Citation: 2011 TCC 382
Date: August 15, 2011
Docket: 2010-3182(IT)I

BETWEEN:

NASR HANNA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Docket: 2010-2919(IT)I

AND BETWEEN:

SARWAT MANSOUR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Edited from the transcript of Reasons for Judgment delivered orally from the Bench on June 2, 2011 in Hamilton, Ontario)

Campbell J.

[1] Good morning again to both of you. Let the record show that I am going to deliver oral reasons in the appeals, which I heard yesterday, respecting Sarwat Mansour and Nasr Hanna. These appeals were heard together on common evidence and are in respect to the 2005, 2006, and 2007 taxation years of both Appellants.

[2] In computing income for these taxation years, the Appellants claimed expenses in respect to a property located at Lawrence Avenue East in Toronto (the "property"). By Notices of Reassessment, the Minister of National Revenue (the "Minister") disallowed the claimed rental expenses.

[3] The Appellants purchased the commercially zoned property in 2004 for $235,000. Each owned a 50 per cent interest in the property. It was purchased to act as a centre for the purpose of facilitating refugees coming to Canada from the Middle East, particularly Egypt, as well as their adjustment to Canada.

[4] The Appellants incorporated an association called Canadian Coptic Association, which Mr. Mansour testified was incorporated at the insistence of the bank as a means of borrowing money. The Appellants spent approximately $60,000 on renovations, as the property had previously been used as an animal hospital. A mortgage of $130,000 was obtained in the names of both Appellants.

[5] According to Mr. Mansour, they made attempts at renting the property after the renovations were completed but were largely unsuccessful. They advertised in newspapers that provided free advertising and gave it to a realtor at one point with the hope of renting it. The property was rented briefly to a tenant in 2005, but after 2005, the property was never rented. Any potential rentals would be short-term in the event refugees arrived on short notice from the Middle East.

[6] The Canadian Coptic Association paid the monthly mortgage payments on the property, together with the utility, telephone, and security services accounts. According to the evidence of Mr. Mansour, he maintained a line of credit from which he filtered funds through the Association's bank account to pay the expenses relating to the property. In addition to the one short rental in 2005, Mr. Mansour indicated that, on occasion, the property was rented for an occasional night for meetings, for example. Mr. Mansour indicated that there was no physical presence of the Association at the property except for signage on the front yard and a phone and small desk inside the property.

[7] The issue in these appeals is whether the Appellants can deduct various expenses related to maintenance of this property in the 2005, 2006, and 2007 taxation years.

[8] The Minister denied these expenses on two bases:

> (1) that it was not the Appellants that incurred the expenses relating to this property; and, alternatively,

(2) that, if they were incurred by the Appellants, the expenses are still not deductible because they were not incurred to gain or produce income in respect to this property.

[9] The evidence respecting many of the expenses, who paid them and how they were paid was simply not put before me, either in the documentary or oral evidence. I have documentary evidence that the utilities, telephone, and security expenses were incurred in the name of the Association. Even though the interest expenses on the mortgage were paid through an account set up in the name of the Association, the mortgage was taken out in the names of the Appellants, and they were legally liable, consequently, for the interest expenses.

[10] I have no evidence before me respecting the payment of any remaining claimed expenses such as insurance, taxes, and professional fees. There is simply no evidence for me to draw any conclusions respecting who incurred them or who paid them. Consequently, except for the principal and interest on the mortgage payments, which were incurred by the Appellants personally, a few of the expenses were incurred in the name of the Association (the utilities, the phone, and security) and not the Appellants. However, there was no evidence before me respecting the remaining expenses from which I could draw any conclusions.

[11] Since there are the interest expenses associated with the mortgage, which were incurred by the Appellants, I will address the Minister's alternative argument, that is, that there is no source of income. This second argument applies to all of the claimed expenses and not only the interest expenses related to the mortgage. The pursuit-of-profit-source test is stated at paragraph 54 of the decision in *Stewart v The Queen*, 2002 SCC 46, [2002] S.C.R. 645: "Does the taxpayer intend to carry on an activity for profit and is there evidence to support the intention?" The Supreme Court of Canada in *Stewart* went on to state: "This requires the taxpayer to establish that his or her predominant intention is to make a profit from the activity and that the activity has been carried out in accordance with objective standards of businesslike behaviour."

[12] This pursuit-of-profit-source test is to be applied in instances where there is some personal element involved in the activity undertaken by a taxpayer. Clearly, the activity in these appeals involved the stated personal goals of the Appellants, which was to use the property as a focal point in assisting refugees to come to Canada and eventually assist them to locate work here. In fact, according to the evidence of Mr. Mansour, this was his predominant objective or intention in acquiring this

property. He stated that, in the interim, he and his partner were hoping to rent the property on a short-term basis to commercial tenants.

[13] The decision in *Stewart* referenced Justice Dickson's conclusions in *Moldowan v The Queen*, [1978] 1 S.C.R. 480, in setting out a number of objective factors which should be considered in determining whether or not a taxpayer is carrying on an activity in a business-like or commercial manner. These objective factors, which are not intended to be an exhaustive list, include the following:

> (1) the profit-and-loss experience in past years;
> (2) the taxpayer's training;
> (3) the taxpayer's intended course of action; and,
> (4) the capability of the venture to show a profit.

[14] In reviewing the evidence as it relates to these factors, the Court should not second-guess the business judgment of the taxpayer. However, because there is a personal element to this activity, a review of the factors must be undertaken in order to determine whether the predominant intention of the Appellants was to make a profit from the commercial rental of the property and, if so, whether the rental activity was carried out according to business-like behaviour and standards. According to the evidence, there was very little rental activity occurring in these years. At best, the rentals were sporadic, consisting of one tenant for several months in 2005 and, other than that, short rental periods for meetings or barbecues. The rental activity, such as it was, was never profitable and the picture is one of minimal revenue with comparably significant losses.

[15] In fact, the Appellants stated that they did not conduct an investigation prior to the purchase of the property as to whether it would even produce rental income. Mr. Mansour also testified in cross-examination that they intended to look after the property expenses personally if there was no rental income. The evidence was also that the tenants would have to vacate quickly if refugees suddenly arrived from the Middle East. This may have undermined their ability to attract long-term tenants or tenants at all to this property.

[16] All of this leads to the conclusion that the Appellants never really turned their attention to the rental of the property, at least not in a serious manner. None of this is in accordance with the standards of business-like behaviour. The Appellants were not previously involved to any great extent in the rental of properties. Nasr Hanna is a doctor and Mr. Mansour is retired from the automotive industry. Although

Mr. Mansour did have some experience with the purchase and rental of residential units, this did not appear to be an extensive involvement.

[17] The evidence supports my conclusion that the Appellants' predominant and primary intention was to use this property with respect to their refugee endeavours and not to make a profit from its rental activities. The rentals seemed to be, if anything, an afterthought, with little effort put into making the commercial rental activities a reality. For these reasons the appeals are dismissed without costs. And that concludes my reasons in the two appeals.

Signed at Summerside, Prince Edward Island, this 15th day of August 2011.

"Diane Campbell"

Campbell J.

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