Docket: 2015-2243(IT)G

BETWEEN:

GROUPE IMMOBILIER GRILLI INC.,

Appellant

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on April 9, 2019, at Montreal, Quebec

Before: The Honourable Justice Guy R. Smith

Appearances:

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| Counsel for the appellant: | Extra Junior Laguerre |
| Counsel for the respondent: | Emmanuel Jilwan |

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2010 taxation year is dismissed, with costs, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 16th day of October 2019.

"Guy R. Smith"

Smith J.

Translation certified true
on this 10th day of August 2022.
François Brunet, Revisor

Citation: 2019 TCC 223
Date: October 15, 2019
Docket: 2015-2243(IT)G

BETWEEN:

GROUPE IMMOBILIER GRILLI INC.,

Appellant

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REASONS FOR JUDGMENT**

Smith J.

I. Overview

[1] Groupe Immobilier Grilli inc. (hereinafter "Group Grilli" or "the appellant") is appealing from a reassessment made on August 27, 2013 by the Minister of National Revenue (hereinafter the "Minister") disallowing $321,429 claimed for professional fees for the taxation year ending August 31, 2010.

[2] According to the Minister, this expense is not deductible from Groupe Grilli's business income because it was not made or incurred for the purpose of gaining or producing income from the business or property, as required by paragraph 18(1)(a) of the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)) (hereinafter referred to as the "Act").

II. Issue

[3] The only issue is whether the Minister was justified in disallowing the deduction of the $321,429 expense claimed by the appellant for the professional fees in question under paragraph 18(1)(a).

III. Statement of facts

[4] Groupe Grilli is a company specializing in real estate development that was created on September 6, 2005, under the *Companies Act*, CQLR c. C-38 ("Companies Act"), following the merger of two numbered businesses. The majority shareholder was the company known as Placements Grilli inc. ("Placements Grilli"), a holding company whose shareholders were Mario Grilli (hereinafter "Mr. Grilli"), Rita Grilli and the Grilli family trust.

[5] In the 1990s, a company associated with the Grilli family acquired land properties within the Ville de L'Île-Bizard (which was amalgamated with the Ville de Montréal in 2002). Following the non-payment of due property tax, the municipality planned to have the land properties sold.

[6] During an auction on November 13, 1997, Jean Denis (hereinafter "Mr. Denis") acquired the lands for $175,550. According to adjudication certificates and official receipts, Mr. Denis made the purchase on behalf of a "yet-to-be-created company".

[7] On November 9, 1998, the company known as Le Village de L'Île inc. (hereinafter "Village inc.") was incorporated under the *Companies Act*. In its initial return, its primary business is described as "buying and selling buildings" or "operating land properties in L'Île-Bizard."

[8] The founding shareholders of Village inc. are 2970-8955 Québec inc. (hereinafter "Gestion Denis"), a company whose main shareholder was Mr. Denis, and Gestion Pasimon ltée (hereinafter "Gestion Pasimon"), whose main shareholder was Yvan Papineau (hereinafter "Mr. Papineau"). They were designated members of the board of directors, as confirmed in the initial return. Gestion Denis and Gestion Pasimon each had 50% of issued shares.

[9] A deed of sale for the land properties in question was finally made on March 16, 1999, between the Ville de L'Île-Bizard et Village inc. From that time until early 2009, not much progress was made in the land development project called "the Village de l'Île" (hereinafter "the Project"), even though certain land properties were sold. Mr. Papineau was the one handling the payment of property taxes and took certain steps with the municipality, but to no avail.

[10] According to 2002 financial statements and notwithstanding the initial return described above, it appears that Mr. Grilli held 50% of shares for Village inc. and

that he, like other shareholders and proportionally, had to make advance payments annually to pay his share of the property tax. According to the 2007 financial statements, his shares were held by "a private company" and it can be inferred that this company was Placements Grilli.

[11] On March 1, 2009, Mr. Denis decided to transfer his shares of Gestion Denis to the company known as Gestion Paolo Grilli inc. (hereinafter "Gestion Paolo"), whose main shareholder was Mr. Grilli's son, Paolo Grilli. According to the purchase agreement, at that time Gestion Denis held 25% of Village inc. shares. The sale price was set at $1,500,000 (with debt).

