scotia

Before: The Honourable Justice Diane Campbell

Appearances:

Counsel for the Appellant:	Bruce S. Russell, Q.C.
Counsel for the Respondent:	David I. Besler

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2000 taxation year is allowed, with costs, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 6th day of March 2009.

"Diane Campbell"

Campbell J.

Citation: 2009 TCC 139
Date: 20090306
Docket: 2006-2241(IT)G

BETWEEN:

LYMAN LANGILLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Campbell J.

[1] During the hearing, counsel for the Appellants withdrew the appeal of Alland Developments Incorporated ("Alland") and, with the consent of counsel for the Respondent, agreed to file a Notice of Discontinuance on a without costs basis.

[2] The remaining appeal of Lyman Langille is in respect to his 2000 taxation year. In that year Mr. Langille claimed a business investment loss of $111,540 in respect to monies loaned to Alland and considered unrecoverable. The Notice of Reassessment dated July 2, 2004 denied $62,889 as an ineligible allowable business investment loss ("ABIL") on the basis that Alland was carrying on a specified investment business. Instead the Minister of National Revenue (the "Minister") allowed the loss of $111,540 as a net capital loss. Although Alland has withdrawn its appeal, much of the evidence focused on its activities.

[3] Mr. Langille is the sole director, officer and employee of Alland. The shares of Alland are owned by Mr. Langille and the Langille Family Trust. Alland was initially incorporated in the late 1980s or early 1990s to engage in real estate

development as a complement to Mr. Langille's business of providing residential and light commercial concrete foundations.

[4] In early 1999, Mr. Langille was introduced to Sheldon Leard, the general manager of a company, Can-do Construction, and a subsequently incorporated company, Trev-Cor Trading Inc. ("Trev-Cor"), which operated out of offices in Dartmouth, Nova Scotia. Eventually Mr. Leard invited Alland to participate in a deal involving the purchase and sale of liquidated goods. The first deal involved an amount of $2,000 being advanced to Trev-Cor. After this initial deal, these trades became more frequent. Altogether Alland participated in approximately 42 or 43 such trades during the period February 1999 to May 2000, only five of these trades were documented by promissory notes made by Trev-Cor. Each of these inventory trades was characterized by Alland advancing funds to Trev-Cor so that Trev-Cor could purchase liquidation, bankruptcy and overstocked items and then re-sell the goods at a profit. Upon completion of a deal, Alland's initial advance would be returned to it, plus a share of the net gain from the inventory trade, which corresponded to Alland's proportionate advance as compared to the total size of the trade. Depending on the particulars of each deal, Alland would make its decision whether or not to participate.

[5] Typically Mr. Langille would have no contact with the vendor of these goods or the buyer, although he made numerous inquiries to ascertain the identities. He was not directly involved in the general logistics of each deal such as the transportation, warehouse storage costs or insurance. Mr. Langille stated that in the course of a trade he would make inquiries in respect to items being purchased, shipment handling and location details. Many trades were arranged through "finders" in the United States, who had located a potential trade opportunity. When "finders" were involved, they arranged the trade specifics such as transportation and so forth. Mr. Langille testified that he was never provided with any information concerning these "finders" except for their first names.

[6] Mr. Langille testified that when Alland participated in a trade, after deduction of expenses and costs, Alland would share in a profit split according to the percentage of funds it had initially invested in that specific deal. As Alland became more involved in the trades, Mr. Langille wanted more details about the specifics of each deal. Except for the promissory notes representing five trades, most of the dealings between Alland and Trev-Cor were completed without much formality. Mr. Langille would generally receive a phone call informing him of a potential trade and he would then drop by Trev-Cor's office to meet with Mr. Leard to get the particulars. He tried to educate himself on the business by ordering a book and

conducting research on the internet. In addition, he had previously taken export/import classes at Dalhousie University.

[7] Mr. Langille met in person with Mr. Leard at least twice a week and they were conversing so often by telephone that Mr. Langille purchased a second cell phone to accommodate the frequency of these calls. He assisted in relocating Trev-Cor's office space by finding a new building that provided additional warehouse space. He also suggested that Trev-Cor hire Alland's accountant because Mr. Langille wanted a specific paper trail to document these deals. He testified that he was involved with Trev-Cor's activities such as finding employees for the office and the warehouse and advice on whether deals should or should not be completed.

