

Docket: 2011-2111(IT)I

BETWEEN:

MICHAEL J. CARUSO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 18, 2012, at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant: Allan Garber
Counsel for the Respondent: Rishma Bhimji

JUDGMENT

The Appellant's appeal is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 29th day of June, 2012.

“Wyman W. Webb”

Webb J.

Citation: 2012TCC233
Date: 20120629
Docket: 2011-2111(IT)I

BETWEEN:

MICHAEL J. CARUSO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The Appellant is a professional hockey player. The issue in this appeal is whether the Appellant is entitled to deduct, in computing his income from employment for 2008, the amount of \$2,927.64 paid by the Appellant to MFIVE SPORTS in 2008, for services rendered in negotiating the Appellant's contract with the Florida Panthers Hockey Club, Ltd. (the "Florida Panthers").

[2] In 2006 the Appellant and his father entered into a contract with AKT Sports Management Consultants Inc. (which later became MFIVE SPORTS). The Appellant signed the contract on his 18th birthday. Paragraph 2 of this Agreement provides that:

2. Services

The Agent is hereby retained by the Player to represent, advise, counsel, and assist Player:

- (1) in conducting individual compensation negotiations for the Player's services with the Player's NHL club; and
- (2) in maintaining and enforcing the Player's rights following execution of a contract with the Player's NHL club.

In performing these services, the Agent agrees to perform in such a manner so as to ensure the effective representation of the Player and to at all times protect the best interests of the Player. The Agent further agrees to comply fully with the Regulations.

It is understood and agreed that the Agent shall not have the authority to bind or commit the Player in any manner without prior written consent of the Player. In no event shall the Agent execute a Player contract for, or on behalf of, the Player.

[3] On May 28, 2008 the Appellant signed a three year contract with the Florida Panthers. The fee payable by the Appellant to his agent was 3.5% of his signing bonus instalment (on signing) and minimum 2008-2009 salary (Minors), which was 3.5% of \$74,750 (U.S.) = \$2,616.25 (U.S.) (which is \$2,927.64 (Cdn)). The issue is whether this payment of the agent's fee is deductible in determining the Appellant's income from employment in 2008.

[4] Subsection 8(2) of the *Income Tax Act* (the "Act") provides as follows:

(2) Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

[5] Therefore the amount paid by the Appellant will only be deductible in computing his income from employment if there is a specific provision of the *Act* that permits such a deduction to be made. The Appellant argued that the deduction of the amount was permitted either under paragraph 8(1)(b) of the *Act* or subsection 8(5) of the *Act*.

[6] Paragraph 8(1)(b) of the *Act* provides as follows:

8. (1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

...

(b) amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect or establish a right to salary or wages owed to the taxpayer by the employer or former employer of the taxpayer;

[7] In order to be deductible under this paragraph the amount must be paid for legal services and those legal services must be services rendered "to collect or

establish a right to salary or wages owed to the taxpayer”. In this case the services rendered by the agent were the services in negotiating the contract that was entered into between the Appellant and the Florida Panthers. When the Appellant was asked about the services provided by the agent, he referred to the additional \$60,000 in signing bonuses that the agent was able to obtain for him.

[8] The Player–Agent Contract was between the Appellant and AKT Sports Management Consultants Inc. While the Appellant’s father stated that Anton Thun (who signed the contract as the guarantor) was a lawyer, there was no indication whether the corporation AKT Sports Management Consultants Inc. was authorized to practice law. The services provided by AKT Sports Management Consultants Inc. (or MFIVE SPORTS) and for which payment was made, were, as described in paragraph 2(1) of the Player-Agent Contract. The agent (AKT Sports Management Consultants Inc.) represented and assisted the Appellant in negotiating his individual compensation (and in particular his signing bonus) payable by the Florida Panthers.

[9] To the extent that any of the services provided by AKT Sports Management Consultants Inc. (or MFIVE SPORTS) could be regarded as legal services, the services were not to collect salary or wages owed to the Appellant (the services were rendered before any contract was signed) nor were such services rendered to establish a right to salary or wages. The services were rendered to negotiate the contract. There was no right to any salary or wages until after the agreement was signed, which was after the services in question were rendered by the Appellant’s agent.

