

Citation: 2009 TCC 641  
Date: 20091229  
Docket: 2006-2238(IT)G

BETWEEN:

167849 CANADA INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

#### **Jorré J.**

[1] The appellant did business in the fast-food industry and, over the course of its 2001 taxation year, it sold six franchised A&W restaurants for the amount of \$675,000. There was no agreement between the appellant and the purchaser as to the purchase price allocation.

#### ISSUE

[2] The only issue herein is the purchase price allocation.

#### PARTIES' POSITION

[3] Upon filing its income tax return, the appellant allocated the price of purchase using the amounts entered in the company's accounting documents for tax purposes at the time of the sale. For example, if, for the installation,<sup>1</sup> the undepreciated capital cost was \$100, the appellant attributed \$100 to installation. The amount exceeding the book value was attributed to the goodwill of the business.<sup>2</sup>

---

<sup>1</sup> "Installation" or possibly "equipment;" see *Terminologie comptable*, « Matériel et équipement », Vol. 2, No. 8-1 (March 1985), Ordre des comptables agréés du Québec. The term "equipment" is used throughout the hearing.

<sup>2</sup> In argument, the appellant did not pursue his first position, according to which the allocation made in its income tax return should be maintained. The income tax report attributes \$100,000 to installation, \$80,620 to leasehold

[4] The appellant's position at trial was that \$114,775 were to be attributed to leasehold improvements, \$118,800 to installation, \$0 to franchise fees and \$441,425 to the goodwill of the business.

[5] The position of the Minister of National Revenue (the Minister) at the time of reassessment was that \$183,000 were to be attributed to leasehold improvements, \$420,000 to installation, \$51,668 to franchise fees and \$20,332 to the goodwill of the business.

[6] At trial, the position of the Minister was that \$270,000 were to be attributed to leasehold improvements, \$350,000 to installation, \$55,000 to franchise fees and \$0 to leasehold improvements.

[7] Neither the appellant nor the respondent attributed any value to the stock.<sup>3</sup>

## FACTS

[8] Jean-Pierre Cadorette, the appellant's owner, testified, as did Richard Dumas, the owner of the company that purchased the restaurants in question.

### Testimony of Mr. Cadorette

[9] The appellant purchased five out of the six restaurants in question in 1989, namely:

- a) Place Fleur de Lys n° 1 — opened in 1987-1988,
- b) Place Laurier — opened in 1983,
- c) St-Joseph Street (mail St-Roch) — opened in 1975,
- d) Place Québec — opened in 1986,
- e) Place Ste-Foy — opened in 1983.<sup>4</sup>

In that same transaction in 1989, the appellant purchased twelve other A&W restaurants, including that at Galeries de la Capitale, sold during the 2000 taxation year (which is not in issue herein).<sup>5</sup>

---

improvements, \$43,316 to franchise fees, \$57,666 to stocks and \$423,399 to the volume of business. I used "stock" rather than inventory;" see *Terminologie comptable*, « Inventory, stock », Vol. 1, No. 10 (May 1983), Ordre des comptables agréés du Québec.

<sup>3</sup> And this despite the fact that, in the income tax return, an amount was attributed to the stock. However, the income tax return also indicated that the sale price was higher than \$30,000. The explanation is probably that provided by the appellant's owner in his testimony, where he states that the stock was part of the adjustments. Considering the parties' position, I will assume that the stock are not included in the amount of \$675,000.

<sup>4</sup> Transcription of December 5, 2007, questions 16 to 21.

[10] The sixth restaurant in question, Fleur de Lys No. 2, did not exist in 1989 and was opened in 1991-1992.<sup>6</sup>

[11] At the time of the purchase and until the sale in question, the appellant did not change the equipment or the leasehold improvements of the restaurants at Place Fleur de Lys No. 1, at Place Laurier or on St-Joseph Street.<sup>7</sup>

[12] In 2000, the restaurant at Place Ste-Foy was closed and reopened at the shopping centre; the restaurant was rebuilt.<sup>8</sup>

[13] Mr. Cadorette testified that in 1989 and 1990, his relationship with the franchisor, A & W, were a little strained because he had to renovate and change the equipment every seven or ten years at most, and that he broke that obligation.

[14] The required renovations could cost between \$100 000 and \$150,000 per restaurant.

[15] He decided at the time that he wanted to sell the six restaurants in question as well as the restaurant at Galeries de la Capitale.

[16] He finally sold the six restaurants in question to Gestion Richard Dumas. This was done through two sale contracts on December 13, 2000, namely, a contract for the restaurant at Place Laurier and a second contract for the other five restaurants.<sup>9</sup> The appellant had already sold the restaurant at Galeries de la Capitale to Gestion Richard Dumas during the 2000 taxation year.

[17] The two contracts contain the same description of businesses sold:

[TRANSLATION]

#### DESCRIPTION

A business known and operated as "**A&W Restaurant**" situated:

...

---

<sup>5</sup> *Ibid.*, question 2.

<sup>6</sup> *Ibid.*, question 20.

<sup>7</sup> *Ibid.*, questions 25 to 33. I also come to the conclusion that the restaurant at Place Québec was not renovated, as in examining the overall evidence, it is clear that the restaurant at Place Ste-Foy was renovated at the time of the sale.

<sup>8</sup> *Ibid.*, question 37.

<sup>9</sup> Exhibits A-1 and A-2.

The present sale includes the following:

1. acceptance by A&W to use the name;
2. all merchandise already inventoried between the parties with which the purchaser is familiar, and declares that he is satisfied therewith;
3. all furniture, movables and equipment for operating the business and already inventoried between the parties with which the purchaser is familiar, and declares that he is satisfied therewith;
5. vendor's rights associated with the business' identification, including telephone numbers, posters, signs, advertisement, permits, the "A&W" franchise;
6. vendor's rights in the lease of sites sold.

[18] Mr. Cadorette testified that he could not sell his franchise rights as, pursuant to his agreement with A&W, he had to surrender them to A&W if he no longer operated the restaurants.

[19] In the [TRANSLATION] "termination and granting of concessions agreement" of November 15, 2000, between the appellant, the purchaser of the restaurants in question and A&W,<sup>10</sup> it is stipulated that A&W accepted the termination of certain concession agreements (franchises) by the appellant in consideration of some conditions, namely, (i) a payment by the appellant, and (ii) the payment by the purchaser of the restaurants of a sum of money for the granting of granting rights required by the purchaser.<sup>11</sup>

[20] Mr. Cadorette testified that he paid \$25,000 for each franchise right for a duration of 20 years, but that at the time he sold the restaurants, the price of one franchise right had doubled to \$50,000 for 20 years or \$25,000 for 10 years.

[21] He also testified as to the negotiations. He explained that the negotiation of the total price was based on the restaurants' profits. The total price of \$1,125,000, including the price of the restaurant at Galeries de la Capitale, was nearly 2.5 times the profits, plus an amount of \$125,000 that took into account costs for redoing the restaurant at Place Ste-Foy.

---

<sup>10</sup> Exhibit A-4.

<sup>11</sup> The agreement designates this payment for the granting of franchise rights as [TRANSLATION] "modernization rights."

Mr. Dumas

[22] Mr. Dumas testified with respect to the purchase of the restaurants.

EXPERTS

[23] The appellant and the respondent presented Guy Hardy and Yvon Ouellet as expert witnesses.

Objections to Mr. Ouellet's testimony

[24] The appellant objected to the Mr. Ouellet's testimony as an expert, not on grounds of qualifications, but for the simple reason that is an official of the Canada Revenue Agency (the CRA). I do not agree. The simple fact that he is CRA official does not in itself suffice for Mr. Ouellet not to be qualified as an expert.<sup>12</sup>

[25] However, I note that around 2001, Mr. Ouellet was consulted on this matter, probably by the auditor. He received some bits of information and made up some numbers without making an assessment. This was done while the CRA hoped to broker an agreement between the appellant and the purchaser of the restaurants on the issue of allocation.

[26] Then, Mr. Ouellet did not work on the file prior to 2007, when he did the assessment that was presented at trial.

[27] The participation of Mr. Ouellet in 2001, prior to the assessment of October 27, 2003, the assessment in issue, does not in itself suffice to prevent him from being qualified as an expert. However, I am of the view that this bears on the weight that should be accorded his evaluation.

---

<sup>12</sup> I would like to thank counsel for their written observations. The cases cited by the appellant set out principles pertaining to the independence and impartiality of courts. The appellant takes the position that experts are in a situation analogous to that of the courts. While recognizing that the *Code of Civil Procedure* (the *CPC*) does not apply to this court, the appellant submits that this court should apply the principles of article 417 of the *CPC*. According to the appellant, article 417 renders article 234 of the *CPC* applicable to experts which itemizes the reasons that may warrant the recusation of a judge.

Even if the *CPC* could apply to this Court, I would not agree. It is important to examine the context of article 417, which is found in the middle of Book II, Title V, Chapter III, Section V, of the *CPC*. Given the context, article 417 applies to an expert appointed by the tribunal and not to an expert presented by either party. See *Houle and Dauphinais Construction inc. v. Attorney General of Quebec*, [1980] J.E. 80-835 (SC), paragraph 32.

Furthermore, it is well-established that the simple fact of being the employee of a party does not in itself suffice for an expert witness to be incompetent to testify. See, for example, *Hallatt v. Canada*, [2000] T.C.J. No. 884 (QL), paragraph 8; Jean-Claude Royer, *La preuve civile*, 4th Edition, 2008, Éditions Yvon Blais, page 329, paragraph 468; Alan W. Bryant, Sidney N. Lederman & Michelle K. Fuerst, *The Law of Evidence in Canada*, 3rd Edition, 2009, LexisNexis, paragraph 12.33.

[28] It would have been preferable that Mr. Ouellet not have any role prior to the assessment in issue.<sup>13</sup>

### Method

[29] As for the installation, Mr. Hardy used a method that consists in finding out the sales price for installation of the same type. Mr. Ouellet used a recognized method of installation depreciation by using the data of Marshall & Swift.

[30] In terms of principles, both methods are reasonable.

[31] However, in both reports, there are certain shortcomings that should be taken into account.

[32] Mr. Hardy's task was limited to appraising leasehold improvements and installation.

### Date of improvements and acquisition of installation

[33] As for the restaurants at Place Fleur de Lys No. 1, at Place Laurier, on St-Joseph Street and at Place Québec, both reports indicate 1989 as the date of leasehold improvements, and the report of Mr. Ouellet indicates 1989 as the date of the acquisition of the installation.<sup>14</sup>

[34] However, the uncontested testimony of Mr. Cadorette was that he did not make any improvements at the time of purchase of these four restaurants. Therefore, the leasehold improvements and the purchase of the installation for these restaurants took place prior to 1989. Given the dates on which the restaurants were opened and the testimony of Mr. Cadorette as to the policy of A&W that it was required to make renovations every seven to ten years of operations, I conclude that at the time of the sale in 1989, the leasehold improvements and the installation for the restaurants at Place Fleur de Lys No. 1, Place Laurier and Place Québec stem from the days the restaurants were opened, that is to say, 1987-1988, 1983 and 1986, respectively.

[35] The restaurant on St-Joseph Street has been in existence since 1975. However, despite the fact that several of the restaurants operated by the appellant went well

---

<sup>13</sup> Generally speaking, I would add that it would be preferable that the appraiser have no knowledge of the parties' positions on values while doing his or her job.