[12] Following that transaction, an amended return was submitted to the Registraire des entreprises du Québec indicating that the shareholders were Placements Grilli, Gestion Pasimon (100% owned by Mr. Papineau) and Gestion Denis (now 100% owned par Gestion Paolo). Mr. Denis stepped down as member of the board of directors while Mr. Papineau remained, and Mr. Grilli and Paolo Grilli were added as new board members.

[13] Beginning in spring 2009, Groupe Grilli carried out various work required to carry out the Project and retained the services of expert consultants for preparing the plans and specifications and for cost estimates for utilities (drinking water, sanitary and rain sewers, road foundation and so on). As sponsor of the Project, Groupe Grilli entered into an agreement with the Commission des services électriques de Montréal and paid the required fees for the application for subdivision.

[14] On March 10, 2010, Groupe Grilli entered into an agreement with the Ville de Montréal for "work related to municipal equipment and infrastructure" and, on March 22, 2010, obtained a subdivision permit for the first phase of work. In so doing, the appellant incurred significant expenses that are not at issue in this appeal.

[15] Meanwhile, the parties agreed that Placements Grilli was going to acquire shares of Village inc. held by Gestion Pasimon and Gestion Paolo (who each held 25% of shares). Following negotiations, Gestion Pasimon provided Groupe Grilli with an invoice dated February 25, 2010, in the amount of $321,429 with the comment "consultation fees". That invoice was paid that same day. This is the invoice that is at issue in this appeal.

[16] The next day, on February 26, 2010, Gestion Pasimon and Gestion Denis entered into an agreement with Placements Grilli to sell their shares in Village inc. The price was set at $1,500,000 per shareholder in addition to the reimbursement of shareholders' advance payments.

[17] Then, on April 30, 2010, Placements Grilli entered into a "share purchase and turnover agreement" with Groupe Grilli to acquire 100% of Village inc. shares in return for $6,000,000. Village inc. consequently became a subsidiary of Groupe Grilli—the appellant in this case.

**Testimony**

[18] Several witnesses came forward for the appellant. I will recall the essential parts of their testimony, ending with testimony from the main witnesses, Mr. Denis and Mr. Papineau.

[19] Cristina Grilli, notary and daughter of Mr. Grilli, and Paolo Grilli, Mr. Grilli's son, confirmed that the "Groupe Grilli" family business is engaged in land acquisition, real estate development, including subdivisions, the sale of land properties and the construction of new residences and has been since the early 1990s.

[20] Several witnesses were then heard who had direct or indirect involvement in the Project, including Sylvain Provencher, Division Head, Urban Planning, Permits and Inspection for the City for the Île-Bizard Borough and Gaétan Lafrance from the Commission des services électriques de la Ville de Montréal. They acknowledged certain written agreements entered into with Groupe Grilli in 2009 and 2010.

[21] The Court also heard the testimony of Daniel Paré, urban planner with Daniel Arbour et Associés from 1991 to 2001, who was commissioned in December 2009, and then Bernard Lefebvre, engineer with "Consultants en développement et gestion urbains" (hereinafter "CDGU"), which was also commissioned by Groupe Grilli to carry out certain work related to the Project. According to CDGU, in early 2009 they were instructed to invoice Groupe Grilli and not Village inc.

[22] Land surveyor Alain Croteau was also commissioned by Groupe Grilli in 2010. He confirmed that it is not unusual for a project sponsor to retain his services even if it is not the owner of the land in question. According to him, this happens very often in the world of real estate development.

[23] Then, two Groupe Grilli employees testified, including urban planner Carole Tétreault, who prepared plans and commissioned expert consultants for the Project, and corporate controller Dominique Ledoux. They confirmed that Mr. Grilli was still coming into the office for a few hours a day, despite his age. A medical certificate was entered into evidence confirming that he could not testify because of his health.