[8] Mr. Langille testified specifically about three trades which detailed his involvement in Trev-Cor on behalf of Alland. One of these trades concerned a container of leather jackets and, as typically occurred in other trades, a buyer had been secured at the time Alland decided to participate. Upon inspection of the jackets, the buyer was reluctant to close the transaction because the jackets had no linings. Mr. Langille's evidence was that he was involved in discussions with Mr. Leard concerning solutions that would salvage this transaction. A decision to have linings sewn into the jackets appeased the buyer and rescued the transaction.

[9] In another trade involving pine plywood from the state of Georgia, Mr. Langille testified that he persuaded Mr. Leard not to get involved in the trade. On this trade Mr. Leard had already spoken with the owner or the manager of Piercey's Supplies as a potential buyer of the plywood, but Mr. Langille had concerns about the lamination of the plywood and in particular the risk of delamination. Although Mr. Langille testified that the deal "sounded great" from an economic perspective, he testified that he also thought that bringing this plywood to Nova Scotia was a big problem. Alland and Mr. Leard chose not to get involved with that deal basically on Mr. Langille's recommendation.

[10] In Alland's last transaction with Trev-Cor, Mr. Langille was involved in determining the price at which to buy liquidation inventory, consisting of sweaters from Scotland. At Mr. Langille's request, Alland's accountant travelled to Scotland to value these sweaters. Although the trade was not completed, Mr. Langille was prepared to travel to Wisconsin to meet with the potential buyer.

[11] Underlying all of this evidence is the fact, which is undisputed by the Respondent, that Trev-Cor used the funds advanced from Alland to perpetrate a fraud on the company. It is also undisputed that the Appellant was unaware that Trev-Cor

was conducting a fraudulent "pyramid" scheme in which Mr. Leard convinced individuals to invest in the purchase of liquidation and bankruptcy inventory which was to be resold to buyers at a profit. The evidence suggests most of these transactions did not occur but Mr. Leard maintained the facade of a legitimate business by renting warehouse and office space filled with employees, storing boxes of various samples of merchandise at the premises and generally giving the appearance of a fast-paced and thriving business operation. This was simply an artificial and deceptive front behind which Mr. Leard could operate. Given this background, it is difficult to ascertain with any certainty whether Trev-Cor, in any of the 42 or 43 inventory trades in which Alland participated, actually purchased and sold the items as Mr. Langille believed, or if the items were bought and sold at a loss. According to Mr. Langille's evidence, in the early trades Trev-Cor did pay returns of up to 382% of the amount advanced by Alland.

[12] Several key assumptions were relied upon by the Respondent in the Reply to the Notice of Appeal at paragraph 9:

> …
>
> (d) at all material times Alland's principal business activity was the investment of funds in an unrelated corporation, namely, Trevcor;
>
> (e) the funds from Alland to Trevcor allowed Trevcor to conduct business operations and to provide an investment return to Alland;
>
> (f) at all material times Alland reported its income as being derived from investments;
>
> (g) Alland was not involved in the day-to-day operations of Trevcor;
>
> (h) Alland was not involved in the control or management of Trevcor;
>
> (i) Alland was not involved in any joint venture with Trevcor;
>
> (j) Alland was unaware that during the time in question, Trevcor used the investment funds from Alland to conduct a fraudulent pyramid scheme; and
>
> …

[13] The issue is whether Alland is carrying on a specified investment business. This will ultimately determine whether Mr. Langille can claim the unrecoverable loans made to Alland as a business investment loss in the 2000 taxation year.

[14] The Respondent assumed that Alland was carrying on a business (assumption 9(d)) but that the principal business activity was the investment of funds. According to the Respondent, the return from the investment was income from property for the purposes of the definition of specified investment business, pursuant to subsection 125(7) of the *Income Tax Act* (the "*Act*"). The Respondent's position is that Alland's participation in these trades consisted of passive investments or as counsel described them "… a series of high-risk loans with variable returns based on the outcome of Trev-Cor's tradings, if in fact any of them occurred" (Transcript, page 159). Although the Respondent also argued that Alland could not be a small business corporation according to the definition because the relevant business of Trev-Cor was not carried on primarily in Canada, I do not accept that the business of Trev-Cor, which is the only business with (alleged) activity outside Canada, can be attributed to Alland. The Respondent asserted that Trev-Cor was entering into purchase and sale transactions outside Canada. However, other than this assertion, there is scant evidence that, in fact, any transactions actually occurred either inside or outside Canada. All or most of these deals belong to the deceptive hoax that Mr. Leard was perpetrating on the Appellant and other individuals. Alland's business is not the business of Trev-Cor. In addition, Alland cannot be in the business of defrauding itself (*Kleinfelder v. M.N.R.*, 91 DTC 913).