<sup>14</sup> Given that Mr. Hardy uses descriptions of equipment held and determines the value of the installation in December 2000, the date of acquisition does not play the same role in his appraisal of the installation as that in the appraisal of Mr. Ouellet.

over ten years without being renovated,<sup>15</sup> it is highly unlikely that the restaurant on St-Joseph Street was not renovated prior to 1989. If that restaurant was not renovated prior to 1989, it means that A&W would not have allowed the restaurant to be renovated during the 25 years from 1975 to 2000. That is not likely. It would be reasonable to suppose that the restaurant on St-Joseph Street was renovated at least one year prior to the appellant purchasing it.

[36] It is therefore important to take into account those dates for the leasehold improvements and installation purchases in considering the appraisals.

### The specific case of the restaurant at Place Ste-Foy

[37] The restaurant at Place Ste-Foy was completely renovated in 2000 and was brand new from A&W's point of view at the time of the sale.<sup>16</sup>

[38] However, the two appraisals do not take that fact into account with respect to the equipment.

[39] In his report, Mr. Ouellet assumes that the equipment is nine years old, despite the fact that it was replaced in 2000.

[40] Although Mr. Hardy's report is not based on how old the equipment was, it is obvious that there is a problem and that the appraisal of the restaurant at Place Ste-Foy cannot take into account the renewal of the installation in 2000. For example, Mr. Hardy appraised the value of the installation of the restaurant at Place Fleur de Lys No. 2 (approximately 400 square feet), between 1991 and 1992, at \$23,800, whereas he appraised that of the restaurant at Place Ste-Foy (300 square feet), which was renovated in 2000, at \$24 890; there is a mistake somewhere, perhaps in the descriptions of the equipment provided to Mr. Hardy.

[41] Given that A&W estimates that the equipment costs between \$125,000 and \$155,000,<sup>17</sup> the value of the installation at Place Ste-Foy must be much higher.

---

<sup>15</sup> Seventeen years in the case of Place Laurier, for example.

<sup>16</sup> Transcription of December 5, 2007. I find that everything was renovated, including the equipment. Although in question 41, Mr. Cadorette spoke about moving the equipment, in questions 35 and 36, he discusses building a brand new restaurant and replacing the equipment, and in questions 509 to 515, he agrees that at the time of the sale, the restaurant at Place Ste-Foy was [TRANSLATION] "within the standards" from A&W's point of view, which suggests that the equipment was new.

<sup>17</sup> Exhibit A-6.

Mr. Hardy's report

[42] One factor that influences the validity of Mr. Hardy's work is the reliability of the descriptions of the equipment provided. In addition to the case of Place Ste-Foy, it should be noted that the differences between the descriptions provided to Mr. Hardy are sometimes very substantial. For example, the description pertaining to Galeries de la Capitale includes 39 types of different items, whereas the description for Place Fleur de Lys No. 2 has 71 types of different items, even though the meal sales at the restaurant at Place Fleur de Lys No. 2 are half the meal sales at the restaurant at Galeries de la Capitale.<sup>18</sup>

[43] Each item's value is based on the price at which an identical or similar item was sold. Over the years, Mr. Hardy developed a data base that lists the sales price of the different items of equipment. His point of departure was this data base, but when he no longer had data, he contacted people in the installation resale industry or colleagues to obtain prices for the equipment at the time of the appraisal. His report does not present the comparative data used and it is therefore impossible to verify whether it is the same brand or model, or a similar object but slightly different.

[44] In his testimony, Mr. Hardy said that the equipment lost more value the first year and that after a certain time, its value no longer depreciated, unless it became obsolete.

[45] As for the leasehold improvements, Mr. Hardy depreciated over a period of ten years. He considered that after 10 years, there is no residual value.