[24] Caroline Hébert, lawyer for Bourassa Boyer Juri-Fisc inc., explained the series of transactions and fiscal plan, specifically the purchase of Village inc. shares by Placements Grilli followed by turnover to Groupe Grilli.

**Jean Denis**

[25] At the time that the land was purchased in 1997, Mr. Denis was a mortgage broker and friend of Yves Papineau, who introduced him to his client, Mr. Grilli. Pursuant to Mr. Papineau's advice, they agreed to purchase the land properties in the city, as indicated above. Mr. Grilli paid 50% of the anticipated cost, while Mr. Denis and Mr. Papineau each paid 25% of the amount required, for a total of about $175,550. Mr. Denis' role was to represent the group during the auction. In cross-examination, he candidly admitted that the land purchase was carried out without intervention from Groupe Grilli.

**Yves Papineau**

[26] Mr. Papineau is a lawyer who mainly practises real estate law under the name "Papineau Avocats inc." Mr. Grilli has been his client since about 1987. He also represents Groupe Grilli, but not exclusively. According to him, "Groupe Immobilier Grilli", as the company was called in 1997, was experiencing financial hardship. There was a mortgage in favour of National Bank, and the municipality of Île-Bizard was threatening to sell the land properties to recover property taxes due. It was then suggested to Mr. Grilli that he purchase the land properties from the municipality at the auction, as explained above, through Mr. Denis.

[27] He confirmed Mr. Denis' testimony by indicating that Mr. Grilli was not initially a registered shareholder of Village inc., given "disagreements with National Bank". He confirmed that the intention of the Village inc. company was to hold the lands "while waiting until they could be developed" and that Carole Tétreault (mentioned above) was taking certain steps with the municipality to move the Project forward. With Mr. Grilli's tacit approval, but without a written agreement, he presented "several projects to the city", but to no avail because there was no infrastructure and the city of Île-Bizard was not cooperative, especially not the city council.

[28] Mr. Grilli offered to buy his shares for the amount indicated above in addition to the reimbursement of his advance payments as a shareholder. Mr. Papineau confirmed that, over the years, he never invoiced Village inc. for professional fees or for these efforts. During questioning, he explained:

> [TRANSLATION]
>
> Mr. LAGUERRE: That amount, three-hundred and twenty-one thousand, four-hundred and twenty-nine (321,429), why not include it in the share purchase contract [. . .]?
>
> Mr. PAPINEAU: Well, it's because he didn't give it to me for the shares because, he had decided—and I'm not saying this to be mean—but he had unilaterally decided that the shares were worth one and a half million (1,500,000) and that it wasn't worth more. He told me, "Yes, you deserve more, but for the work you did for the 'Groupe'. And you're not going to make the money, the 'Groupe' is going to." So, that's why he asked me to invoice "Groupe".
>
> Mr. LAGUERRE: You agreed to these negotiations?
>
> Mr. PAPINEAU: Let me tell you, Mr. Laguerre. I may have misstepped, but anyone who tells me, "Make me an invoice for three-hundred and twenty-one thousand, four-hundred and twenty-nine dollars ($321,429)," I'm willing to do it if I get a cheque that comes with it.

[29] He then explained why the invoice was made out to Groupe Grilli:

> [TRANSLATION]
>
> Mr. LAGUERRE: So, "Gestion Pasimon", that's your company, so we can see that this is an invoice made out to "Groupe Immobilier Grilli"; why is this invoice made out to "Groupe Immobilier Grilli"?
>
> Mr. PAPINEAU: Right. When it was a matter of selling my shares, I won't tell you that I didn't want to sell them etc., etc.; we won't go through that again. Mr. Grilli told me, "Basically, you did things for the group. You tried to move the project forward. You're the one who arranged the buyout of the land properties for taxes. You're the one who doesn't want to sell the land properties, unlike Jean Denis, who did want to." [. . .]
>
> Mr. LAGUERRE: We can see "consultation fees" is written here. What consultations did you carry out?
>
> Mr. PAPINEAU: Ok, look, is it "consultation fees", is it "fees for the work that I had done previously", "fees for the sales that I didn't do", maybe it's not the best choice of words, but it was compensation for the fact that the "Groupe", the work

> that I did for the "Groupe" and the profits that the "Groupe" would make with the project, that I wouldn't be making.

