

Docket: 2009-2803(IT)I

BETWEEN:

MAUREEN McCARGAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on May 21, 2010, at Vancouver, British Columbia,

By: The Honourable Justice E.A. Bowie

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Aman Sanghepa (Student-at-law) and Matthew Canzer

JUDGMENT

The appeals from reassessments under the *Income Tax Act* for the 2004, 2005, 2006 and 2007 taxation years are dismissed.

Signed at Ottawa, Canada, this 1st day of June, 2010.

“E.A. Bowie”

Bowie J.

Citation: 2010 TCC 293
Date: 20100601
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BETWEEN:

MAUREEN McCARGAR,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Bowie J.

[1] On March 20, 2008, Ms. McCargar was reassessed for the 2004, 2005 and 2006 taxation years. By that reassessment, the Minister of National Revenue (Minister) added \$26,000 to her income for each of those years. On November 18, 2008, she was reassessed for the 2007 taxation year to add \$11,147 to her income.

[2] The theory of the Minister's assessments is that Ms. McCargar received the amounts in question as cash payments from the Royal Canadian Legion Branch #15, in Abbotsford, BC (the "Legion") pursuant to a contract that she had entered into with the Legion on September 19, 2003. The contract provided that Ms. McCargar would provide services as "secretary/manager" to the Legion for a period of five years, for which she was to be paid at the rate of \$500 per week. There is no question that there was such a contract; it is Exhibit R-1, and the Appellant acknowledges its execution. The Minister says that as the secretary/manager, Ms. McCargar had control of the legion's cash receipts and was in a position to and did pay herself the \$500 each week to which she was entitled in cash amounts that she failed to disclose when she filed her income tax returns for the four years in question.

[3] Ms. McCargar's position is that the Legion was not in sufficient financial health to pay her \$500 per week and that she did not in fact receive any amount under the contract during the three and one-half years that she carried out her duties as secretary/manager.

[4] According to the appellant's evidence, in the years between 1998 and 2002 a former bookkeeper had defrauded the Legion of somewhat more than \$200,000. The fraud, she said, was uncovered by an audit that she performed. She is a chartered accountant, she said, and therefore qualified to perform this audit. As a result the former bookkeeper was prosecuted and convicted of fraud. One result of the fraud was that the Legion had to sell its building to pay outstanding assessments for provincial sales tax. Another result was the contract with Ms. McCargar to which I have referred.

[5] Ms. McCargar's evidence was that she took the position knowing that the Legion did not have the resources or income to pay her, and that she did not expect to be paid. Whether she was a member of this Legion Branch, or simply a person with a close association to it, is not clear from her evidence. However, she made it quite clear that her position was that she did not expect that the Legion would have sufficient revenue to pay her, and that this was not a matter of concern to her. She also testified that three senior officers of the Legion, Mr. Campbell, Mr. Henning and Mr. Welford, knew that she was not expecting payment, even though the contract provided for it. These individuals were the Treasurer, Vice-President and President, respectively. They signed the contract on behalf of the Legion. By the time these appeals were heard in May 2010, all three were deceased, and therefore unable to testify.

[6] Ms. McCargar, as the secretary/manager, maintained the books of the Legion. She also had control of the cash receipts, the great majority of which came from the cash bar that the Branch operated in its premises. During her tenure as secretary/manager, the cash receipts were deposited at the end of each day into a safe by the bar staff. The following day, Ms. McCargar took the cash from the safe and deposited it in the bank. She also made the journal entries to account for those receipts, as well as all the other entries in the books of the Branch.

[7] Mr. Franklin Burton is presently the bookkeeper for the Legion, and has been since March 2008. He was called by the respondent to give evidence as to the financial records of the Branch during the relevant years. Ms. McCargar said in her evidence that following the sale of the original Legion building and the move of the Branch to a different building, "they would be lucky to gross \$100 a day". This

was why she said she did not expect and did not take her \$500 per week. Mr. Burton's evidence was that the gross sales of the bar from 2004 to 2007 were:

2004	\$211,563
2005	\$229,170
2006	\$206,310
2007	\$170,054

These amounts were far greater than \$100 per day. The net profit from the bar during this period was:

2004	\$55,340
2005	\$84,254
2006	\$84,185
2007	\$76,775

Despite these profits the Branch showed a loss in three of these years overall, before depreciation:

2004	\$62,299
2005	(\$34,438)
2006	(\$13,538)
2007	(\$13,469)

Certainly, Ms. McCargar's evidence as to the bar receipts is not accurate, and the financial results during the first full year of the contract were not nearly as dismal as she would have me believe.

[8] There is a conflict, too, between Ms. McCargar's evidence as to the way in which she accounted for her fees in the books of the Legion and Mr. Burton's evidence on that subject. Ms. McCargar said that she debited her \$500 per week to office expense. When I asked about the corresponding credit entry, she said that it was to the profit and loss account, and that she "wrote it off" at the end of the year. Mr. Burton said that he examined the journal entries for the period and that they showed fees of Ms. McCargar debited to account #5614 "office management expense". The amounts were not in the form of debits of \$500 each, but of different amounts (all round numbers) adding up to \$500 per week. The corresponding credits, he said, were to various revenue accounts.

[9] I prefer Mr. Burton's evidence to that of the Appellant. Ms. McCargar's evidence that she credited "the profit and loss account" makes no sense. Mr. Burton's evidence as to these entries does make sense.

[10] Mr. Burton, of course, has no stake in the outcome of the appeals. He also impressed me as someone who had looked into the matter carefully, and he gave his evidence that way.

[11] There are other problems with Ms. McCargar's evidence. It seems likely that if she had really entered into this contract with no expectation of being paid, as she said, that the contract would make specific provision that her fees could be deferred pending more prosperous days for the Legion.

[12] It is inexplicable that, if things were as she said, Ms. McCargar would have accounted for the unpaid fees in the way that she did. She was an accountant with something like 40 years of experience. She surely would have known that if these fees were being accrued but not paid, then they should be debited to "office management expense" and the corresponding credit should be to "accounts payable". Only in that way would a record be maintained of the Legion's debt to her. The amounts should have been posted weekly in the amount of \$500 (or possibly monthly). Ms. McCargar testified that she gave no thought to these matters, because there was no prospect that she would ever be paid. However, she gave evidence of two large bequests to the Legion, one of \$370,000 made prior to the fraud, and a more recent bequest of a smaller amount. Clearly, there was always a prospect that the Legion would at some future time receive other bequests, and there was also the prospect of recovering some funds from the former bookkeeper, either through a restitution order or a civil judgment. There also was in prospect a refund of overpaid provincial sales tax. The Appellant testified that she knew that the provincial assessment was too high, and that in fact the Branch did eventually receive such a refund from the provincial Treasurer.

[13] It is most unlikely that with the prospect of those several sources of funds (even though some of them did not materialize to any significant extent), Ms. McCargar would enter into the contract that she did, do the work without pay, and not account for it properly by setting up an account payable for herself and crediting her fees to it to keep a record of the amount she was owed. This amount, had she worked the full five years without pay, would have amounted to \$130,000.

[14] In fact, Ms. McCargar did not work for the full five years. In July 2007, she moved to Lillooet and ceased her work for the Legion. There was some conflict in

the evidence between the Appellant and Mr. Burton as to exactly when Ms. McCargar ceased work at the Legion. The Minister's assumption underlying the 2007 assessment is that she received \$11,475 in that year from the Legion. This was based on a T4A slip issued by Mr. Burton. As I find Mr. Burton to be a more reliable witness than Ms. McCargar, I accept his evidence that she received \$11,475 in 2007 and \$26,000 in each of 2004, 2005 and 2006.

[15] There is an issue raised by the Minister as to the validity of the appeal for 2004, on the basis that the Appellant did not file her notice of objection for that year within the 90 days limited for doing so. In view of my conclusion on the merits, it is not necessary to decide if the appeal was validly filed or not. The appeals for 2004, 2005, 2006 and 2007 are dismissed.

Signed at Ottawa, Canada, this 1st day of June, 2010.

“E.A. Bowie”

Bowie J.

CITATION: 2010 TCC 293

COURT FILE NO.: 2009-2803(IT)I

STYLE OF CAUSE: MAUREEN McCARGAR and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: May 21, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice E.A. Bowie

DATE OF JUDGMENT: June 1, 2010

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Aman Sanghepa (Student-at-law) aAnd Matthew Canzer

COUNSEL OF RECORD:

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