Mr. Ouellet's appraisal

[46] In examining Mr. Ouellet's report, it is important to take into account, from the outset, a problem with the report. The report concludes that there is a total value of \$726,850 for the equipment, leasehold improvements and franchise rights sold during the taxation year, even if the sales price is \$675,000. This conclusion means that there is a negative goodwill of \$51,850, but there cannot be a negative goodwill.

[47] In his testimony, Mr. Ouellet recognized the problem and, as a result, said that it was necessary to adjust the values for the goodwill to be null. He explained this conclusion by the fact that his report had been prepared to determine the total values of the six restaurants sold in 2001 and of the restaurant at Galeries de la Capitale sold in 2000.

---

<sup>18</sup> Exhibit A-3.



[48] It remains that the need to make adjustments<sup>19</sup> raises serious issues as to Mr. Ouellet's approach.

[49] This is particularly true when considering that the restaurant at Place Laurier was sold separately for \$250,000. If we take the appraisals for the equipment, the leasehold improvements and the franchise rights of the six restaurants and divide them up between the restaurant at Place Laurier and the five other restaurants sold for \$425,000, we will see that the result is a negative goodwill of about \$135,000 for the restaurant at Place Laurier and a negative goodwill of approximately \$185,000 for the five other restaurants.<sup>20</sup>

[50] I also note certain other errors on page 15 of the report.<sup>21</sup> The restaurants at Place Fleur de Lys No. 1 and on St-Joseph Street both have equipment that is eleven years old, but, in one case, there is a depreciation of 76% and, in the other case, there is a depreciation of 86%. On the same page, the number of years of existence used for the restaurants at Place Québec and Place Laurier is nine, although nothing in the report suggests that the equipment of those restaurants is any more new than that at Place Fleur de Lys No. 1 or on St-Joseph Street. Also, it is important to take into account the real dates of the installation's acquisition (see paragraphs 34 and 35 above).

## ANALYSIS

[51] Accordingly, I do not accept either report as such. It is necessary to take the reports and to consider the necessary changes.

[52] The following factors should be taken into account:

- (a) The equipment and leasehold improvements are dated as follows:
  - (i) Place Fleur de Lys No. 1: 1987 and 1988,
  - (ii) Place Laurier: 1983,
  - (iii) Place Québec: 1986,
  - (iv) St-Joseph Street: before 1989,
  - (v) Place Fleur de Lys No. 2: 1991 and 1992.

---

<sup>19</sup> The amounts adjusted appear in the last column of Exhibit I-1 and represent the allocation submitted by the respondent.

<sup>20</sup> If we add up the equipment, the leasehold improvements and the value attributed to the franchise rights of the restaurant at Galeries de la Capitale, they will sum to \$114,000 and to the same amount for Place Laurier, which leaves us with approximately \$612,000 (\$840,000 - \$228,000) for the equipment, leasehold improvements and franchise rights of the other five restaurants sold for \$425,000. Mathematically speaking, the result is a negative goodwill of \$187,000 (\$425,000 - \$612,000).

<sup>21</sup> Exhibit I-7.