[15] Mr. Langille's position is that any income arising from Alland's participation in the trades was income from the underlying trading activities jointly carried on with Trev-Cor and as such the income was in the nature of business profits rather than income from property.

Analysis

[16] The relevant portions of subsection 125(7) define "specified investment business" as follows:

> … a business … the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property …

[17] "Active business", as it applies in this appeal, is defined at subsection 248(1) as:

> … any business carried on by the taxpayer other than a specified investment business …

[18] Again at subsection 248(1) a small business corporation is defined as:

> … a particular corporation that is a Canadian-controlled private corporation all or substantially all of the fair market value of the assets of which at that time is attributable to assets that are
>
> > (a) used principally in an active business carried on primarily in Canada by the particular corporation or by a corporation related to it, …

[19] The definition of small business corporation is relevant in the context of the definition of business investment loss which includes a capital loss from the disposition of "… a debt owing to the taxpayer by a Canadian-controlled private corporation" that generally is a small business corporation at the time of the loss.

[20] The issue, as I have outlined it, involves an analysis of the "character of the income" in relation to these inventory trades. This analysis, which will determine whether Alland was a specified investment business, will take two different approaches because of the nature of this appeal:

(1) assuming that the arrangements between Alland and Trev-Cor created the legal rights and economic relationships as Mr. Langille believed them to be at that time; or

(2) recognizing that the arrangements were simply part of an elaborate fraud that Mr. Leard and Trev-Cor were perpetrating on Mr. Langille and Alland.

I have concluded that from the perspective of either approach, any income arising from the trades cannot be characterized as income from property. It follows that Alland was not engaged in a specified investment business as alleged by the Respondent. Since the Respondent has assumed that Alland was engaged in a business, this conclusion implies that Alland was a small business corporation and entitles the Appellant to treat his unrecoverable loans to Alland as business investment losses.

[21] If the approach is premised on the inventory trades being *bona fide*, then the issue is whether Alland had a passive creditor-like interest in the trades where its income would be akin to interest, dividends, royalties or rent and therefore income from property, or whether Alland's interest was in the capacity of a joint venture or some other direct interest in each of the inventory trades, where the income originates from the sale of the underlying inventory and therefore could not be characterized as income from property, as the term is used in the *Act*.

[22] Except for five of the 42 or 43 trades which were documented by promissory notes, there was no written agreement respecting the relationship between Mr. Langille, Alland and Trev-Cor. In *Johnston v. The Queen,* 2000 DTC 1864, which considered a taxpayer that had been subject to a similar fraud as Mr. Langille by the same perpetrator, Sheldon Leard, all of the transactions were documented by promissory notes. Only five of the transactions in the present appeal were documented by promissory notes. In addition, the parties in *Johnston* had entered into a joint venture agreement setting forth the terms of their relationship, while no written agreement exists in the present appeal. The Respondent pointed out that, in the present appeal, Mr. Langille advanced funds to Trev-Cor through his company, Alland, rather than advancing them directly to Trev-Cor. Bell J. in *Johnston* affirmed the principle that a taxpayer could not be treated as carrying on a business of defrauding itself. However, Bell J. concluded that, since a corporate co-venturer defrauding the taxpayer could be considered to be carrying on the active business of defrauding others, the taxpayer's loss resulted in an allowable business investment loss because it arose from a loan made to a small business corporation.

