Docket: 2008-2863(IT)G

BETWEEN:

TERRY PIERSANTI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 26-27-28-29-30, 2012, at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

Counsel for the Appellant:	V. Ross Morrison
Counsel for the Respondent:	Laurent Bartleman

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 1995, 1996 and 1997 taxation years is dismissed.

Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 11th day of July 2013.

"V.A. Miller"

V.A. Miller J.

Citation: 2013TCC226
Date: 20130710
Docket: 2008-2863(IT)G

BETWEEN:

TERRY PIERSANTI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] At the beginning of the hearing, the Appellant brought a motion for an Order to exclude all documents relied on by the Minister of National Revenue (the "Minister") when he issued the reassessments against her. It was the Appellant's position that the documents used to raise the reassessments under the *Income Tax Act* ("*ITA*") were obtained without judicial authorization during the course of a criminal GST investigation and her sections 7 and 8 rights under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") were violated. The Appellant also requested that the assumptions in the Reply to Notice of Appeal be struck and the notices of reassessment be vacated.

[2] In support of her motion, the Appellant intended to use the transcript from the discovery of the Respondent's nominee, John Di Rito, and to examine Mr. Di Rito at the hearing of the motion. As the appeal was set down for five days and to avoid duplication of evidence, the parties agreed that all evidence would be presented during the week but that I would make my decision on the motion first. A decision on the merits of the appeal would only be necessary if I allowed the motion in part or dismissed it.

[3] The issue in the appeal relates to the Appellant's 1995, 1996 and 1997 taxation years which were reassessed by notices dated December 14, 2001 to include the

amounts of $108,51.49, $680,392.51 and $116,182.32, respectively in her income. The reassessments were made beyond the normal reassessment period and subsection 163(2) penalties were also assessed.

(a) Motion

Facts

[4] John Di Rito is a team leader in the Criminal Enforcement Division of the Canada Revenue Agency ("CRA") and he has conducted criminal investigations with the CRA for 16 or 17 years.

[5] In 1999, Mr. Di Rito obtained a lead from the audit division of CRA that various corporations which owned shopping centres were not reporting the Goods and Services Tax (GST) which they collected from their commercial tenants. He prepared a preliminary report but in order to advance the case he needed the financial records of the corporations. On June 30, 1999 he sought a search warrant from a Justice of the Peace. It was declined. He then sought a search warrant from a Judge who granted his request.

[6] The search warrant was exercised on July 14, 1999 at the law office of Piersanti & Co. Among the documents seized were the records of various corporations which Mr. Di Rito thought were controlled by the Appellant and her spouse.

[7] The Appellant's spouse made a claim of solicitor/client privilege on the seized documents and the documents were sealed. Apparently, there were numerous hearings over a period of years with respect to these sealed documents.

[8] After the privilege claim was made, to further the investigation, Mr. Di Rito began to use Requirements issued pursuant to section 289 of the *Excise Tax Act* (the "*ETA*"). He stated that he did not seek any information which he thought might be covered by solicitor/client privilege. He served the Requirements on various banks, credit card companies and real estate firms and he interviewed tenants of the shopping centres which were owned by the corporations. According to Mr. Di Rito, he served between 50 and 60 Requirements from October 1999 until July 2001. Most of the Requirements were with respect to information concerning the corporations but some of the Requirements referenced the Appellant and/or her spouse.

[9] Mr. Di Rito relied on the documents he received from the Requirements to lay a total of 68 charges in the Superior Court of Justice against the Appellant, her

spouse, Glenwoods Properties Inc., Hanlon Properties Inc., and Tottenham Properties Inc. All charges were laid under the *ETA*. Pursuant to an Agreed Statement of Fact dated February 22, 2005, the Appellant entered a guilty plea to 35 of the charges. These charges detailed offences that occurred from 1995 to 1998. The charges against the Appellant's spouse were dropped and the charges against the corporations were stayed.

[10] Mr. Di Rito used the same documents which he received as a result of the Requirements to raise the income tax reassessments at issue in this appeal.