- (b) Given that A&W provides for a minimal cost of \$125,000 for the equipment, even assuming a very high depreciation the first year and a smaller cost, the equipment of the restaurant at Place Ste-Foy has a minimal value of \$105,000.
- (c) It is not reasonable to not attribute any value residual value to the equipment and to the leasehold improvements. However, although the data of Marshall & Swift indicates residual values of 14% for the restaurants, they also indicate that "if the equipment is unmarketable, however, then the value could go to zero."<sup>22</sup> Consequently, given the equipment's age (12, 13, 14 and 17 years in four of the restaurants), it is reasonable to use a residual value of 10%. The leasehold improvements have an even lower residual value, given the age and the fact that the restaurants only have an interest insofar as someone continues to operate them without renovating them. Seeing as the purchaser continued to operate the restaurants and that a certain time had to pass before any renovations could be made, a residual value of 4% is appropriate, except in the case of the restaurant on St-Joseph Street, which was closed shortly after the sale.<sup>23</sup> As for the restaurant on St-Joseph Street, the residual value of the leasehold improvements is zero.
- (d) As for the amortization period for leasehold improvements, Mr. Hardy used a period of ten years and Mr. Ouellet used a period of fifteen years. Despite the testimony of Mr. Cadorette according to which renovations had to be made within ten years at most, I note that in fact none of the restaurants sold in 2001 were renovated after ten years, except for that at Place Ste-Foy, which was renovated owing to the move imposed by the shopping centre. The restaurant at Place Ste-Foy had not been renovated since its opening in 1983, seventeen years before the renovation of 2000. Consequently, it is reasonable to use an amortization period of fourteen years.
- (e) As for the costs to be used to calculate the depreciation, one must use either the real costs if they are known or a reasonable estimate thereof. If an estimate is used, I believe more weight should be given to the written documents obtained from A&W (Exhibit A-6) or to the estimate (also from A&W) which begins on the second page of the appendix in Mr. Hardy's report (Exhibit A-8) than to the information obtained from a

---

<sup>22</sup> Exhibit I-8, page 2.

<sup>23</sup> One indicator clearly demonstrates that this was probably anticipated, as we see in the appendix of Exhibit A-4 that the purchaser paid nothing to A&W for franchise rights.

franchisor's representative and orally confirmed by Mr. Cadorette.<sup>24</sup> Finally, on the subject, since the report deals primarily with the leasehold improvements and installation of a certain age and that Exhibit A-6 is from 2003,<sup>25</sup> it is necessary to use an estimate at the bottom of the scale indicated in Exhibit A-6.

[53] In taking into account all these factors insofar as they apply to the one or other appraisal report, we notice that both appraisals tend toward a comparable order of magnitude. I conclude that the value of the leasehold improvements is \$180,000 and that the value of the equipment is \$190,000. The effect of the resulting corrections and calculations is shown in the appendix.

### Franchise rights

[54] The appellant did not provide an appraisal of the franchise rights. The appellant's position is that it could not sell its franchise rights and that, as a result, no value could be attributed to the franchise rights.

[55] Indeed, the appellant had to relinquish its franchise rights; however, it is necessary to look at the contracts between the appellant and the purchaser, and also between the appellant, the purchaser and A&W, as a whole. In examining the contracts,<sup>26</sup> it is obvious that one of the elements essential to the sale of the restaurants was that A&W accepted to give the purchaser franchise rights. The condition was that the appellant had to give up its franchise rights so that A&W could grant the purchaser new franchises. Also, the continuity of the franchises is reflected in the fact that A&W slightly reduced the costs of the new franchises by taking into account in part the amounts the appellant had paid for the periods of franchise rights that have yet to reach their maturity date.<sup>27</sup>

[56] Consequently, the purchaser paid the purchase price, among other things, so that the appellant could give up its franchise rights.

---

<sup>24</sup> Exhibit A-6, page 14, report of Mr. Ouellet. According to the report, it does not seem as though the information was obtained in writing, which increases the possibility of misunderstandings.

<sup>25</sup> Page 2 of said Exhibit.

<sup>26</sup> Exhibits A-1, A-2 et A-4.

<sup>27</sup> Nothing in the evidence contradicts the testimony of Mr. Cadorette that the purchaser receives a certain credit.

[57] Mr. Ouellet calculated the value of what the appellant gave up as being the value of the franchise fees the purchaser saves. That approach is entirely reasonable and the calculation is consistent with the amounts the purchaser saved according to Mr. Cadorette's testimony.

[58] However, the appendix of Exhibit A-4 shows the amounts the purchaser undertook to pay to A&W for the franchise rights.<sup>28</sup> Those amounts cannot be reconciled with the testimony of Mr. Cadorette and the calculation done by Mr. Ouellet.