[23] The decision in *Johnston*, which was affirmed by the Federal Court of Appeal, makes some interesting comments, based on the evidence, in coming to its conclusion that the venture " … was one in name only with absolutely no business activity giving it any status or legitimacy" (page 1873). It is clear that Bell J. considered it important that the Appellant in *Johnston* had made no inquiries in respect to the transactions or generally to any aspect of the alleged venture, did not seek financial information or statements, provided no assistance to the venture and had no knowledge and made no inquiries respecting the contribution and involvement of Mr. Leard's corporation in the alleged venture. By contrast in the present appeal, the evidence supports quite the contrary conclusions. Clearly Mr. Langille was constantly in pursuit of information and knowledge concerning all aspects of each trade in which he participated. Although he was not always successful in obtaining the information, such as the full names of the buyers, finders and vendors, he continued in his repeated attempts to convince Mr. Leard to provide proper paper trails for these trades and successfully convinced Mr. Leard to engage Alland's own accountant in an attempt to properly catalogue these trades. The lines of communication between Mr. Leard and Mr. Langille were so incessant over this period that Mr. Langille was forced to purchase a separate cell phone to deal with these calls which began as early as 5:30 in the morning and continued all day. He made several weekly visits to Trev-Cor's premises in addition to the constant daily phone communication. He often inspected samples of merchandise while at the premises. In fact, at one point Mr. Langille was actually involved in the successful

location of alternate office and warehouse facilities for Trev-Cor to use. He had discussions and offered suggestions for improving costs and expenses and hiring of staff. As the trades became more frequent so did their communication. Mr. Langille testified that he attempted to gain more knowledge of each and every trade. Before choosing to participate in transactions, he met personally with Mr. Leard to obtain information and knowledge so that he could make an informed decision. His level of involvement in some of these alleged trades, again if we consider them *bona fide*, was extensive. He was successful in persuading Mr. Leard to side-step a proposed trade respecting Georgian plywood because of potential delamination problems. In one of the last trades, his accountant, Andrew Hunter, traveled to Scotland to check on and confirm sweater samples.

[24] Mr. Langille was actively engaged in soliciting trades, acquiring knowledge about expenses, looking at samples, interest in remedying the accounting records of Trev-Cor and daily communication with Mr. Leard. The evidence supports my conclusion that Alland was completely immersed, to the extent Mr. Leard permitted, in the trades in which it participated all with a view to a profit on those trades. The degree of uncertainty associated with Alland's participation in the trades is further evidence of engagement in an active business within the marketplace. Alland was not an investor in Trev-Cor but rather it was a participant with Trev-Cor in those trades in which it decided to engage. Alland stood to gain a percentage of the net profit from those trades and therefore the income flows from the underlying purchase and sale of the liquidated merchandise rather than from a property right.

[25] I agree with the Appellant's position that the return to Alland was not income from property because Alland was a co-venturer with Trev-Cor and thus the income retains the character of the underlying inventory trades. I also agree that since this type of return would have existed at a minimum in 37 or 38 of 42 or 43 transactions that Alland's principal purpose is not to derive income from property.

[26] The Respondent's position is that no joint venture existed between Alland and Trev-Cor because their relationship did not meet all of the requirements that a joint venture apparently must possess as addressed in the Nova Scotia case, *Graham v. Central Mortgage and Housing Corporation and Bras D'Or Construction Ltd.*, (1973), 43 D.L.R. (3d) 686 (N.S.S.C.) ("*C.M.H.C.*"). As is often the case in this Court, counsel for the Respondent cited a decision of another Court dealing with provincial laws that, by happenstance, uses similar terminology applicable to taxation matters under the *Act*. Not a moment was "wasted" by the Respondent's counsel explaining to this Court why a decision of the Nova Scotia Supreme Court dealing with the joint and several liability of a mortgage lender has relevance to the case at