Appellant's Position

[11] It is the Appellant's position that the documents used to raise the reassessments under the *ITA* were obtained without judicial authorization during the course of a criminal GST investigation and her sections 7 and 8 rights under the *Charter* were violated.

[12] Counsel for the Appellant stated that Mr. Di Rito was engaged in a criminal investigation of the Appellant from July 1999 and in accordance with the Supreme Court of Canada's decision in *R v Jarvis*, 2002 SCC 73, Mr. Di Rito was obligated to use search warrants to further the investigation. Instead he used third party Requirements. As a result, the Appellant was never provided with a proper warning and it was only in October 2001 that she learned the CRA was considering a reassessment of her income tax liability. Counsel relied on the following paragraphs from *Jarvis* for his position:

> 88 In our view, where the predominant purpose of a particular inquiry is the determination of penal liability, CCRA officials must relinquish the authority to use the inspection and requirement powers under ss. 231.1(1) and 231.2(1). In essence, officials "cross the Rubicon" when the inquiry in question engages the adversarial relationship between the taxpayer and the state. …
>
> …
>
> 99 By way of summary, the following points emerge:
>
> 1. Although the ITA is a regulatory statute, a distinction can be drawn between the audit and investigative powers that it grants to the Minister.
>
> 2. When, in light of all relevant circumstances, it is apparent that CCRA officials are not engaged in the verification of tax

> liability, but are engaged in the determination of penal liability under s. 239, the adversarial relationship between the state and the individual exists. As a result, *Charter* protections are engaged.
>
> 3. When this is the case, investigators must provide the taxpayer with a proper warning. The powers of compulsion in ss. 231.1(1) and 231.2(1) are not available, and search warrants are required in order to further the investigation.

[13] Counsel argued that the evidence was obtained by an illegal search and seizure, in violation of the Appellant's rights under the *Charter*, and the evidence should be excluded pursuant to section 24 of the *Charter*. The reassessments based on this evidence should be vacated: *O'Neill Motors Limited v R*, [1996] 1 CTC 2714 (TCC); affirmed [1998] 3 CTC 385 (FCA).

Respondent's Position

[14] It was the Respondent's position that the use of Requirements in a civil audit does not violate the Appellant's rights under the *Charter*. Although the evidence gathered in this case may not have been acceptable in a criminal proceeding, it can be used in a civil trial. In the alternative, if it is found that the CRA cannot use section 289 of the *ETA* when there is a criminal investigation, then the Appellant has no standing to allege that her rights were violated because the Requirements were not used to gather documents respecting the Appellant but were used to gather documents with respect to the corporations she controlled: *R v Edwards*, [1996] 1 SRC 128. In the further alternative, if there was a violation of the Appellant's rights, the evidence should not be excluded when one considers the tests in *R v Grant*, 2009 SCC 32.

[15] In *Grant*, the Supreme Court of Canada noted that the purpose of subsection 24(2) is to maintain the good repute of the administration of the justice and the phrase "bring the administration of justice into disrepute" has to be understood in the long-term sense of maintaining the integrity of, and the public confidence in the justice system. Second, determining whether the admission of evidence obtained in a breach would bring the administration of justice into disrepute engages three lines of inquiry:

- The seriousness of the Charter-infringing state conduct;
- The impact of the breach on the Charter-protected interests of the accused; and

- Society's interest in the adjudication of the case on its merits.

It is the trial judge's task to weigh these factors.

[16] Counsel for the Respondent spoke to these three lines of inquiry and concluded that, if there was a Charter breach in this case, the evidence should not be excluded.

[17] Prior to making my decision with respect to the motion, I asked both counsel for their submissions in light of the recent decision in *Romanuk v The Queen*, 2013 FCA 133.

[18] Counsel for the Appellant referenced paragraph 6 in *Romanuk* and reiterated that the "predominant purpose" of Mr. DiRito's inquiry was criminal in nature. Therefore all information and documents were obtained without a search warrant and in violation of the Appellant's rights under sections 7 and 8 of the *Charter*. The documents obtained by the CRA through the use of the Requirements in the present case were not obtained for the purpose of administering the *ITA* but rather for the purpose of furthering a criminal prosecution for GST evasion. Counsel again submitted that the decision in *O'Neill Motors* (*supra*) is applicable considering the circumstances in this appeal.

[19] Counsel for the Respondent wrote that the Federal Court of Appeal decision in *Romanuk* affirmed that CRA could continue to use its civil audit powers even after it has begun a criminal investigation of the taxpayer. The results obtained from the use of the civil audit powers cannot be used in relation to a prosecution of the taxpayer but they can be used to raise a reassessment of the taxpayer.

Analysis

[20] As of July 1999, the predominant purpose of Mr. Di Rito's investigation was the determination of the Appellant's penal liability under the *ETA*. The documents received as a result of the Requirements was in furtherance of that investigation. Such evidence may be excluded from the prosecution of an offence: *R v Ling*, [2002] SCC 74 at paragraph 5. However, the issue before this court is the determination of the Appellant's income tax liability not her penal liability. The question is whether the Appellant's section 7 and 8 rights under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") were violated when the documents obtained through the use of the Requirements were used to reassess the Appellant's income tax liability.

[21] The CRA may conduct both an audit and an investigation concurrently. They are not mutually exclusive: *Ling (supra)* at paragraph 30.

[22] The Supreme Court of Canada made a distinction between the procedures that had to be used when CRA officials were engaged in a criminal investigation rather than the verification of tax liability. They found that although an audit and an investigation could be conducted concurrently, the results of the audit could not be used in furtherance of the prosecution. However, the results of the audit can be used in relation to an administrative matter, such as a reassessment: *Romanuk v The Queen*, 2013 FCA 133 at paragraph 7.

[23] It is my view that the Appellant's rights under section 7 and 8 of the *Charter* are not violated by using the information from the Requirements to raise the reassessments at issue. In fact, the use of Requirements is one of the tools the CRA has to further an audit. Her section 7 and 8 rights may have been violated by using the information from the Requirements to prosecute her under the *ETA* but that would have been a question for the Superior Court of Justice to decide at the Appellant's trial for GST evasion: *Romanuk* at paragraph 8. The Appellant chose not to raise that defence at the proceedings before the Superior Court of Justice.

[24] The Appellant relied on the decision in *O'Neill Motors* to assert that the reassessments should be vacated. However, *O'Neill Motors* is distinguishable from the present appeal. At the prosecution of *O'Neill Motors*, the criminal court found that the documents relied on to lay the charges were illegally seized under section 231.3 of the *ITA* as that section had been found to be unconstitutional. It also found that the subsequent re-seizure of the documents under section 487 of the Criminal Code was an abuse of process and a violation of O'Neill Motors' rights under sections 7 and 8 of the *Charter*. There was no such determination by the criminal court in the present matter. In addition, unlike the situation in *O'Neill Motors*, the documents in the present appeal were not seized pursuant to an unconstitutional section of the *ETA*.

[25] It is the Appellant's position that the CRA used an improper investigation tool to gather information to prosecute the Appellant. It is my view that this position should have been advanced before the criminal court where the Appellant's penal liability was at issue. The only issue before this court is the Appellant's income tax liability. I find that it was proper for the CRA to use the documents it received as a result of the Requirements to assess the Appellant's income tax liability. In the context of our self-assessment and self-reporting income tax regime, a taxpayer's privacy interest in records that may be relevant to his or her tax liability is relatively low: *R v McKinlay Transport Ltd*, [1990] 1 SCR 627 at paragraph 38.

[26] In *Romanuk (supra)*, the taxpayer alleged that the CRA used its audit powers in subsection 231.1(1) of the *ITA* to obtain documents after it had commenced a criminal investigation. The taxpayer argued that the use of these audit powers by CRA violated her sections 7 and 8 *Charter* rights. Webb JA wrote:

> [8] The use of such information or documents in administering the *Act* and reassessing the appellant does not violate her rights under either section 7 or 8 of the *Charter* because the CRA has the right to continue to use its audit powers provided that the information or documents are only used for the purposes of administering the *Act*. If the information or documents are to be used in an investigation or prosecution of an offence under section 239 of the *Act*, the issue for the particular court dealing with the prosecution of the offence under section 239 of the *Act*, will be whether the predominant purpose of the exercise of such powers was to gather information or documents for such investigation or prosecution.
>
> …
>
> [10] Even if the CRA were contemplating an investigation of the appellant before any requirement for information was made by the CRA, this does not suspend the right of the CRA to make such requests for information for the purposes of administering the *Act* using the inspection and audit powers as set out in subsections 231.1(1) and 231.2(1) of the *Act*. **Any information or documents obtained using such powers could be used to reassess the appellant (including the assessment of penalties under subsection 162(1) and 163(2) of the *Act*). (emphasis added)** Whether such information or documents could also be used for the purpose of an investigation of an offence under section 239 or the prosecution of such offence is not a matter for the Tax Court of Canada. The only issue before the Tax Court of Canada is the validity of the reassessment, *i.e.*, whether the appellant's claim in relation to the losses of the partnership that were allocated to her is correct and whether the assessment of the penalties under subsections 162(1) and 163(2) is correct.

[27] It is my view that the recent decision by the Federal Court of Appeal in *Romanuk* answers the question in this motion. The motion is dismissed.

(b) The Reassessments

[28] As stated earlier, the issue in the appeal relates to the Appellant's 1995, 1996 and 1997 taxation years which were reassessed to include the amounts of $108,512.49, $680,392.51 and $116,182.32, respectively in her income. The reassessments were made beyond the normal reassessment period and subsection 163(2) penalties were also assessed.

[29] The witnesses at the hearing were the Appellant, David Fine, a chartered accountant, and John Di Rito, a team leader in the Criminal Enforcement Division of the Canada Revenue Agency ("CRA").

Facts

[30] The Appellant and her spouse controlled numerous corporations. Some of those corporations were: Gold Financial Corporation ("Gold Corp."), Pier Properties Inc. ("Pier Inc."), Polar Property Management Inc. ("Polar Inc."), 789533 Ontario Limited ("789 Ltd."), Yonge Davis Center Inc. ("Yonge Inc."), Glenwoods Properties Inc. ("Glenwoods Inc."), Hanlon Properties Inc. ("Hanlon Inc."), Tottenham Properties Inc. ("Tottenham Inc.") and Justin Properties Inc. I will refer to these corporations collectively as the Corporations.

[31] Yonge Inc., Glenwoods Inc., Hanlon Inc. and Tottenham Inc. owned shopping centres and received rental income from their operations. I will refer to these operations collectively as the Commercial Rental Operations. Neither Gold Corp. nor 789 Ltd. carried on business or had any business activities. They had no income or expenses and they filed nil income tax returns for each of the years at issue. Pier Inc. has not filed an income tax return since 1993.

[32] In analyzing the bank statements that he received, Mr. Di Rito found that there were numerous disbursements of a personal nature from the bank accounts held by Gold Corp., 789 Ltd., Pier Inc., Polar Inc. and Yonge Inc. ("the Disbursements"). He traced the source of the funds in the bank accounts held by Gold Corp., 789 Ltd., Pier Inc., and Polar Inc. and found that the rental income and the unremitted GST from the Commercial Rental Operations had been transferred to the bank accounts held by Gold Corp., 789 Ltd., Pier Inc., and Polar Inc.

[33] The Disbursements were used to pay for such things as the tuition fees for the private schools which the Appellant's children attended, condo fees for a vacation property, membership at the King Equestrian Club, fees to the Appellant's children's orthodontist, the mortgage on the family residence, the Appellant's personal credit cards, cash payments to the Appellant and her spouse's personal bank accounts, automobile expenses for vehicles driven by the Appellant and her spouse, payments on the personal demand loans taken out by the Appellant and her spouse, life insurance premiums and the property taxes on the family residence. Attached as an appendix to these reasons is a list of those Disbursements.

[34] The Appellant was an officer of the Corporations and she was employed as the property manager for the Commercial Rental Operations. She was the sole signing

authority on the bank accounts for all the Corporations. She admitted that all Disbursements were made pursuant to her direction or with her concurrence. However, it was her position that the Disbursements were repayments of a loan which she had made to Gold Financial Trust ("Gold Trust") in 1995.

[35] The Appellant explained that Gold Trust is a family trust which was created for the benefit of her children. She and her spouse are its trustees. She stated that the revenue and expenses from the Commercial Rental Operations was reported for income tax purposes by Gold Trust.

[36] The exhibits tendered by the Appellant included the income tax returns and Financial Statements for Gold Trust for 1995, 1996 and 1997. The Appellant stated that the account listed as "Due to related party" in the 1995 Financial Statements and the account listed as "Advances from related party" in the 1996 and 1997 Financial Statements evidenced the loan she made to Gold Trust.

[37] The Appellant described the circumstances which gave rise to her making the loan to Gold Trust. She stated that, in the mid 1990's, she and her spouse had two other partners in a corporation called Map Properties Inc. ("Map Inc."). Map Inc. was indebted to the Royal Bank for approximately $11 million. The Appellant, her spouse, the corporations which owned the shopping centres and other parties had guaranteed Map Inc.'s indebtedness and on December 7, 1994, the Royal Bank called its loan. It forbore from enforcement of its security until February 28, 1995. It was the Appellant's evidence that they were able to arrange refinancing for approximately $10.5 million but on the very last day they still needed approximately $1 million. She stated that she went to the CIBC where she negotiated the balance needed to pay the indebtedness with the Royal Bank. It is this $1 million which she stated she lent to Gold Trust.

[38] There was no explanation given with respect to the relationship between Map Inc. and Gold Trust. However, the partial accounting records for Gold Corp. and Gold Trust which were submitted as exhibits showed that the Appellant and her spouse had set up a complicated structure with respect to their assets. Each of their large assets, including the family home, was held in a separate corporation. All accounting entries for the group of corporations were recorded in the books of Gold Corp. and the results of these records were reported for income tax purposes by Gold Trust.

[39] The Appellant was not able to answer any questions with respect to these accounting records. She stated that it was her accountant who structured the books in this fashion and he told her bookkeeper how to make the various entries. Neither the

accountant nor the bookkeeper was called as witnesses and I have inferred that their evidence would not have supported the Appellant. I realize that counsel for the Appellant stated that the accountant had retired, but it does not follow that he was not available to be called as a witness.

[40] Mr. David Fine was called as a witness to speak to the accounting records. He did not prepare the records and he did not see any of the source documents which were used to prepare the records. Any conversations that he had with the maker of the accounting records are hearsay. I have given no weight to his evidence respecting any of the accounting records.

[41] For those Disbursements paid directly to her, the Appellant was assessed pursuant to paragraph 6(1)(*a*) of the ITA on the basis that she received or enjoyed a benefit in the course of, or by virtue of the office or employment she held with the Corporations.

[42] With respect to those Disbursements paid to persons other than the Appellant, the Appellant was assessed pursuant to subsection 56(2) of the *ITA* on the basis that they were benefits which she desired to confer on her spouse or her children.

Analysis

[43] I have concluded from the evidence that the Appellant did not make a loan to Gold Trust or to any of the corporations she controlled. My conclusion is based on the following reasons.

[44] Firstly, it was her evidence that she guaranteed the loan which was received from the CIBC in February 1995. She stated that she negotiated the loan and that it would not have been granted but for her "personal guarantee". The Appellant's evidence does not support her position that she made a loan to Gold Trust. She also stated that the properties were used as collateral for the loan from CIBC. Based on the Appellant's evidence and the Financial Statements for Gold Trust, I have concluded that Glenwoods Inc., Hanlon Inc. and Tottenham Inc. were the borrowers of the loan from the CIBC and they used their properties as collateral for that loan. The Appellant gave her personal guarantee for that loan and she testified that the CIBC has not demanded payment of the loan. In other words, her guarantee has not been called.

[45] Secondly, according to the income tax returns prepared and filed by the Appellant, she did not have the personal resources to make a personal loan to Gold Trust. The income reported by the Appellant was as follows:

Year	Income Reported	Source
1989	$13,000	T4 Earnings
1990	$22,790 $1,199	Dividends Family Allowance
1991	$10,422 $1,221	RRSP Income Family Allowance
1992	$1,255	Family Allowance
1993	$14,400	T4 Earnings
1994	$15,600	T4 Earnings
1995	$12,600	T4 Earnings from her spouse's law firm, Piersanti & Co.
1996	$0	
1997	$0	

[46] Lastly, if the Appellant had made a loan to Gold Corp. or Gold Trust or any of the Corporations she controlled, she ought to have been able to give documentary evidence to support her position. I do not accept that the entries marked "Due to a related party" or Advances from a related party" in the Financial Statements for Gold Trust refer to the Appellant. There has not been any evidence presented to me which would allow me to conclude that the Appellant made a loan to Gold Trust. Actually, there has not been any evidence which verified that these entries "Due to a related party" or Advances from a related party" are correct. I note that in its 1996 and 1997 income tax returns, Gold Trust declared that it did not borrow money or incur a debt in a non-arm's length transaction since June 18, 1971. In 1995, Gold Trust did not make any declarations.

[47] Paragraph 6(1)(*a*) of the *ITA* reads:

> 6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:
>
> (*a*) the value of board, lodging and other *benefits of any kind* whatever (except the benefit he derives from his employer's contributions to or under a registered pension fund or plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit sharing plan or group term life insurance policy) *received or enjoyed by him in the year in respect of, in the course of, or by virtue of an office or employment*; (emphasis added)

[48] A review of the evidence presented by Mr. Di Rito showed that the Appellant used the bank accounts for the Corporations as her personal banker. Over the period, she received a net amount of $7,591.37 cash from the Corporations This amount was taken from the Corporations and deposited into her personal bank account. It is not difficult to conclude that the amount of $7,591.37 was a benefit received by the Appellant in respect of, in the course of, or by virtue of her office or employment with the Corporations: *R v Savage*, [1983] 2 SCR 428.

[49] Subsection 56(2) of the *ITA* provides:

> **56**....
> (2) A payment or transfer of property made pursuant to the direction of, or with the concurrence of, a taxpayer to some other person for the benefit of the taxpayer or as a benefit that the taxpayer desired to have conferred on the other person shall be included in computing the taxpayer's income to the extent that it would be if the payment or transfer had been made to him

[50] The four preconditions contained in subsection 56(2) are:

(1) the Disbursement must be made to a person other than the Appellant;

(2) the Disbursement must be made at the direction or with the concurrence of the Appellant;

(3) the Disbursement must be for the benefit of the Appellant or for the benefit of another person whom the Appellant wanted to benefit; and,

(4) the Disbursement would have been included in the Appellant's income if it had been received by her.

[51] The requirements of subsection 56(2) have been met in this case for all Disbursements made to parties other than the Appellant.

[52] All Disbursements, except the cash taken by the Appellant personally, were made to third parties. The Appellant has admitted that the Disbursements were made pursuant to her direction or with her concurrence. The Disbursements were made for the benefit of the Appellant's children and her spouse. They were made to fund her family's living expenses. The Disbursements to her spouse alone were $94,354.76. There is no doubt that the amount of the Disbursements would have been included in the Appellant's income if it had been received directly by the Appellant.

[53] I will speak to the Disbursement made to Justin Properties Inc. because it was the Appellant's position that the amount of $470,550 was a loan to Justin Properties Inc.

[54] The only asset owned by Justin Properties Inc. was the family residence at 110 Greenbrooke.

[55] The Appellant's position was not supported by the documents filed with the court. The bank statements showed that in 1995, 1996 and 1997, the mortgage payments on 110 Greenbrooke were made by Gold Corp. and Pier Inc. There was no evidence as to which Corporation actually earned these amounts and there was no documentary evidence to support that the mortgage payments were a loan. In 1997 a lump sum of $417,000 was deposited into Justin Properties Inc.'s bank account so that it could pay off its mortgage with the Royal Bank. The paper trail showed that this deposit was a cheque for $417,000 from Petstuff to Yonge Inc. The cheque represented a pay out of Petstuff's lease with Yonge Inc. The General Ledger for Gold Corp. does not record that Yonge Inc. received the payment or that it lent it to Justin Properties Inc.

