

Docket: 2007-4357(IT)I

BETWEEN:

WOJCIECH ZAKRZEWSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on May 28, 2008, at Sudbury, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Suzanie Chua

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**JUDGMENT**

The appeal is dismissed.

Signed at Ottawa, Canada, this 20<sup>th</sup> day of June 2008.

"Patrick Boyle"

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Boyle, J.

Citation: 2008 TCC 385  
Date: 20080620  
Docket: 2007-4357(IT)I

BETWEEN:

WOJCIECH ZAKRZEWSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

(Delivered orally from the Bench on May 28, 2008, in Sudbury, Ontario.)

#### **Boyle, J.**

[1] Mr. Zakrzewski is appealing his 2000 to 2005 tax reassessments which denied him all of the business losses claimed by him that relate to his joint venture participation in an Eastern European pharmaceutical export sales business promoted to him by his financial advisor. Mr. Zakrzewski is a research scientist in a forest research institute and holds a Ph.D. in forest biometrics. That employment and his knowledge and expertise did not seem to relate in any way to the pharmaceutical sector.

[2] Mr. Zakrzewski represented himself ably and clearly at today's hearing even though he had expected his representative to attend. Unfortunately, Mr. Zakrzewski knew little about the venture and had very little paperwork.

[3] Mr. Zakrzewski was introduced to the opportunity to participate in the Can-Pol Investment Corporation Joint Venture by his financial advisor, a Mr. John Kotowski. Mr. Kotowski is also the manager of the Can-Pol Joint Venture. Mr. Kotowski is also Mr. Zakrzewski's authorized representative in this appeal but has not appeared today and is apparently in Poland.

[4] When CRA initially questioned Mr. Zakrzewski's Can-Pol losses, Mr. Zakrzewski was told by Mr. Kotowski that he would look after everything and Mr. Zakrzewski shouldn't discuss the matter with anyone else.

[5] Mr. Zakrzewski said his only involvement was to sign a participation agreement and promissory note and similar documents presented to him each year by Mr. Kotowski. Mr. Zakrzewski acknowledged he knew little detail, had not received any distribution of profits and simply claimed as business losses the amount Mr. Kotowski reported on a one-page form to him for tax purposes.

[6] Mr. Zakrzewski understood Mr. Kotowski to be a well-respected businessman, the co-builder of a local resort, an impresario of Shania Twain, who had worked for CRA for a number of years. Mr. Kotowski assured Mr. Zakrzewski everything was above board and legal.

[7] Mr. Zakrzewski's understanding of the business his joint venture carried on was that it was involved in the sale of medical products produced by a major Canadian pharmaceutical company. Mr. Zakrzewski understood the lack of profit related to a problem registering certain drugs in Poland and perhaps in Russia and Ukraine, as well. He stressed that his only contribution was financial and everything else was left to his co-venturer, Can-Pol Investment Corporation.

[8] No business-related records, banking records, sales receipts or expense receipts were produced at the hearing, nor did CRA receive any in response to five separate audit inquiry letters sent out in 2005 and 2006.

[9] The participation agreement Mr. Zakrzewski produced was sloppy, if not ineffective, even if I were satisfied the Can-Pol Investment Corporation Joint Venture carried on business activities or incurred expenses related to such a business. The agreement allocates net profit, but is at best unclear on loss allocations. In any event, the net profit and the expenses it does address are expressly those of Mr. Zakrzewski's co-venturer, the Can-Pol Investment Corporation, not those of the joint venture itself, the Can-Pol Investment Corporation Joint Venture.

[10] This is an unfortunate case for Mr. Zakrzewski. He acknowledged in his evidence that he was partly responsible for this situation and perhaps negligent and that he should have hired a lawyer to review these claims. While it was not clear if in saying this he was speaking to the time of his investment or to the time of the audit and appeal, I sense from his testimony and demeanour that Mr. Zakrzewski knows deep down that he appears to have been short-changed, if not swindled, by

Mr. Kotowski. While this is unfortunate, I cannot find any credible evidence that the business loss and loss carryovers claimed by Mr. Zakrzewski were ever incurred in a business of the joint venture.

[11] One of the years under the appeal is beyond the normal reassessment period. This was not raised in Mr. Zakrzewski's Notice of Appeal. I am satisfied on the evidence that Mr. Zakrzewski misrepresented his income as a result of at least carelessness or neglect when he signed his return claiming these losses as a deduction.

[12] Mr. Zakrzewski's appeal is dismissed.

Signed at Ottawa, Canada, this 20<sup>th</sup> day of June 2008.

"Patrick Boyle"

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Boyle, J.

CITATION: 2008 TCC 385

COURT FILE NO.: 2007-4357(IT)I

STYLE OF CAUSE: WOJCIECH ZAKRZEWSKI v. HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Sudbury, Ontario

DATE OF HEARING: May 28, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: June 20, 2008

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Suzanie Chua

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
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