

Docket: 2007-4188(IT)G

BETWEEN:

SAEL INSPECTION LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of *Barry Singleton*
(2007-4189(IT)G) and *Aniger Consulting Inc.* (2007-4187(IT)G)
on May 19 and 20, 2010, at Calgary, Alberta

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Patrick Lindsay
Colena Der
Counsel for the Respondent: Cynthia Isenor

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2001 and 2002 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 15th day of December 2010.

“L.M. Little”

Little J.

Citation: 2010 TCC 640
Date: December 15, 2010
Docket: 2007-4188(IT)G

BETWEEN:

SAEL INSPECTION LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS

- [1] The Appellant was incorporated in the Province of Alberta on March 29, 1982.
- [2] Barry Singleton (“Barry”) was the President and sole shareholder of the Appellant in the years under appeal.
- [3] Barry and his brother, Bryan Singleton (“Bryan”), were the Directors of the Appellant in the years under appeal.
- [4] The Appellant’s fiscal year end is March 29.
- [5] The Appellant is in the business of oil and gas pipeline consulting.
- [6] The Appellant entered into a consulting agreement (the “Agreement”) with Aniger Consulting Inc. (“Aniger”) on March 20, 2000.

[7] 100 percent of the shares of Aniger were owned by Regina Gajecki (“Regina”).

[8] Regina was the common-law spouse of Barry and is now the wife of Barry.

[9] In 1999, Barry, his brother Bryan and their respective companies entered into a contract to provide the engineering services to assist in the construction of the Canadian portion of the Alliance Pipeline Project (the “Project”).

[10] The Project was a proposed pipeline to carry natural gas from Fort St. John, British Columbia to Chicago, Illinois. The proposed pipeline was to go across a portion of the Province of British Columbia, through the Province of Alberta and through a portion of the Province of Saskatchewan. The proposed pipeline was to cross into the United States near Estevan, Saskatchewan.

[11] The cost of the Project was estimated to be \$5 Billion. The Canadian portion of the Project was estimated to be \$1.8 Billion.

[12] The Project was completed under budget.

[13] Aniger invoiced the Appellant for the consulting services provided for the following periods:

Period	Amount	GST	Total
Dec. 1, 1999 – Nov. 30, 2000	\$260,000.00	\$18,200.00	\$278,200.00
April 1, 2000 – March 31, 2001	\$275,000.00	\$19,250.00	\$294,250.00
April 1, 2001 – March 31, 2002	\$280,000.00	\$19,600.00	\$299,600.00
TOTAL	\$815,000.00	\$57,050.00	\$872,050.00

[14] Pursuant to the Agreement, Aniger was to be paid \$15,000.00 per month by the Appellant.

[15] Pursuant to the Agreement, Aniger was paid bonuses of \$95,000.00 in 2001 and \$100,000.00 in 2002. (Note: These bonuses were in addition to the amounts shown in paragraph [13] above.)

[16] The Minister of National Revenue (the “Minister”) maintains that the Appellant contracted with various professionals to provide drafting and other professional consulting services to the Appellant.

[17] The Minister also maintains that Aniger did not perform consulting services to the Appellant as claimed, since other individuals were contracted to do this work.

[18] In the alternative, the Minister maintains that if Aniger did perform the consulting services to the Appellant as claimed, the amounts paid to Aniger were grossly inflated.

[19] The Minister also disallowed the following expenses:

Disallowed Expense	March 29, 2001	March 29, 2002
Auto insurance – personal vehicles	\$ 2,498.00	\$ 442.00
Clawback of portion of meals and entertainment expenses	\$ 4,903.00	\$ 4,740.00
Hotel expenses re North Bay trip	\$ 4,211.00	
Flights re North Bay trip	\$ 7,694.00	
Repairs to Jaguar		\$ 99.00
CCA re 1998 Dodge		\$ 2,442.00
Unreasonable consulting expenses		\$246,386.00
Unreasonable consulting expenses		\$250,641.00

[20] The Minister also imposed penalties pursuant to subsection 163(2) of the *Income Tax Act* (the “Act”).