[56] The Appellant tried to distance herself from the accounting records by stating that she did not understand them and they were prepared under the direction of the accountant who instructed the bookkeeper how to enter the data in the general ledger. However, in the Notice to Reader in the Financial Statements for Gold Trust, the accountant wrote that the statements were prepared from information provided by management. He did not audit, review or verify the information.

[57] I do not accept the Appellant's attempt to blame her Corporations' records on her accountant or her bookkeeper.

[58] I have concluded that the Minister has shown that the Appellant made a misrepresentation in her 1995, 1996 and 1997 income tax returns and that misrepresentation was attributable to wilful default. The Appellant knew that she reported zero income from her work with her Corporations. She admitted that she

directed the Corporations to pay her family's living expenses including paying off the mortgage on her family home and yet she declared no income. She also knew that she did not give a loan to Gold Trust. She admitted that she guaranteed the loan to CIBC and I do not believe that the Appellant did not know the difference between obtaining a loan and guaranteeing a loan.

[59] The Appellant tried to rely on the fact that she has only a high school education as an excuse for not understanding the accounting records. However, I found the Appellant to be an intelligent, shrewd business woman. She was the controlling mind of a large Commercial Rental Operation with assets that were worth in excess of $17 million in 1995 and in excess of $19 million in 1997. She negotiated the leases for the properties, the loans made to the Corporations and she collected the rents from her tenants. She ensured that all of the properties were well maintained.

[60] The Appellant stripped substantial amounts from the Corporations and the only income she reported during the period was $12,600 which she received from her spouse's law firm in 1995. It is my view that the Minister has satisfied his burden under both subsections 152(4) and 163(2). I have concluded that the Appellant intentionally took funds from the Corporations and intentionally did not report those funds.

[61] The appeal is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 11th day of July 2013.

"V.A. Miller"

V.A. Miller J.

Appendix

Persons Paid	1995	1996	1997
American Express	$ 16,000.00	$ 1,000.00	
Appleby College	$ 14,320.00	$ 24,846.18	$ 17,330.00
Cash/Appellant/spouse	$ 12,532.02	$ 88,344.74	$ 1,069.37
Dr. Neil Shapero	$ 2,850.00	$ 2,250.00	$ 500.00
Laurentian Bank re; $50,000 personal loan taken by the Appellant and her spouse	$ 6,600.00	$ 12,100.00	$ 5,500.00
MasterCard/TD/GMVisa/RoyalVisa/ CIBC Visa	$ 10,009.97	$ 74,047.17	$ 43,734.42
Mississauga Private School	$ 6,440.00	$ 12,660.00	$ 6,000.00
Roger James Insurance (auto insurance)	$ 7,344.00	$ 8,622.95	
Victor Travel Agency	$ 2,761.20		
Justin Properties	$ 29,655.30	$436,900.23	$ 3,995.00
Greenbrooke Drive Rate Payers		$ 1,600.00	
King Equestrian Club		$ 4,000.00	
London Life-Life Insurance		$ 2,727.30	$ 2,454.57
Blue Mountain Resorts		$ 2,205.00	
Canada Trustco (auto payments)		$ 1,201.74	$ 5,207.54
Maranello Motors		$ 2,639.06	
Mercedez Benz		$ 5,248.14	$ 10,496.28
City of Vaughan			$ 10,063.47
Prochilo Bros. (auto parts)			$ 1,200.00
Personal Loan SPL			$ 5,156.22
West Assurance/Auto Insurance			$ 3,475.45
TOTAL	$108,512.49	$680,392.51	$116,182.32

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COURT FILE NO.:	2008-2863(IT)G
STYLE OF CAUSE:	TERRY PIERSANTI AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 26, 2012
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
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APPEARANCES:

Counsel for the Appellant:	V. Ross Morrison
Counsel for the Respondent:	Laurent Bartleman

COUNSEL OF RECORD:

For the Appellant:

Name:	V. Ross Morrison
Firm:	Morrison Brown Sosnovitch LLP

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada