

Docket: 2008-2965(IT)I

BETWEEN:

JOHN G. DALFORT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 13, 2009, at Nanaimo, British Columbia.

By: The Honourable Justice B. Paris

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: **S. Natasha Reid**

AMENDED JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2006 taxation year is dismissed.

This Amended Judgment is issued in substitution for the Judgment signed on August 26, 2009. The Reasons for Judgment remain unchanged.

Signed at **Ottawa, Canada**, this **28th** day of **September**, 2009.

“B.Paris”

Paris J.

Citation: 2009 TCC 416
Date: 20090826
Docket: 2008-2965(IT)I

BETWEEN:

JOHN G. DALFORT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] The issue in this appeal is whether the Appellant is entitled to deduct \$20,751 of legal fees in the calculation of his income from property in the 2006 taxation year. The legal fees were incurred by the Appellant to defend himself in a lawsuit brought against him by Ms. Karen Conquergood, with whom he had been in a relationship for several years.

[2] In the lawsuit, Ms. Conquergood made several claims¹ against Mr. Dalfort.

[3] The first was for spousal support.

[4] The second claim by Ms. Conquergood was that her relationship with Mr. Dalfort had unjustly enriched him. The unjust enrichment claim related to two lawsuits which Mr. Dalfort had brought against an insurance company and a physician, and to the sale of a house which Mr. Dalfort had owned when the relationship with Ms. Conquergood began. Ms. Conquergood sought a portion of the

¹ See Exhibit R-1, Tab 6, Reasons for Judgment, *Conquergood v. Dalfort*, 2007 BCSC 1556.

amounts Mr. Dalfort recovered in the lawsuits, and a portion of the proceeds from the sale of the house.

[5] Ms. Conquergood's third claim was for an interest in a 45-foot sailboat that Mr. Dalfort and Ms. Conquergood had purchased jointly but which had been registered in Mr. Dalfort's name.

[6] Ms. Conquergood's fourth claim was that Mr. Dalfort had taken more than his share of the money that they earned from the following joint ventures they had operated at various times when they were together:

- i) an escort agency;
- ii) a pyramid scheme; and
- iii) a crab fishing business.

None of these joint ventures were being carried on at the time Ms. Conquergood brought the lawsuit.

[7] The final claim by Ms. Conquergood against Mr. Dalfort was for damages for assault.

[8] In the same action, Mr. Dalfort brought a counter-claim against Ms. Conquergood for money allegedly taken by her from their joint funds.

[9] Mr. Dalfort's position is that he incurred the legal fees to protect assets from which he earned income, and that therefore the legal fees were incurred to earn income. Mr. Dalfort argues that he is entitled to deduct the legal fees on the basis that he was protecting his ability to earn income from his investment portfolio, which he referred to as his "private pension savings and investments". He described Ms. Conquergood's lawsuit as an attempt to obtain money from his "pension fund". He said that these funds were "outside of his relationship with Ms. Conquergood" and that the claim to a portion of those funds was not part of any application for a division of assets on the breakdown of their relationship.

[10] Mr. Dalfort's appeal cannot succeed. None of the claims made against him by Ms. Conquergood arose in the course of a business being operated by him or in relation to property from which he generated income, and therefore the expenses cannot be said to have been incurred for the purpose of earning income from business

or property. In addition, the case law is clear that legal expenses incurred to defend a claim for spousal support are not deductible.²

[11] None of the claims made by Ms. Conquergood was directed at Mr. Dalfort's investment portfolio. The only time those assets are referred to in the Reasons for Judgment in the lawsuit is in relation to fixing the amount of support payments awarded to Ms. Conquergood. The judge took into account the income earned from the investments in determining Mr. Dalfort's ability to pay support to Ms. Conquergood.

[12] I accept that, had Ms. Conquergood been awarded damages of any magnitude in the suit, Mr. Dalfort would likely have had to liquidate part of his investment portfolio to pay the damages. However, the threat to those assets was indirect, and the primary purpose for which Mr. Dalfort incurred the legal fees was to defend against claims which were either personal in nature, or involved business activities which had been, but were no longer, carried on by the parties. In either case the legal fees are not deductible. Personal expenses do not meet the test set out in paragraph 18(1)(a) of the *Act*, and expenses related to a defunct business or joint venture cannot be deducted because there is no longer any source of income to which they can be attributed.

[13] Even if Ms. Conquergood had sought to obtain a portion of Mr. Dalfort's investment portfolio, I am of the view that the legal fees incurred to defend such a claim would not be deductible. Their purpose would have been to protect and preserve a capital asset or assets. Legal fees laid out for this purpose are non-deductible capital expenditures.³

[14] It was suggested that the Appellant might be able to deduct the legal fees under subparagraph 60(o.1)(i)(A) of the *Act*, as having been incurred to collect or establish a right to a benefit under a pension fund. That provision reads as follows:

60. There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable

(a) ...

² *Nadeau v. The Queen*, 2003 FCA 400.

³ *Dominion Natural Gas Co. Ltd. v. M.N.R.*, [1940-41] C.T.C. 155 (S.C.C.), *The Queen v. Jager Homes Ltd.* [1998] 1 C.T.C. 215 (F.C.A.) and *Strassburger Insulation Ltd. v. M.N.R.*, [1998] 1 C.T.C. 2507 (F.C.A.).

- (o.1) the amount, if any, by which the lesser of
- (i) the total of all legal expenses (other than those relating to a division or settlement of property arising out of, or on a breakdown of, a marriage or common-law partnership) paid by the taxpayer in the year or in any of the 7 preceding taxation years to collect or establish a right to an amount of
 - (A) a benefit under a pension fund or plan (other than a benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that *Act*) in respect of the employment of the taxpayer or a deceased individual of whom the taxpayer was a dependant, relation or legal representative, or
 - (B) ...

However, there is no basis for finding that Mr. Dalfort's investment portfolio was a pension plan, or that he incurred the legal fees in order to collect or establish a right to an amount of a benefit under such a plan. By Mr. Dalfort's own admission, the portfolio was not set up or registered as a pension plan. It is also beyond dispute that the subject matter of the lawsuit by Ms. Conquergood was not related to the collection or establishment of a right to pension benefits.

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

Signed at Vancouver, British Columbia, this 26th day of August 2009.

“B.Paris”

B. Paris J.

CITATION: 2009 TCC 416

COURT FILE NO.: 2008-2965(IT)I

STYLE OF CAUSE: JOHN G. DALFORT and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Nanaimo, British Columbia

DATE OF HEARING: August 13, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris
DATE OF REASONS FOR JUDGMENT: August 26, 2009

DATE OF AMENDED JUDGMENT: September 14, 2009

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: **S. Natasha Reid**

COUNSEL OF RECORD:

For the Appellant:

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Firm: N/A

For the Respondent:

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