[59] In the appendix of Exhibit A-5, we notice a calculation similar to that of Exhibit A-4. We notice that the amounts are slightly lower in the appendix of Exhibit A-5 than in the appendix of Exhibit A-4 because there was an extra year added to the duration of the franchise rights at the time Exhibit A-4 was prepared.<sup>29</sup> In comparing Exhibits A-4 and A-5, we notice that the purchaser chose franchise rights for a period of 10 years. If we exclude the restaurants at Place Québec and on St-Joseph Street, we notice that the amount saved by the purchaser is very different from that stated in the testimony of Mr. Cadorette or the calculation of Mr. Ouellet.<sup>30</sup>

[60] In the appendix of Exhibit A-4, we notice that for the restaurants in issue, with the exception of those on St-Joseph Street and at Place Québec, the purchaser saved about \$30,000.<sup>31</sup>

[61] As for the restaurants on St-Joseph Street and at Place Québec, the franchise fees are zero. That cannot be explained by a credit to the purchaser for the remaining period of the appellant's franchise rights, as at Place Québec the franchise right reached its maturity date at the end of January 2001, and on St-Joseph Street, it expired in November 2003.<sup>32</sup> There must be other reasons that have not been adduced in evidence.<sup>33</sup> As a result, the fact that there are no franchise fees for the two restaurants cannot be attributed to a credit for what the appellant already paid for.

---

<sup>28</sup> "Modernization fees."

<sup>29</sup> With the exception of the restaurants at Place Québec and on St-Joseph Street.

<sup>30</sup> It is also important to take into account the fact that Mr. Ouellet did his calculations from the month of August, and not December 2000.

<sup>31</sup> The franchise rights cost \$25,000 for ten year. The savings is the difference between \$25,000 and the fees paid by the purchaser.

<sup>32</sup> Exhibit A-5, appendix.

<sup>33</sup> It is possible that the purchaser and A&W already agreed that the restaurant on St-Joseph Street would close shortly after the purchase.

[62] In any case, the only true savings for the purchaser consisted in the reduction of \$30,000 in franchise fees. The value to be attributed to the franchises is therefore \$30,000.

[63] Considering my findings on the value of the leasehold improvements, installation and franchise rights, the value of the goodwill must necessarily be \$275,000.<sup>34</sup>

## CONCLUSION

[64] The appeal is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and redetermination on the basis that the sales price of \$675,000 must be allocated as follows:

- |                             |            |
|-----------------------------|------------|
| (a) leasehold improvements: | \$180,000, |
| (b) installation:           | \$190,000, |
| (c) franchise rights:       | \$30,000,  |
| (d) goodwill:               | \$275,000. |

[65] Prior to signing the judgment, I would ask the parties to inform the Registry within 30 days from the date of the Reasons if they wish to make any observations pertaining to the fees, either in writing or by conference call. I will sign the judgment thereafter.

Signed at Ottawa, Canada, this 29th day of December 2009.

"Gaston Jorré"

---

Jorré J.

Translation certified true  
on this 8<sup>th</sup> day of June 2010.

François Brunet, Revisor

---

<sup>34</sup> That is to say the sales price of \$675,000 less (\$180,000 + \$190,000 + \$30,000).

**Appendix – Adjustments to Appraisals**  
(All figures are rounded off to the nearest dollars.)

**Appellant's report**

**Installation:** It is necessary to take into account the cost of the installation of the restaurant at Place Ste-Foy.

<b>Report:</b>	133
<b>Less: Galeries de la Capitale</b>	<u>(14)</u>
	119
<b>Less: current estimate Ste-Foy</b>	<u>(25)</u>
	94
<b>More: amount for Ste-Foy</b>	<u>105</u>
<b>TOTAL</b>	<b>199</b>

**Leasehold improvements:** It is necessary to add the residual values and take into account an amortization period of 14 years.