[30] And finally he tried to explain how the "consultation fees" were calculated.

> [TRANSLATION]
>
> Mr. LAGUERRE: Who came up with "the formula" to determine the three-hundred and twenty-one thousand, four-hundred and twenty-nine dollar ($321,429) figure?
>
> Mr. PAPINEAU: Who came up with the formula, that I don't know. One thing's certain: I don't think it was me. Who, on the other hand, it was, I couldn't tell you.

[31] In cross-examination, Mr. Papineau specified that the invoice was not for professional fees because it was his management company. He acknowledged that there was no detailed description other than the date with the invoice amount and taxes.

## IV. Applicable law

[32] Paragraph 18(1)(a) of the Act provides as follows:

> **General limitations**
>
> **18(1)** In computing the income of a taxpayer from a business or property no deduction shall be made in respect of
>
> **General limitation**
>
> a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

[33] The Minister considers that the expense was not made or incurred for the purpose of gaining or producing income and so it is up to the appellant to demonstrate, according to the balance of probabilities, that the Minister's reassessment was wrong (*House v. Canada*, 2011 FCA 234).

[34] This issue must be considered in the context of the company operated by the taxpayer. As explained by the Supreme Court of Canada in *Stewart* v. *Canada*, 2002 SCC 46 ("*Stewart*"):

> [51] [. . .] As such, it is logical to conclude that an activity undertaken in pursuit of profit, regardless of the level of taxpayer activity, will be either a business or property source of income.

[35] The Court then explained the following:

> [57] [. . .] If the deductibility of a particular expense is in question, then it is not the existence of a source of income which ought to be questioned, but the relationship between that expense and the source to which it is purported to relate.

[36] In terms of whether a taxpayer must necessarily be the owner of a land property before being able to incur an expense that is deductible under paragraph 18(1)(a), the former Chief Justice Bowman J.T.C.C stated as follows in *Gartry v. Canada*, 94 DTC 1947 ("*Gartry*"):

> [TRANSLATION]
>
> **16** It was also suggested that the company may have not have been started yet when the expenses were incurred and that, if there was no company at that time, the expenses could not have been incurred for the purpose of gaining or producing income from a business within the meaning of paragraph 18(1)(a).[. . .] Each case depends on its facts, but when a taxpayer has taken important measures, essential measures, to operate the business, it is fair to conclude that the business had been started. [. . .] In my opinion, the business had been started and was well underway when the expenses in question were incurred. [. . .] So, even if the cost of modifying the vessel represented an expenditure, the other day-to-day expenses, such as accountant fees, lawyer fees, administrative fees, travel costs and insurance fees, would be deductible. Interest charges, as I previously mentioned, are deductible under paragraph 20(1)(c).
>
> [Emphasis added]

[37] Bowman J.T.C.C concluded that even if, according to the facts, the taxpayer did not have the land property in question, the expenses that he had incurred in relation to it can be deducted under paragraph 18(1)(a).

[38] The appellant in this case therefore has the burden of convincing the Court that they incurred the expense in question for the purpose of gaining income, and more specifically, according to *Stewart* (para. 57), that there is a relationship between the expense "and the source to which it is supposed to relate".

[39] In addition, the relationship between the claimed expense and the source of income must be "sufficiently direct" and not be too "tenuous or distant" (*Sardami v. The Queen*, 2017 FCA 131, at para. 14 and 18). As stated by the Federal Court

of Appeal in citing *Byram v. Canada*, 99 DTC 5117 (para. 21), "a deduction cannot be so far removed from its corresponding income stream as to render its connection to the anticipated income tenuous at best."

V. Appellant's position

[40] The appellant submits that they were engaged in the Project before acquiring the lands in April 2010. It therefore had a business activity related to the Project and consequently a "source of income" as defined by the case law.

[41] According to the appellant, the sole purpose of the Village inc. company was to hold the lands, and it did not really operate a business in relation to the Project. It did not even have a "source of income" itself in relation to the Project. It acquired the land properties and took certain steps, but this did not really constitute a commercial or business activity.

[42] The expense in question was incurred in relation to Groupe Grilli's activities. Since Village inc. did not have a source of income, it could not deduct the expense; only the appellant could. Like expenses incurred on a prospective basis to definitively acquire the land properties, the expense in question was part of integration costs.

[43] The appellant also submits that even though the transfer of the land properties took place on April 30, 2010, they were previously sold to the appellant because there is a contract under Quebec civil law, specifically article 1385 of the *Civil Code of Québec*, CQLR 1991, c.64 ("CCQ"), which provides as follows:

> 1385. A contract is formed by the sole exchange of consents between persons having capacity to contract, unless, in addition, the law requires a particular form to be respected as a necessary condition of its formation, or unless the parties subject the formation of the contract to a solemn form.

[44] Even though the Village inc. shares were transferred to Groupe Grilli over 60 days after the date of the invoice in question, there was nevertheless a "contract" and "exchange of consents" within the meaning of the above-mentioned provision. It is therefore in that perspective that the appellant incurred the expense in question, having already incurred significant expenses during the year before acquiring the land properties.

[45] Finally, the appellant submits that the expense was reasonable within the meaning of section 67 of the Act and that there is no reason to question the

business decisions made by Groupe Grilli, especially since the amount of the incurred expense represents about 5% of the total value of the shares acquired.

VI. Respondent's position

[46] The respondent submits that the appellant was not the owner of the land properties until April 30, 2010. The expenses incurred before that date were therefore not incurred for the purpose of gaining income in relation to the land properties, since Village inc. was the owner. This was therefore the "source of revenue" of Village inc. and not of the appellant at the time when the expenses were incurred. The respondent underscored that Village inc. had undertaken various steps and sold certain land properties over the years.

[47] The appellant was involved as Project sponsor, but the fact still remains that this was a "source of income" for Village inc. The respondent also submits that there was no management contract between the appellant and Gestion Papineau, Mr. Papineau or even with Village inc.

[48] Lastly, the respondent submits that even if the appellant could have otherwise deducted the expense, the evidence does not lead to the conclusion that this was an expense that was incurred for the purpose of gaining income.

VII. Analysis

[49] As indicated by the respondent, the Minister's sole position is that the expense in question is not deductible under paragraph 18(1)(a) of the Act, even though sections 20 and 67 are cited in the reply to notice of appeal. I will therefore address this issue only.

[50] It is admitted that Mr. Papineau did not invoice "professional fees" related to the Project, and so the Court must necessarily conclude that the Minister had reasons to disallow the expense in that capacity.

[51] Could the appellant nevertheless claim an expense?

[52] Firstly, the notice of appeal should be examined where it states that Village inc. [TRANSLATION] "had a mission to acquire, subdivide and develop a real estate project on large land properties" [. . .] (para. 12).

[53] The notice goes on to indicate that Mr. Papineau [TRANSLATION] "without being compensated, was in charge of various processes required with appropriate authorities to obtain authorization for the development project for the land properties acquired by the Village" (para. 13) and that during negotiations for the sale of shares held by the management company [TRANSLATION] "Pasimon will impose a condition on any agreement with the appellant to pay fair and reasonable compensation for all the steps taken with the various authorities to obtain the authorizations required to carry out the real estate project" (para.19).

[54] Mr. Papineau's testimony confirmed this summary, except that the evidence unequivocally indicates that the shares were sold to Placements Grilli. The Court must therefore conclude that the "condition" in question was imposed on Placements Grilli and not on the appellant.

[55] Mr. Papineau's testimony was relatively candid and credible, but there are inconsistencies in relation to the expense in question.

[56] He tried to summarize why Mr. Grilli agreed to spend the amount in question by indicating that he did "things for the group", that he "tried to move the project forward" and that he "arranged the buyout of the tax land properties" and so on. He then indicated the Mr. Grilli wanted to compensate him "for the money that you won't be making, but that the Group will be making".

[57] Mr. Papineau later indicated that the invoice represented either "fees for the work I had done previously" or "fees for the sales that I didn't do". But in what proportion? He cannot explain this, and there is no evidence in that regard. Mr. Grilli did not testify and so cannot enlighten this matter further.

[58] Given that the $1,500,000 represents the fair market value of the shares and that, according to Mr. Papineau, the invoice amount was not to be added to the readjusted base price, it is more likely and the Court must conclude that Mr. Grilli wanted to compensate him for services rendered previously, that is to say before Groupe Grilli took over the Project.

[59] The same can be said for the suggestion that the calculation of the invoice was based on a set amount per lot. There is no evidence to support this position, and I also note that this argument was not raised in the notice of appeal.

[60] The appellant submits that only Group Grilli had a source of income according to the case law. However, the primary business of Village inc. is

described as “buying and selling buildings” and “operating land properties in Île-Bizard”. However, some land properties were sold over the years, and Mr. Papineau certainly did take steps.

[61] Lastly, the question of Group Grilli’s source of income is not at issue, and the Court did not rule on this. In any case, this does not preclude the conclusion that Village inc. also had a source of income.

[62] Since Mr. Papineau holds shares in Village inc. and is a member of the board of directors, the Court must conclude that he rendered services for this company, but he nevertheless agreed to invoice the appellant at Mr. Grilli’s express request. However, there is no evidence of an agreement in that regard between Gestion Pasimon and the appellant or even between Mr. Papineau and the appellant.

[63] In addition, the company in possession of the land properties during the auction that took place in 1997 was not the appellant. It is possible that the company was previously part of the companies included in the Grilli family’s corporate group, but that is not good enough.

[64] The appellant was only incorporated in September 2005, over six years after the land properties were acquired by Mr. Denis on behalf of a “yet-to-be-established company”, namely Village inc. and not the appellant.

[65] Even if the Court accepted the appellant’s claim that there was a contract for the sale of the land properties to the appellant within the meaning of section 1385 of the CCQ, it must conclude that the services were rendered by Gestion Pasimon or Mr. Papineau before Groupe Grilli took over the Project.

[66] As stated above, “[i]f the deductibility of a particular expense is in question, then it is not the existence of a source of income which ought to be questioned, but the relationship between that expense and the source to which it is purported to relate.” (*Stewart*, at para. 57). The appellant had the burden of convincing the Court, according to the balance of probabilities, of the existence of this relationship.

[67] In the Court’s opinion, the appellant has not met that burden. Since the services were rendered when Mr. Papineau was a member of the board of directors for Village inc. and at least in part, before the Groupe Grilli company was created n 2005 and before it took over the Project in 2009, and given the absence of

agreement between Gestion Pasimon or Mr. Papineau and the appellant, the Court must conclude that the relationship between the expense in question and the appellant's source of income is not direct enough to be deductible under paragraph 18(1)(a) of the Act.

[68] For these reasons, the appeal must be dismissed with costs.

Signed at Ottawa, Canada, this 16th day of October 2019.

"Guy R. Smith"

Smith J.

Translation certified true
on this 10th day of August 2022.
François Brunet, Revisor

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| CITATION: | 2019 TCC 223 |
| COURT FILE NO.: | 2015-2243(IT)G |
| STYLE OF CAUSE: | GROUPE IMMOBILIER GRILLI INC. AND HER MAJESTY THE QUEEN |
| PLACE OF HEARING: | Montreal, Quebec |
| DATE OF HEARING: | April 9, 2019 |
| REASONS FOR JUDGMENT BY: | The Honourable Justice Guy R. Smith |
| DATE OF JUDGMENT: | October 16, 2019 |

APPEARANCES:

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| Counsel for the appellant: | Extra Junior Laguerre |
| Counsel for the respondent: | Emmanuel Jilwan |

COUNSEL OF RECORD:

For the appellant:

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| Name: | Extra Junior Laguerre |
| Firm: | Laguerre Fiscaliste inc. |
| For the respondent: | Nathalie G. Drouin<br>Deputy Attorney General of Canada<br>Ottawa, Canada |