Docket: 2007-4189(IT)G

BETWEEN:

BARRY SINGLETON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of *Sael Inspection Ltd.* (2007-4188(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 2000 and 2001 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 638
Date: December 15, 2010
Docket: 2007-4189(IT)G

BETWEEN:

BARRY SINGLETON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS

[1] The Appellant graduated as an Engineer from the University of Western Ontario in 1974.

[2] Commencing in 1979, the Appellant and his twin brother Bryan Singleton ("Bryan") practiced as Engineers in Calgary, Alberta under the name of Singleton and Singleton.

[3] The Appellant retained legal counsel and arranged to have SAEL Inspection Ltd. ("SAEL") incorporated under the laws of the Province of Alberta. SAEL was incorporated on March 29, 1982.

[4] The Appellant was the sole shareholder and President of SAEL in the years under appeal.

[5] The Appellant and his brother Bryan were the only Directors of SAEL in the years under appeal.

[6] SAEL is in the business of oil and gas pipeline consulting.

[7] In 1999, the Appellant, his brother Bryan and their respective companies entered into a contract to provide the engineering services required to construct the Canadian portion of the Alliance Pipeline Project (the "Project").

[8] The Project was a proposed pipeline to carry natural gas from Fort St. John, British Columbia to Chicago, Illinois. The 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.

[9] The cost of the pipeline was estimated to be $5 Billion and the Canadian portion of the pipeline was estimated to cost $1.8 Billion.

[10] The Canadian portion of the Project was completed under budget.

[11] Aniger Consulting Inc. ("Aniger") was incorporated under the laws of the Province of Alberta on November 27, 1996.

[12] On February 1, 2000, Regina Gajecki ("Regina") purchased 100 per cent of the shares of Aniger.

[13] Regina is the sole shareholder and Director of Aniger.

[14] Aniger entered into a consulting agreement (the "Agreement") with SAEL on March 20, 2000.

[15] Regina was the common-law spouse of the Appellant and is now the wife of the Appellant.

[16] The Agreement stated that Aniger would provide various services to SAEL.

Aniger issued the following invoices to SAEL for the indicated 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

[17] Aniger was paid bonuses by SAEL of $95,000.00 in 2001 and $100,000.00 in 2002.

[18] The Minister of National Revenue (the "Minister") reassessed the Appellant to include in his income the amount of $246,386.00 in respect of a payment made by SAEL to Aniger pursuant to the direction of, or with the concurrence of, the Appellant for consulting expenses in the 2001 taxation year. The Minister maintains that this amount was a benefit that the Appellant wanted to confer on Aniger pursuant to subsection 56(2) of the *Income Tax Act* (the "*Act*").

[19] The Minister also assessed the Appellant by including in his income the amount of $15,000.00 in respect of a transfer of property made by SAEL to his brother, Lyal Singleton, pursuant to the direction of, or with the concurrence of, the Appellant for the purchase of a 1998 Dodge Ram in the 2001 taxation year. The Minister maintains that the transfer of the Dodge Ram was a benefit that the Appellant wanted to confer on Lyal Singleton pursuant to subsection 56(2) of the *Act*.

[20] The Minister also assessed the Appellant by including in his income the amount of $11,905.00 as a shareholder benefit pursuant to subsection 15(1) of the *Act* in respect of travel expenses claimed in the 2000 taxation year.

[21] The Minister also imposed gross negligence penalties on the Appellant pursuant to subsection 163(2) of the *Act*.

B. ISSUES

[22] Is the Appellant required to include the following amounts in his income?

Adjustment	2000	2001
Auto insurance paid by SAEL	$2,498.00	$ 442.00
North Bay Trip – flights paid by SAEL	$4,211.00	
North Bay Trip – hotel paid by SAEL	$7,694.00	
Interest benefit – shareholder loan	$3,558.00	$ 1,642.00
Auto repairs paid by SAEL		$ 99.00
Benefit conferred on Lyal Singleton – Dodge truck transferred to Lyal		$ 15,000.00
Benefit conferred – Consulting fees to common-law spouse		$246,386.00

[23] Was the Minister correct in imposing gross negligence penalties on the Appellant under subsection 163(2) of the *Act*?

C. ANALYSIS AND DECISION

[24] During the hearing, counsel for the Respondent indicated that she had provided counsel for the Appellant with a letter regarding the inclusion of the amount of $246,386.00 in the Appellant's income for the 2001 taxation year. The letter is dated May 11, 2010 and reads, in part, as follows:

> …
>
> As I've previously indicated in our various discussions attempting to narrow the issues for trial, as the consulting fees paid to Aniger are taxable income to Aniger, the Respondent is formally conceding the imposition of 56(2) benefits on Mr. Singleton regarding the unreasonable portion of the fees paid to Aniger.
>
> …

[25] In other words, the letter states that the Minister is prepared to remove the amount of $246,386.00 from the Appellant's income for the 2001 taxation year.

Automobile Insurance

[26] With respect to automobile insurance paid by SAEL, in the amount of $2,498.00 in the 2000 taxation year and $442.00 in the 2001 taxation year, I accept the position of the Minister.

Travel Expenses

[27] SAEL claimed a deduction of $4,211.00 in hotel expenses related to a trip to North Bay, Ontario in the 2000 taxation year. The parties involved on this trip were mainly members of the Singleton family. In the Reasons for Judgment issued for SAEL, I have allowed SAEL to deduct one half of this amount as a business expense. I have concluded that the amount of $4,211.00 should be removed from the Appellant's income.

[28] SAEL claimed a deduction of $7,694.00 in airfare expenses related to a trip to North Bay, Ontario in the 2000 taxation year. In the Reasons for Judgment issued for SAEL, I have allowed SAEL to deduct one half of this amount as a business expense. I have concluded that the amount of $7,694.00 should be removed from the Appellant's income.

Interest Benefits – Shareholder Loan

[29] Interest Benefits in the amount of $3,558.00 and $1,642.00 were included in the Appellant's income for the 2000 and 2001 taxation years respectively. Mr. Nagy, the accountant for the Appellant, SAEL and Aniger maintains that there is no basis for this position. I accept the testimony of Mr. Nagy on this point. The Interest Benefits referred to above should be removed from the Appellant's income.

Automobile Repair

[30] Auto Repair, paid by SAEL, in the amount of $99.00. I accept the position of the Minister.

Benefit Conferred on Lyal Singleton – Dodge Truck

[31] A Dodge Truck was transferred to the Appellant's brother, Lyal Singleton. The Appellant was reassessed to include the amount of $15,000.00 in his income. The Appellant testified that he believed that the value of this truck at the time of transfer was $10,000.00. The Appellant also testified that Lyal Singleton paid him

$10,000 for this truck. The Appellant said that the truck was not in good shape when it was transferred and Lyal made a number of repairs. I accept the testimony of the Appellant. The amount of $15,000.00 should be removed from the Appellant's income. The Appellant's shareholder loan account in SAEL should be adjusted to recognize that Lyal Singleton paid $10,000.00 to the Appellant for the Dodge Truck in 2001.

Penalties

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

1. Consulting fees paid by SAEL to Aniger in the amount of $246,386.00 in the 2001 taxation year;

2. Amounts disallowed for travel expenses in the amount of $11,905.00 in the 2000 taxation year;

3. Auto insurance expenses of $2,498.00 in the 2000 taxation year and $442.00 in the 2001 taxation year;

4. Benefit conferred re 98 Dodge Ram sale of $15,000.00 in the 2001 taxation year; and

5. Repairs on the Jaguar in the amount of $99.00 in the 2001 taxation year.

[33] 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 *Venne*:

> 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)

[34] 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.)

[35] 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 prepared by the Appeals Section. 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)

[36] Later on during the hearing, I referred to the Audit Report 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.)

[37] 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.
>
> (Emphasis added)
>
> (Transcript, page 305, lines 4 – 23)

[38] 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

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

[40] 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. …

[41] Many Court decisions have made similar comments.

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

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

[44] The appeal is allowed, without costs, and the Minister is to make the adjustments referred to above.

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

"L.M. Little"

Little J.

CITATION:	2010 TCC 638
COURT FILE NO.:	2007-4189(IT)G
STYLE OF CAUSE:	BARRY SINGLETON 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