

Docket: 2006-2430(IT)G

BETWEEN:

MICHAEL KION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeals heard together with the appeals of  
*Petra Kion*, 2006-2434(IT)G and  
*Michael Kion and Petra Kion*, 2006-2427(GST)G  
on December 18, 2008, at Vancouver, British Columbia

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       David Everett

---

**JUDGMENT**

In accordance with the attached Reasons for Judgment, the appeals from the reassessments made under the *Income Tax Act* for the 2000 and 2001 taxation years are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 16<sup>th</sup> day of September, 2009.

“G. A. Sheridan”

---

Sheridan, J.

Docket: 2006-2434(IT)G

BETWEEN:

PETRA KION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeals heard together with the appeals of  
*Michael Kion*, 2006-2430(IT)G and  
*Michael Kion and Petra Kion*, 2006-2427(GST)G  
on December 18, 2008, at Vancouver, British Columbia

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:                   The Appellant herself  
Counsel for the Respondent:       David Everett

---

**JUDGMENT**

In accordance with the attached Reasons for Judgment, the appeals from the reassessments made under the *Income Tax Act* for the 2000 and 2001 taxation years are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 16<sup>th</sup> day of September, 2009.

“G. A. Sheridan”

---

Sheridan, J.

Docket: 2006-2427(GST)G

BETWEEN:

MICHAEL KION AND PETRA KION,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard together with the appeals of  
*Michael Kion*, 2006-2430(IT)G and  
*Petra Kion*, 2006-2434(IT)G  
on December 18, 2008, at Vancouver, British Columbia

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellants:                   The Appellants themselves  
Counsel for the Respondent:       David Everett

---

**JUDGMENT**

In accordance with the attached Reasons for Judgment, the appeal from the assessment made under the *Excise Tax Act* dated August 29, 2005 and bearing number 11G0001268 is dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 16<sup>th</sup> day of September, 2009.

“G. A. Sheridan”

---

Sheridan, J.

Citation: 2009TCC447  
Date: 20090916  
Docket: 2006-2430(IT)G

BETWEEN:

MICHAEL KION,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN:

PETRA KION,

2006-2434(IT)G

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN;

MICHAEL KION AND PETRA KION,

2006-2427(GST)G

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Sheridan, J.

[1] The Appellants, Michael Kion and Petra Kion, are appealing the reassessments of the Minister of National Revenue under the *Income Tax Act* and the *Excise Tax Act* for the years 2000 and 2001. The three appeals were heard together on common

evidence. The Kions represented themselves and testified at the hearing. A week prior to the hearing, the Kions brought a motion to amend their Amended Notices of Appeal in respect of the conduct of certain Canada Revenue Agency officials; their motion was dismissed, with the question of costs to be determined at the hearing of the appeals; costs shall follow the cause.

[2] From 1994 to 1999, the Kions were equal partners in an air conditioning service and sales business: Mr. Kion did the service work; Mrs. Kion, the bookkeeping. Their partnership was registered for GST under the *Excise Tax Act*. During those years, they filed personal and GST returns and paid tax under the applicable legislation.

[3] In March 2000, the Kions notified the Minister<sup>1</sup> that they were declaring themselves ‘natural persons’ and as such, made various demands on the Minister the effect of which would be to relieve them of any further liability for tax. Briefly stated, their contention was that each human creature comprises both a physical being (i.e., the ‘natural person’) and some sort of other legal entity created upon the government’s issuance to the human creature of a social insurance number. Conveniently, any income earned by the human creature is attributed to the natural person while the obligation to pay tax rests exclusively with its legal doppelganger.

[4] The Minister promptly responded<sup>2</sup> to their letter, warning them of the risks of following misleading tax advice and explaining their obligations under the legislation. Unmoved by this information, the Kions continued their studies of the so-called ‘natural person’ argument and its application to their situation<sup>3</sup>: as a result, they stopped keeping books and records for the partnership; they advised the Minister that the partnership had ceased its commercial activities and stopped reporting and remitting GST; they filed income tax returns reporting “zero” income for the business; and they provided documents<sup>4</sup> to their banks purporting to show themselves, in their capacity as ‘natural persons’, the beneficial owners of their accounts.

---

<sup>1</sup> Exhibit R-1, Tab 28.

<sup>2</sup> Exhibit R-1, Tab 29.

<sup>3</sup> Exhibit R-1, Tab 11.

<sup>4</sup> Exhibit A-2.

[5] The upshot was that in 2003, the Kions were audited and assessed for unreported income under the *Income Tax Act* and net tax under the *Excise Tax Act*. Gross negligence penalties were also assessed under the relevant legislation. It is from these assessments that the Kions appealed.

## Analysis

[6] The Kions are not the first to hang their hats on the ‘natural person’ argument<sup>5</sup> and regrettably, are unlikely to be the last. Like others of their ilk, though opposed to paying taxes themselves, the Kions had no compunction about wasting the tax dollars of their fellow Canadians by failing to comply with their obligations under the law and prosecuting nonsensical claims at the administrative level and in the judicial system. Nor did their philosophical underpinnings prevent them from pocketing amounts received for the Child Tax Benefit and the GST Tax Credit.

[7] At the hearing, the Kions’ primary argument was that in their capacity as ‘natural persons’, they were not obligated to pay tax. They did not deny the amounts the Minister assumed they had had at their disposal in the taxation years and offered no alternative explanation for the source of such funds. They did not challenge the assumptions made with regard to the living expenses they incurred in those years. They did not deny the fact that the partnership was operating in 2000 and 2001 but, as Mr. Kion explained, they carried on the business as ‘natural persons’:

Q: Okay, fine. At paragraph four [of Exhibit R-1, Tab 60] you say, "We [Mr. and Mrs. Kion] then began to operate a new business using the same business name, for our own benefit in a private capacity. The new business was not operated for the benefit of an officer, a taxpayer in a representative capacity, as a legal representative by either of us." But what I take from that, I'm asking you the question now, is that, there was a business in 2000 and 2001, just in a different capacity, right?

A: That is correct, it would be in a --

Q: At least in your allegation it is a different capacity?

A: Yes.

---

<sup>5</sup> *Kennedy v. Canada*, [2000] 4 C.T.C 186 (Ont. S.C.); *R. v. Sydel*, [2006] 5 C.T.C 88. (B.C. Prov. Ct.); *R. v. Lindsay*, [2006] 3 C.T.C 146 (B.C.C.A.); *Canada (Minister of National Revenue) v. Camplin*, [2007] 2 C.T.C 205 (F.C.); *Hovey Ventures Inc. v. Canada*, [2007] T.C.J. No. 79. (T.C.C.).

Q: But you and Petra are running a business in 2000 and 2001?

A: Yeah, in a different capacity, yes, okay.

Q: Okay.

A: In a capacity of a natural person, right.<sup>6</sup>

[8] They did dispute that Mrs. Kion was still a partner in 2000 and 2001. The Kions both testified that she had given up her work as a bookkeeper to spend more time at home. I do not believe a word of that story. First of all, a notice of dissolution of their partnership was not filed until 2006<sup>7</sup>, long after the time Mrs. Kion said she ceased to be a partner. More importantly, I did not find Mrs. Kion to be a credible witness; her entire testimony was geared to conform to her understanding of the ‘natural person’ argument; for the same purpose, she attempted to prompt her husband while he was testifying. I have no reason to believe she ceased to be the bookkeeping partner; what I am certain of is that while in that position, she stopped keeping records that they both knew ought to have been kept.

[9] The Kions also argued that, because the auditor testified that on three particular occasions during his review he had not noted any business activities at the Kions’ home or a commercial warehouse they owned at that time, the Minister could not assess on the basis that their partnership had been operating in 2000 and 2001. The first weakness with this submission is that it ignores the onus that rests with the taxpayer on an appeal to the Tax Court. It also overlooks the fact that the auditor’s observation occurred in 2003, at least a year after the taxation years under appeal - the warehouse he saw was not even owned by the Kions in 2000 or 2001. In these circumstances, the auditor’s testimony does nothing to diminish the overwhelming force of the Kions’ own admissions that the partnership was in operation in 2000 and 2001.

[10] There being no basis in law for the ‘natural person’ argument upon which the Kions grounded their appeals and the Kions having failed entirely to rebut the assumptions relied upon by the Minister in making the assessments appealed from, their appeals are dismissed, with costs to the Respondent.

## Gross Negligence Penalties

---

<sup>6</sup> Transcript, page 83, lines 22-25 to page 84, lines 1-18.

<sup>7</sup> Exhibit A-4.

[11] That leaves, then, the question of the gross negligence penalties assessed by the Minister. The Minister has the onus of proving that such penalties are justified. As Strayer, J. (as he then was) explained in the oft-cited case of *Venne v. Minister of National Revenue*<sup>8</sup>, the Minister's is a heavy burden to discharge:

“Gross negligence” must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not.<sup>9</sup>

[12] Given my findings above, I have no hesitation in concluding that the Minister was correct to levy gross negligence penalties in each of the assessments: the Kions deliberately chose to embrace the ‘natural person’ argument, honed their knowledge of it and put theory into practice. They steadfastly pursued that path notwithstanding the Minister's timely explanation of the dangers of relying on questionable tax advice and of their obligations under the legislation. They blatantly continued their partnership operations as before, generating income on which, from past practice and experience, they well knew they were obligated to pay tax. They reported “zero” income in both taxation years; they provided false information to the Minister to cause the partnership to be deregistered for GST and made no returns. They deliberately kept no records of their income-generating activities and modified existing bank records to conform to ‘natural person’ theory. All of this was done, not out of indifference, but with the clear intention of not complying with what they knew to be the law.

[13] In these circumstances, I am persuaded by the evidence that the Kions knowingly made false statements and omissions in their income tax returns filed under the *Income Tax Act* and in their returns under the *Excise Tax Act*; accordingly, the Minister was justified in levying gross negligence penalties under subsection 163(2) of the *Income Tax Act* and section 285 of the *Excise Tax Act*.

Signed at Ottawa, Canada, this 16<sup>th</sup> day of September, 2009.

“G. A. Sheridan”

---

<sup>8</sup> [1984] C.T.C 223. (F.C.T.D.)

<sup>9</sup> Above, at page 234.



---

Sheridan J.

CITATION: 2009TCC447

COURT FILE NOS.: 2006-2430(IT)G; 2006-2434(IT)G;  
2006-2427(GST)G

STYLE OF CAUSE: MICHAEL KION AND BETWEEN PETRA  
KION AND BETWEEN MICHAEL KION  
AND PETRA KION AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: December 18, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: September 16, 2009

APPEARANCES:

For the Appellants: The Appellants themselves

Counsel for the Respondent: David Everett

COUNSEL OF RECORD:

For the Appellants:

Name:

Firm:

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