<b>Report:</b>	115
<b>Plus residual values:<sup>1</sup></b>	
Fleur de Lys No. 1	8
Place Laurier	7
Place Québec	6
<b>More:</b>	
St-Joseph Street	0 <sup>2</sup>
<b>More:</b>	
Fleur de Lys No. 2	20 <sup>3</sup>
Place Ste-Foy	<u>25<sup>4</sup></u>
<b>TOTAL</b>	<b>181</b>

---

<sup>1</sup> In all, 4% of the cost in the report.

<sup>2</sup> Closed shortly after the transaction.

<sup>3</sup> The cost of \$125,000 over fourteen years results in a value of \$45,000 instead of \$25,000, and to which we must add \$20,000.

<sup>4</sup> In the case of Ste-Foy, given that the renovations had just been done the year before, it is more appropriate to take the cost for a purchaser who would have had to do the work, less a one-year amortization period, that is, \$115,000, by using the figures of Exhibit A-6 as a point of departure. The report established the value of \$90,000, and therefore we must add \$25,000. In reaching this conclusion, I would also like to take into account the fact that the Place Ste-Foy shopping centre also made certain improvements which reduced the costs paid by the appellant for leasehold improvements while increasing the value of the leasehold improvements for the purchaser. See the transcription of December 5, 2007, question 45, testimony of Mr. Cadorette.

**Respondent's report**

**Installation:** cost of \$125,000;<sup>5</sup> amortization over 12 years, but quicker amortization the first year; residual value of 10%.

<b>Restaurant</b>	<b>Age</b>	<b>% not amortized</b>	<b>Value</b>
Fleur de Lys No. 1	13 years	residual	12
Fleur de Lys No. 2	9 years	25%	31
Place Laurier	17 years	residual	12
St-Joseph Street	12 years	residual	12
Place Québec	14 years	residual	12
Place Ste-Foy	1 year	after 1 year <sup>6</sup>	<u>105</u>
<b>TOTAL</b>			<b>184</b>

**Leasehold improvements:** cost of \$130,000;<sup>7</sup> amortization over 14 years, but quicker amortization the first year; residual value of 4%, except 0% for St-Joseph Street.

<b>Restaurant</b>	<b>Age</b>	<b>% not amortized</b>	<b>Value</b>
Fleur de Lys No. 1	13 years	residual 1	5
Fleur de Lys No. 2	9 years	35 %	45
Place Laurier	17 years	residual	5
St-Joseph Street	12 years	14 %	0 <sup>8</sup>
Place Québec	14 years	residual	5
Place Ste-Foy	1 year	after 1 year <sup>9</sup>	<u>115</u>
<b>TOTAL</b>			<b>175</b>

<sup>5</sup> See paragraph 52(e) of these Reasons.

<sup>6</sup> Quicker amortization the first year.

<sup>7</sup> See paragraphe 52(e) of these Reasons.

<sup>8</sup> Closed shortly after the transaction.

<sup>9</sup> Quicker amortization the first year.

**Summary**

	<b>Value</b>
Value of the installation after having adjusted the appellant's appraisal	199
Value of the installation after having adjusted the respondent's appraisal	184
Value of the leasehold improvements after having adjusted the appellant's appraisal	181
Value of the leasehold improvements after having adjusted the respondent's appraisal	175

It is reasonable to conclude that the value of the installation is \$190,000 and that the value of the leasehold improvements is \$180,000.



CITATION: 2009 TCC 641

COURT FILE NO.: 2006-2238(IT)G

STYLE OF CAUSE: 167849 CANADA INC. v. HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Québec, Quebec

DATES OF HEARING: December 5, 2007, and February 4, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF REASONS  
FOR JUDGMENT: December 29, 2009

APPEARANCES:

    Counsel for the appellant: Daniel Des Aulniers

    Counsel for the respondent: Michel Lamarre

COUNSEL OF RECORD:

    For the appellant:

        Name: Daniel Des Aulniers

        Firm: Grondin, Poudrier, Bernier  
            Québec, Quebec

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