bar. In the present appeal, we are, after all, concerned with whether Alland is entitled to character flow through from the underlying trades. The Respondent's logic from the oral argument would seem to be that if a party does not satisfy the test to be held jointly liable under Nova Scotia law that they are not entitled to character flow through. Since I have concluded that the *C.M.H.C.* criteria are satisfied in any event, I do not need to decide whether it would have any relevance to the instant case if its criteria were not satisfied. I will, however, say the following with respect to *C.M.H.C.* If a contractual interest in a business enterprise does not cause a taxpayer to be a direct owner of the business enterprise, then in respect of that enterprise I believe it is doubtful that a taxpayer could be said to receive business income on a flow through basis. Indirect ownership through partnerships also permits character flow through, but is addressed under special provisions of the *Act*. I understand a joint venture to be a form of direct co-ownership of an underlying venture. Thus, to the extent *C.M.H.C.* may be an authority for considering when a person may be a direct co-owner of an underlying enterprise under Nova Scotia law, which law I assume would govern the contractual relations of Alland and Trev-Cor, then I agree that this case may have some bearing on the question at hand. By its own facts, however, *C.M.H.C.* must be read as creating at best a necessary but not sufficient condition for character flow through. The income of C.M.H.C. in that case would appear to have been unambiguously interest income in spite of the fact that it was held to be a joint venture participant. I do not think the Respondent would argue that since C.M.H.C. was in a joint venture that its income from mortgage loans was somehow transformed into something other than interest.

[27] According to the Respondent, Alland did not meet the following three elements for establishing a joint venture:

1. there was no contractual basis;
2. Alland had no joint property interest in the inventory purported to be the source of the joint venture income; and
3. Alland had no control or management rights in the enterprise.

[28] In respect to the first factor, no contractual basis, the Respondent submits that, assuming there were third parties involved in these trades, there would be no meeting of minds unless a contract existed between Trev-Cor and all other participants, including Alland. If I did have evidence of the involvement of third parties, in all or some of the trades in which Alland participated, I am not certain that Trev-Cor and Alland could not have entered into a contractual relationship giving rise to a joint venture, whether written or oral, where third parties participated in some manner. Alland chose to participate in any given trade by contractually agreeing to fund a

particular portion of the trade. Trev-Cor then agreed to fund the balance and if it chose to handle its portion of the funding by engaging third parties to do so, I do not see how Trev-Cor's decision to involve third parties would impact upon the ability of Alland to enter a joint venture with Trev-Cor.

[29] In respect to the second factor, joint ownership, I believe that the Respondent has inappropriately focussed on the inventory property as the subject matter of the joint venture when in fact it is the actual gain arising from these trades that involves the joint ownership aspect. Because Trev-Cor is the participant that buys and sells the inventory property in its own name, the Respondent views Alland as having no property interest in the subject matter of the joint venture. However, after Alland conducted its investigations and decided on a percentage participation in a trade, it contributed cash to finance this trade and Trev-Cor (either on its own or with third parties) contributed the balance of the cash. Once pooled, Alland retained its ownership interest in the cash that it had contributed. In return for this cash contribution, Alland and Trev-Cor may be viewed as each having a property interest in the gains from the trades. Even if I am wrong in this view, the case of *C.M.H.C.* supports a conclusion that Alland has a sufficient joint property interest in the subject matter of the joint venture (again assuming the *bona fide* existence of one). In *C.M.H.C.*, the Court concluded that C.M.H.C. had a joint property interest where it advanced mortgage funding to a sub-developer. Alland did not make cash advances without the creation of some legal rights with respect to such advances, which would ultimately extend to a claim on the assets of the joint venture in the event of a particular trade not proceeding. Again this is all premised on the basis of the *bona fides* of the transactions. Assuming, *arguendo*, that a joint venture did exist, if a trade did not go through after the inventory property had been purchased then interest holders of the joint venture would have recourse against, or a claim on, the inventory property at some level of priority. If such a joint property interest satisfied this requirement in *C.M.H.C.*, I do not see why it should not satisfy the requirement in the case at bar.

[30] The analysis of the third factor, control and management rights, can be analyzed by adopting two different approaches. If the 42 or 43 trades are viewed in aggregate as potentially one single joint venture, then Alland's complete discretion to participate or not, in each individual trade by supplying cash, could be viewed as satisfying the factor of mutual control and management. Each time Alland decided to participate or not in a trade, despite Trev-Cor carrying out the actual trade, Alland retained significant control with respect to its participation in a trade.

[31] If, on the other hand, each trade in which Alland participated is viewed from the perspective of being a separate joint venture between Alland and Trev-Cor, can we still conclude Alland enjoyed mutual control and management where the trades were entirely presented to Alland prior to its decision to participate? I have evidence before me that, in at least three instances, Alland exercised a significant degree of control over a trade. These three incidents involved rectifying the leather jacket trade by arranging for sewing in linings to satisfy the buyer, persuading Mr. Leard to abandon the Georgian plywood trade and Mr. Langille's involvement in the Scottish sweater deal. Each of these trades involved discussions between Mr. Langille and Mr. Leard respecting the ultimate outcome or completion of the trade. This is evidence of a hands-on involvement that a passive investor would not possess. It also suggests that Alland had considerable persuasive abilities and control over, not only the direction of a particular trade, but also, the ultimate participation of Trev-Cor in a trade with or without Alland.

[32] With only five of the 42 or 43 trades documented by promissory notes, whether the remaining 37 or 38 trades give rise to either one or 37 or 38 joint ventures as discussed previously, Alland's principal purpose would be the participation in such joint venture(s) and thus not the deriving of income from property. In the 37 or 38 trades, under the fiction that they were *bona fide*, since Alland had direct ownership in the venture, the income it derived would not have been income from property. On balance this outweighs the five trades documented by promissory notes and thus is Alland's principal purpose. This conclusion is not altered either by the fact that Trev-Cor entered into these alleged trades to perpetrate a fraud on Alland and Mr. Langille or by the fact that only some or perhaps none of the trades actually occurred.

[33] This leads me to an analysis of the trades from the perspective of these trades being part of an elaborate fraudulent scheme. Counsel for both Appellant and Respondent acknowledged that these trades were part of a scheme and that none of them may have occurred. They argued that taxation consequences should flow from the legal and economic arrangements as Mr. Langille and Alland believed them to be at the time, including treating the trades as if they were generating income and as if that income would be of the same character it would have been had the trades been legitimate.

[34] The definition of specified investment business references a determination of what the principal purpose of a business may be. Bowman J. (as he was then) made the following instructive comments with respect to this determination in *Ed Sinclair Construction & Supplies Ltd. et al. v. M.N.R.,* 92 DTC 1163, at page 1165:

> In determining the "principal purpose" of a business carried on by a corporation the stated object of the person who carries it on is not necessarily the only, or even the most important, criterion. Of critical importance is what the corporation in fact does and what its sources of income are [*Ben Barbary Company Limited v. M.N.R.*, 89 DTC 242 at 244]. …

[35] From the perspective of this decision, it would appear to be more appropriate to examine the principal purpose of Alland based on the facts as they actually existed rather than as they appeared to be. From this perspective would it be reasonable to conclude that Alland was deriving income from property when its "principal purpose" was to enter into transactions by which it was being defrauded? In fact, to the extent that such a fraud is successful, then potentially Alland's principal purpose would ensure it either had no income at all or that it incurred a loss. Even if the principal purpose of Alland could be considered to be deriving income, when the principal source of such income is designed to ultimately fail, acknowledging the fraud suggests that the source of any income would be the re-shuffling of advances from other participants within the pyramid scheme. Therefore in reality it is not income at all or at least not from sales of inventory. With respect to the 37 or 38 undocumented trades, re-shuffling such payments from other participants cannot convert them into income from property in any context. If a genuine transaction would not give rise to income from property, the same transaction will not through alchemy give rise to income from property when the intention of one of the parties participating in those transactions is to defraud the other. According to the decision in *Kleinfelder*, such payments would not be considered business income from the joint venture perpetrating the fraud. However, since the Respondent has assumed that Alland was carrying on business activities independently from any joint venture enterprise, such payments here could presumably be business income from such a business. (See *Friesen v. Canada*, [1995] T.C.J. No. 922.)

[36] With respect to the trades documented by promissory notes, it is questionable whether even interest payments could be made to a victim of a fraudulent pyramid scheme when the origin of those payments are re-shuffled contributions from other like victims. However, given my conclusion with respect to the 37 or 38 trades that were undocumented, whether or not the five trades documented by promissory notes would have given rise to income from property will not disturb my overall conclusion that Alland's principal purpose was not to derive income from property.

[37] In summary, the appeal of Alland Developments Incorporated is withdrawn, without costs, by consent of the parties. The appeal of Lyman Langille is allowed, with costs.

Signed at Ottawa, Canada, this 6th day of March 2009.

"Diane Campbell"

Campbell J.

CITATION:	2009 TCC 139
COURT FILE NO.:	2006-2241(IT)G
STYLE OF CAUSE:	Lyman Langille and Her Majesty The Queen
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