B. ISSUES

[21] The issues are whether:

- a) the Minister correctly assessed the Appellant by including in its income the amount of \$497,027.00 in respect of a deduction disallowed for consulting expenses paid to Aniger in the 2002 taxation year;
- b) the Minister correctly assessed the Appellant by including in its income the amount of \$11,905.00 in respect of deductions disallowed as travel expenses claimed in the 2001 taxation year; and
- c) the Minister correctly reassessed the Appellant by imposing penalties pursuant to subsection 163(2) of the *Act* in respect of disallowed travel expenses and disallowed consulting expenses in the Appellant’s 2001 and 2002 taxation years.

C. ANALYSIS AND DECISION

[22] During the hearing, the following additional facts were established:

1. The Appellant paid Aniger on an annual basis.
2. Regina submitted timetables to the Appellant in which she stated that she worked the following hours for Aniger:

2001 - 1,644 hours
2002 - 1,560 hours
3. Regina is employed on a full-time basis with Atco Gas as a Clerk C in the Land and Claims Department.
4. The average hourly wage paid to Aniger by the Appellant (including monthly salary and yearly bonus) was \$167.00 per hour for 2001 and \$179.00 per hour for 2002.
5. Regina's average hourly wage for her full-time employment at Atco Gas for 2002 was \$25.00 per hour.
6. The Minister maintains that the Appellant contracted with various professionals to provide drafting and other professional consulting services on the Project.
7. The other contractors retained by the Appellant were paid between \$20.00 to \$35.00 per hour for their services.
8. The other contractors retained by the Appellant were required to provide monthly invoices, including daily hours worked and details pertaining to the Project services provided.
9. The invoices provided to the Appellant by Aniger were provided on an annual basis.

[23] The Minister maintains that Aniger did not perform the consulting services as claimed since other individuals were contracted to do this work (see Reply, paragraph 17(gg)).

[24] In the alternative the Minister maintains,

Alternatively, if Aniger did perform the Consulting Services for SAEL as claimed, then the amounts paid to Aniger were grossly inflated given her qualifications, the type of services provided, and the amounts paid to other contractors providing higher level services on the project.

(Reply, paragraph 17(hh))

[25] Based upon the evidence, I have concluded that Aniger did perform a considerable amount of work for the Appellant as outlined in the Agreement. However, I agree with the argument made by counsel for the Respondent that the fees paid by the Appellant to Aniger were inflated. Based upon the evidence that was presented, the relationship between Regina and Barry, the substantial fees paid to Regina by the Appellant compared with the fees received by Regina from Atco Gas and other relevant facts, I have concluded that the amounts paid to Aniger by the Appellant should be determined as follows:

		Deduct	Amount Allowed
2002	\$250,641.00	\$75,000.00	\$175,641.00
	\$246,386.00	\$75,000.00	\$171,386.00

Travel Expenses

[26] In 2001, the Appellant claimed a deduction of \$7,694.00 in airfare expenses and \$4,211.00 in hotel expenses related to a trip to North Bay, Ontario.

[27] Barry testified that one of the main reasons he and other employees of the various companies took this trip was for business purposes, i.e., to attend a strategy session.

[28] The Minister maintains that the main reason for the trip from Calgary to North Bay was to celebrate the 80th birthday of the mother of Barry and Bryan and the mother or relative of other employees of the companies.

[29] I have concluded that 50 per cent of these expenses should be allowed as business expenses and 50 per cent of these expenses should be recognized as personal expenses.

Meals and Entertainment Expenses

[30] The Appellant claimed a deduction for meals and entertainment expenses in the amount of \$9,480.00 in the 2002 taxation year.

[31] The Minister maintains that the Appellant knew, or ought to have known, that 50 per cent of the meals and entertainment expenses that were claimed were not allowable deductions pursuant to section 67.1 of the *Act*.

[32] I agree with the Minister's position and, therefore, 50 per cent of these expenses should be disallowed.

Insurance Expenses

[33] The Appellant claimed the following insurance expenses:

Vehicles	2001	2002
1989 Jaguar		
1986 Ford Bronco	\$2,498.00 (total)	\$442.00 (total)
1995 Dodge Stealth		

The Minister disallowed this claim. I agree with the position taken by the Minister.

Capital Cost Allowance on 1998 Dodge Ram

[34] The Appellant claimed Capital Cost Allowance (“CCA”) of \$2,442.00 in the 2002 taxation year and the Minister disallowed this amount. I agree with the position taken by the Minister.

Repairs to the 1989 Jaguar

[35] The Appellant claimed \$99.00 in the 2002 taxation year and the Minister disallowed this amount. I agree with the position taken by the Minister.

Penalties

[36] The Minister assessed penalties in the following situations:

1. Consulting fees paid by the Appellant to Aniger in the amount of \$497,027.00 in the 2002 taxation year;
2. Amounts disallowed for travel expenses in the amount of \$11,905.00 in the 2001 taxation year;
3. Insurance expenses of \$2,498.00 in the 2001 taxation year and \$442.00 in the 2002 taxation year;
4. CCA of \$2,442.00 in the 2002 taxation year; and
5. Repairs in the amount of \$99.00 in the 2002 taxation year.

[37] The Minister imposed penalties under subsection 163(2) of the *Act*. In support of the penalties, counsel for the Respondent said in her argument:

My friend is correct, *Venne* is the key decision. ...
(see *Venne v. The Queen*, 84 D.T.C. 6247)

(Transcript, page 584, lines 1 - 2).

Counsel for the Respondent then quoted from paragraph 37 of the *Venne* decision:

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 or not the law was complied with.

(Transcript, page 584, lines 13 – 19)

[38] At page 591 of the transcript, counsel for the Respondent said:

In the penalty recommendation report, part of her reason for supporting it was that they had previous interaction with the CRA.

(Transcript, page 591, lines 5 – 7)

(Note: The reference to “they” in the above quote was a reference to Barry and Bryan and their companies.)

[39] Counsel for the Respondent filed a copy of an Audit Report for the Singletons for an earlier period but did not file a copy of the T-401 Report. In connection with the failure of the Respondent to file a copy of the T-401 Report, I said:

JUSTICE: Well, I don't want to see the Crown file a half of a document. You can't file an audit report and say, “Well, there's the story. He's done it before.” Give me the full report, not just the audit report. Let's see the T4-1 [*sic*] report or the Appeals Section report. This is just half the story. ...

(Transcript, page 590, lines 7 – 13)

[40] Later on during the hearing, I referred to the audit and said:

JUSTICE: ... How was it finally resolved? That's what I'm concerned about.

(Transcript, page 592, lines 19 – 21)

(Note: Counsel for the Respondent said that they could not find the T-401 Report or the Appeals Section Report.)

[41] In re-examination of Mr. Nagy, counsel for the Appellant referred to the earlier Audit Report and said:

Q. First, my friend took you to an earlier audit, and you mentioned that during the course of that audit, there were errors by the auditor, and they were required to apologize?

A. That's right.

Q. Can you tell us about that?

A. Well, there were a number of issues, and then there was a statement made by a CAR – CRA auditor – that looking at it would lead to the belief that the taxpayer or – or not necessarily carrying out their duties and responsibilities as a – as a taxpayer.

So, we confronted the auditor, and – and the subsequent individual, the supervisor, and they indicated to us that they would retract the statements in a letter, 'cause we proved that they were erroneous, they were wrong. And we never, ever did get that letter, and we phoned her a couple of times, and never, ever got the letter.

(Transcript, page 305, lines 4 – 23)

[42] Based on the evidence presented, I am not convinced that the penalties that were imposed should apply. All of the penalties should be deleted.

Costs:

[43] Counsel for the Appellant argued that solicitor/client costs should be awarded in this situation.

[44] In *Young v. Young*, [1993] 4 S.C.R. 3, the Supreme Court of Canada said:

Solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties. ...

[45] Solicitor/client costs are only awarded in extreme and unusual circumstances. In my opinion, this is not a situation where solicitor/client costs should be awarded.

[46] With respect to party to party costs, I have concluded that, since success has been divided, no costs should be allowed.

Signed at Vancouver, British Columbia, this 15th day of December 2010.

“L.M. Little”

Little J.

CITATION: 2010 TCC 640

COURT FILE NO.: 2007-4188(IT)G

STYLE OF CAUSE: SAEL INSPECTION LTD. AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: May 19 and 20, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: December 15, 2010

APPEARANCES:

 Counsel for the Appellant: Patrick Lindsay / Colena Der

 Counsel for the Respondent: Cynthia Isenor

COUNSEL OF RECORD:

 For the Appellant:

 Name: Patrick Lindsay / Colena Der

 Firm: Osler, Hoskin & Harcourt LLP
 Calgary, Alberta

 For the Respondent: Myles J. Kirvan
 Deputy Attorney General of Canada
 Ottawa, Canada