[10] The Appellant argued that the proposed amendment to paragraph 8(1)(b) of the *Act* will result in the amount being deductible. The proposed amendment, when proclaimed, will be applicable to amounts paid in 2001 or later. The revised version of paragraph 8(1)(b) of the *Act* will read as follows:

(b) amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to, an amount owed to the taxpayer that, if received by the taxpayer, would be required by this subdivision to be included in computing the taxpayer’s income;

[11] The proposed amendment will only change this paragraph when this amendment is effective. In any event, the provision will still require that the services must be legal services. As well, not all legal services will qualify. Only amounts paid for those legal services provided to collect amounts owed to the taxpayer or to establish a right to such amount will qualify for the deduction under this paragraph.

Therefore even if such amendments were now effective the proposed changes would not result in the amount that was paid to the Appellant's agent being deductible.

[12] The amount paid the Appellant to his agent is not deductible under paragraph 8(1)(b) of the *Act*.

[13] The Appellant also argued that the amount paid to his agent is deductible under subsection 8(5) of the *Act*. This subsection provides as follows:

(5) Notwithstanding subparagraphs (1)(i)(i), (iv), (vi) and (vii), ***dues are not deductible under those subparagraphs*** in computing a taxpayer's income from an office or employment to the extent that they are, in effect, levied

(a) for or under a superannuation fund or plan;

(b) for or under a fund or plan for annuities, insurance (other than professional or malpractice liability insurance that is necessary to maintain a professional status recognized by statute) or similar benefits; or

(c) for any other purpose not directly related to the ordinary operating expenses of the committee or similar body, association, board or trade union, as the case may be.

(emphasis added)

[14] However, subsection 8(5) of the *Act* does not permit a deduction but rather it denies or restricts a deduction that might otherwise have been claimed. This subsection provides that amounts that would otherwise be deductible under subparagraphs (1)(i)(i), (iv), (vi) or (vii) of the *Act*, will not be deductible to the extent that they are levied as specified in paragraphs 8(5)(a), (b), or (c) of the *Act*. This subsection does not permit any amounts to be deducted but restricts amounts that might otherwise have been deductible. Therefore this subsection cannot support any claim that the amount paid to the agent of the Appellant in 2008 can be deducted in computing the Appellant's income from employment. It is clear that the amount paid to the agent is not deductible under any of subparagraphs 8(1)(i)(i), (iv), (vi), or (vii) of the *Act*¹ even without the restriction imposed by subsection 8(5) of the *Act*.

¹ Subparagraphs 8(1)(i)(i), (iv), (vi) and (vii) of the *Act* provide as follows:

8. (1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

The Appellant, in any event, did not submit that any of these subparagraphs would permit the deduction claimed.

[15] The Appellant did not identify any other provision of the *Act* which would support his claim for a deduction in computing his income from employment in 2008 for the amount of \$2,927.64 paid by him to his agent in 2008. Since there is no provision that would permit the deduction of this amount, this amount is not deductible in computing the Appellant's income from employment for 2008 and his appeal is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 29th day of June, 2012.

...

(i) amounts paid by the taxpayer in the year as

(i) annual professional membership dues the payment of which was necessary to maintain a professional status recognized by statute,

...

(iv) annual dues to maintain membership in a trade union as defined

(A) by section 3 of the *Canada Labour Code*, or

(B) in any provincial statute providing for the investigation, conciliation or settlement of industrial disputes,

or to maintain membership in an association of public servants the primary object of which is to promote the improvement of the members' conditions of employment or work,

...

(vi) dues to a parity or advisory committee or similar body, the payment of which was required under the laws of a province in respect of the employment for the year, and

(vii) dues to a professions board, the payment of which was required under the laws of a province,

to the extent that the taxpayer has not been reimbursed, and is not entitled to be reimbursed in respect thereof;

“Wyman W. Webb”

Webb J.

CITATION: 2012TCC233
COURT FILE NO.: 2011-2111(IT)I
STYLE OF CAUSE: MICHAEL J. CARUSO AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Canada
DATE OF HEARING: June 18, 2012
REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT: June 29, 2012

APPEARANCES:

Agent for the Appellant: Allan Garber
Counsel for the Respondent: Rishma Bhimji

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada