

Docket: 2007-1617(IT)I

BETWEEN:

YANN DAVIES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on August 17, 2007, at Montreal, Quebec.  
Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nadia Golmier

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**JUDGMENT**

The appeal from the assessment made under paragraph 20(1)(bb) of the *Income Tax Act* for the 2002 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of September 2007.

"Paul Bédard"

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Bédard J.

Citation: 2007TCC503  
Date: 20070910  
Docket: 2007-1617(IT)I

BETWEEN:

YANN DAVIES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Bédard J.

[1] The appellant is appealing an assessment for the 2002 taxation year disallowing, pursuant to paragraph 20(1)(bb) of the *Income Tax Act* (the “Act”), an amount of \$2,000 claimed by him as fees paid to Fryan Inc.

[2] The appellant is an engineer. Fryan Inc. was incorporated on December 11, 1978 (Exhibit A-1). Its only shareholder and director is Françoise Demarque Davies, the appellant’s spouse. According to the appellant’s testimony, Ms. Demarque is an artist and has little involvement in Fryan Inc. The appellant filed as part of Exhibit A-1 a contractual agreement (“the 2003 Agreement”) for the year 2003 between Fryan Inc. and him. That agreement provides as follows:

#### Entente contractuelle

Entre	Fryan Inc. B.P. 98 Station H Montréal H3G 2K5
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Et  
Yann Davies  
893 Vallée  
Sutton JOE 2K0

1. FRYAN Inc. fournira à M. Yann Davies les services suivants dans le domaine des finances et du placement.
  - 1.1 achat et fourniture d'un nombre utile de publications mensuelles, hebdomadaires, quotidiennes et occasionnelles
  - 1.2 rédaction et fourniture de rapports occasionnels sur des informations et analyses provenant ou non de ces documents
  - 1.3 facturation de toutes ses dépenses au coût incluant les taxes (qui sont déjà incluses) et ce en fin de chaque année
2. M. Yann Davies apportera son soutien et contribution généralement à la fourniture de services
  - 2.1 il facilitera l'obtention des documents
  - 2.2 il participera à l'analyse des informations et à la rédaction des rapports
  - 2.3 il payera les factures promptement
3.
  - 3.1 Cette entente est valide pour l'année 2003
  - 3.2 Elle est extensionnée annuellement à moins d'avis d'interruption par un des partis [*sic*].
4. Fait à Montréal ce 5 janvier 2003  
signé Fryan Inc. : (*signature*) par Françoise Demarque  
Yann Davies (*signature*) par Yann Davies

According to the appellant's testimony, the terms of the agreement concluded verbally in 2002 between Fryan Inc. and him, were to the same effect as those of the 2003 Agreement. Fryan Inc. invoiced the appellant for an amount of \$2,000 (Exhibit A-1) on December 26, 2002 for the following services:

Pour frais de recherche, achat de documents, rapports d'experts et de publications spécialisées, travaux d'analyse et émission de conclusions

The appellant testified that most of the \$2,000 in fees was for advice as to the advisability of purchasing or selling specific shares. It is worth mentioning that the appellant did not file any documentary evidence to support his testimony nor could he remember what specific shares he was advised to sell or buy in 2002.

[3] Ms. Jeannette Allard, an auditor for the Revenue Agency, testified that Fryan Inc. did not declare any income from the above-mentioned activities. The appellant testified that Fryan did not file an income tax return for its 2002 taxation year because he was convinced that a corporation does not have an obligation to file a return when expenses exceed gross revenue. The appellant added that Fryan Inc.'s only income for the 2002 taxation year was the \$2,000 in fees paid by him. He also testified that Fryan Inc.'s expenses amounted to \$2,600 in 2002 and that those expenses were essentially related to subscription fees for financial magazines and newspapers, rental of a post office box and internet registration. The appellant also testified that Fryan Inc. did the investment research work mostly for him but also for his spouse and family. He also said that he himself did all the Fryan Inc.'s investment research work and that he was not paid for this by Fryan Inc. Furthermore, Fryan Inc. did not provide advice nor render any services to any other investors.

[4] Paragraph 20(1)(bb) of the *Act* reads as follows:

**(1) Deductions permitted in computing income from business or property** — Notwithstanding paragraphs 18(1)(a), (b) and (h), in computing a taxpayer's income for a taxation year from a business or property, 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:

[ . . . ]

**(bb) Fees paid to investment counsel** — an amount other than a commission paid by the taxpayer in the year to a person

(i) for advice as to the advisability of purchasing or selling a specific share or security of the taxpayer, or

(ii) for services in respect of the administration or management of shares or securities of the taxpayer,

if that person's principal business

(iii) is advising others as to the advisability of purchasing or selling specific shares or securities, or

(iv) includes the provision of services in respect of the administration or management of shares or securities.

[5] Paragraph 20(1)(*bb*) of the *Act* is an exception to the general rule that expenses on capital account are not deductible. As an exception it has to be interpreted narrowly. Paragraph 20(1)(*bb*) of the *Act* expressly permits a taxpayer to deduct fees paid for advice on buying and selling a specific share, provided the fees are paid to a person whose principal business either is advising others on purchasing and selling specific shares or securities or includes the provision of administration or management services with respect to shares. Fees paid for other types of activities, such as general financial counselling or planning, are not deductible. Subscription fees paid for financial magazines and newspapers, or for investment publications are also not deductible.

[6] I am of the view that the appellant has shown that Fryan Inc. existed as a person in 2002. But I am also of the view that the appellant has not shown that Fryan Inc.'s principal business was advising others on purchasing and selling specific shares or securities. Moreover, I am of the opinion that Fryan Inc. was not even operating a business of any kind in 2002.

[7] Furthermore, even if my conclusion regarding Fryan Inc.'s business or principal business is wrong, I would point out that in order to be deductible the fees in question must have been paid for advice on buying and selling a specific share. In this case, the appellant did not convince me that any of the services for which he was billed in 2002 were related to advice on purchasing or selling a specific share. I point out to the fact that in the 2002 verbal agreement between the appellant and Fryan Inc. the latter agreed to render many other kinds of services to the appellant. I also point out to the fact that the 2002 invoice shows that the appellant was billed for different kinds of services. In fact, the appellant was unable to show what part of the \$2,000 in fees, if any, was related to advice on purchasing or selling shares. The appellant was also unable to produce any documentary evidence of advice provided regarding selling or buying a specific share in 2002. Indeed, the appellant was not even able to remember the shares he was advised by Fryan Inc. to sell or buy that year.

[8] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 10th day of September 2007.

"Paul Bédard"

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Bédard J.

CITATION: 2007TCC503

COURT FILE NO.: 2007-1617(IT)I

STYLE OF CAUSE: YANN DAVIES V. HER MAJESTY THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: August 17, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: September 10, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nadia Golmier

COUNSEL OF RECORD:

For the Appellant:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada