

Citation: 2010TCC4  
Date: 20100118  
Docket: 2006-3297(IT)G

BETWEEN:

ROBERT JEWETT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR JUDGMENT**

Appearances:

For the Appellant: John David Buote  
Counsel for the Respondent: Jenny P. Mboutsiadis

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**(Delivered orally from the bench on  
November 20, 2009, in Toronto, Ontario.)**

**Miller J.**

[1] This is a net worth assessment case covering the taxation years 1999, 2000, and 2001. The Appellant, Mr. Jewett, claims he had little income in those years, while the Minister of National Revenue assessed by including amounts of \$111,323, \$194,765, and \$195,605, respectively, in Mr. Jewett's income for the years in question. The Minister reached these figures based on the assumption that Mr. Jewett personally owned nine rental properties from which he derived significant income. Mr. Jewett claims he did not own the properties personally, but a company he owned did derive rental income from those properties. From Mr. Jewett's testimony, I conclude his business practices were unorthodox, yet not to the point of yielding all of the half-million dollars in income the Minister has assessed, though a considerable portion of it, being approximately \$295,000.

## FACTS

[2] Mr. Jewett was in the business of renting rooms to low-income tenants or those on social assistance. He would have up to nine or 10 tenants in a property. Initially, in the mid-1980s, he owned the properties himself, but he suggests that on the advice of lawyers, for creditor-proofing purposes, he placed each rental property in the name of a company.

[3] He incorporated a holding company, 802179 Ontario Inc., which I will refer to as "802", which in turn incorporated subsidiary companies to own the properties. Mr. Jewett claims that in those early years he received financial help from his family, friends, and from equity from the sale of a house. There was no corroboration of this assertion.

[4] In the late 1980s, Mr. Jewett claims he was impacted by changes in provincial legislation, protecting rights of tenants, making it more difficult to evict unwanted tenants. Also, the municipality of Mississauga by-laws only permitted boarders in owner-occupied homes. Mr. Jewett devised a new plan. He would put properties in the names of tenants, and he or his company would cover all expenses and continue to collect rent from the boarders. In this manner, two properties were acquired in 1996, five in 1997, one in 1998, and one in 1999. I was provided with a schedule that indicated the property addresses and the names of the nominee tenants who went on title. Mr. Jewett maintained that the tenants who did go on title knew they were doing so, knew they would be applying for a mortgage, and knew they might benefit in getting equity in the property if it significantly increased in value.

[5] From the evidence of Mr. Weston, Mr. Martin, and Mr. Overton, three of the nominee tenants, it was clear there were varying degrees of understanding, though no one had the full understanding that Mr. Jewett suggested they had. Mr. Weston, for example, acknowledged that he agreed that he would go on title on one property, but he never agreed to another property being put in his name. He also did not appreciate that he would ever receive any equity out of the property. He also denied signing any mortgage documents. Mr. Martin indicated he went through with the arrangement under pressure and unwillingly. Mr. Overton could not recall being a part of any such arrangement. The properties were highly mortgaged. I will have more to say about that in a moment.

[6] For each of the properties, Mr. Jewett suggested there be a lease with 802 in which 802 would agree to pay a monthly rent that covered the mortgage, interest, and

taxes. As well, the lease would provide that 802 was obligated to cover all utilities expenses. It would have the right to sublet the property.

[7] Mr. Jewett provided copies of four such leases, most of which were not fully executed and which were only produced the business day before trial. These leases did reflect multi-year leases. Presumably once a lease term expired it could be renewed or, according to Mr. Jewett, a new lease could be entered into with a new nominee or the property would be acquired by one of Mr. Jewett's companies. In fact, this occurred with one property, which was transferred into the name of one of Mr. Jewett's companies, MLZ Productions Inc. Again, the evidence as to what those on title understood about the leases was minimal. They presumed they were dealing with Mr. Jewett.

[8] I have not been convinced as to the validity of those leases. I picture a much looser arrangement, whereby Mr. Jewett received rents from boarders and he simply used those rental funds to cover expenses. There were no leases with the boarders either; none that were produced at trial.

[9] On the acquisition of a property, Mr. Jewett would instruct an agent to obtain a mortgage for close to the price of the property. Prices of the nine properties ranged from approximately \$160,000 to \$190,000, with an average of \$20,000 down and the balance mortgaged. Mr. Jewett claims the deposit came from him through 802 by way of shareholder advance. Again, there was no paper trail to confirm this.

[10] The mortgages were obtained from reputable financial lending institutions upon purported applications of the nominee tenants. It was clear from a review of the mortgage applications which were accompanied by a letter of the applicant's alleged employer and a T4 slip, that these applications were completely fabricated. Recall that the nominee tenants were for the most part on social assistance, yet their applications indicated significant earnings from a company named Grand Trunk Holdings, complete with a fictitious T4 slip confirming such fictitious earnings. Mr. Jewett acknowledged Grand Trunk was the name of a U.S. company that he had once owned but which had long since ceased to exist, though well after the mortgage applications he had occasion to incorporate an Ontario company with the name Grand Trunk. Mr. Jewett could not explain how these false applications came to be. I do not believe him. And I do not believe him because: one, he later admitted that he falsified credit card applications; two, no one other than Mr. Jewett would have known about Grand Trunk to use that defunct company as a false employer; three, the nominee owners have satisfied me that they were not involved in any mortgage

application; and four, Mr. Jewett actually admitted he signed nominees' names on documents for which he believed he had a power of attorney.

[11] As well as the first mortgages placed against these properties, Mr. Jewett had second mortgages put on the properties under the name of another of his companies, MLZ Productions Inc., for approximately \$150,000 each. This, according to Mr. Jewett, was to protect the equity in the properties. Recall that someone had put up the shortfall for these properties. As Mr. Jewett stated, 802 controlled the rent and equity in the properties, though it was not the legal owner. He suggested he indemnified the owners, though I was shown no such indemnity.

[12] I conclude that there certainly was an arrangement whereby properties controlled by Mr. Jewett were held in others' names, either knowingly or unknowingly. As stated, I have doubts that there were valid leases with 802, however someone subletted to low-income tenants, but again, there were no copies of any written rental agreements with such tenants.

[13] The premises were poorly maintained and held more people than they were likely designed for. I also conclude the rent, mainly cash, was collected by Mr. Jewett through agents, one of whom testified to that effect.

[14] The documents to record rents, evictions, or give notices to tenants were from Mr. Jewett's company, 802, as the management company. Deposits of the rent went to 802's bank account, yet Mr. Jewett acknowledged he did not have a personal account. I conclude that 802's account was used by Mr. Jewett as both a business and personal account. I also conclude that, if anything, 802 was Mr. Jewett's agent or management company for collection of rent and enforcement of the arrangement; effectively, a property-management company, as opposed to a landlord. Indeed, eviction notices referred to the management, as opposed to the landlord.

[15] Mr. Jewett went so far as putting his own personal residence in nominees' names, using false information to apply for credit cards in others' names, setting up bank accounts in others' names, and signing others' names on documents. Neither he nor 802 filed tax returns prior to the net worth assessments. At the time of the Canada Revenue Agency investigation, Mr. Jewett retained a chartered accountant to put financial statements together for 802 and to prepare tax returns for him and 802 for the 1999, 2000, and 2001 taxation years.

[16] Mr. Gray, the accountant, prepared financial statements based on records CRA had previously seized from Mr. Jewett. These financial statements showed gross

income for the three years in question of \$290,000, \$364,000, and \$365,000, respectively, which is not that different from Mr. Lewis', the CRA investigator's numbers. Mr. Gray also calculated expenses of 802 for the three years of \$250,000, \$321,000, and \$320,000, leaving earnings of \$40,000, \$43,000, and \$44,000, respectively, from the rental properties. He also calculated that Mr. Jewett had, management fees from the company of \$12,290, \$24,000, and \$31,800 in 1999, 2000, and 2001 respectively, which he credited to Mr. Jewett's shareholder loan account. In August 2005, Mr. Gray submitted tax returns for both Mr. Jewett and 802 reflecting these numbers. He also provided a summary of Mr. Jewett's shareholder loan account with 802, indicating net drawings from the account in each of the three years of \$51,000, \$56,000, and \$38,000. No solid basis was laid for these statements prepared long after the fact, and I am reluctant to give them any weight.

[17] Mr. Lewis, the CRA investigating officer, completed his net worth assessment of Mr. Jewett in May 2003. In doing his calculations, he presumed Mr. Jewett owned the nine properties, so included the purchase price of the properties as assets of Mr. Jewett's and the mortgages against the property as liabilities of Mr. Jewett. He listed credit card balances in Mr. Jewett's personal liabilities, as well as approximately \$80,000 in 2000 and \$56,000 in 2001, being amounts owed to a Sally Durie. Mr. Jewett maintains that liability was \$200,000, and he provided a promissory note evidencing that amount. The note was from both Mr. Jewett and a Mr. Witt. Based on this calculation of business and personal assets and liabilities, Mr. Lewis came to an increased net worth of \$43,669, \$71,336, and \$59,852 for 1999, 2000, and 2001 respectively, for a total of \$175,000. He then added Mr. Jewett's personal expenditures, which he gleaned from Mr. Jewett's seized records of \$67,654, \$123,429, and \$135,740, for a total of \$326,000. The total income assessed for the three years, therefore, was just over \$500,000.

[18] I have not gone into great detail of all the evidence, as a good deal dealt with false applications, disputed signatures and what people did or did not know. I have simply attempted to capture the nature of that testimony, in that Mr. Jewett operated his business in a less than forthright manner. It is for this Court, however, to determine whether the Minister has correctly estimated Mr. Jewett's income, no matter how it arose in the years in question. Considerable emphasis was placed by the Crown on the fact that it was Mr. Jewett who actually owned the properties. If he did not, he did own a company, 802, which controlled the rent and equity arising from those properties. This issue is important not as it pertains to the increased net worth arising from the properties themselves, but as it might impact on the Appellant's argument that Mr. Jewett received funds not as income but through his

shareholder's loan account. The actual equity increase in the properties accounted for less than \$100,000 of the \$500,000 net worth increase.

## ANALYSIS

[19] The analysis is to determine Mr. Jewett's income, income the Crown acknowledges could only have come from the rental properties, or so Mr. Lewis claimed. I have no doubt Mr. Jewett's business affairs were, to be kind, a shambles. He did not keep financial statements. He did not file returns. He had no personal bank account. He used corporate accounts for personal expenses. He put other people's names on credit cards for his use. He signed those other people's names on documents purporting to rely on powers of attorney. This is conduct that leaves the CRA no alternative but to use what has been referred to as the blunt tool of a net worth assessment. The goal is not to prove that Mr. Jewett may have duped some people, it is to determine what income he personally had from this rental property business. Let us look at the numbers.

[20] There are two ways to approach the numbers: first, the CRA's net worth approach, which is an asset-based approach, or second, an income approach, attempting to determine what a reasonable yield would be from this rental property business.

[21] I turn first to Mr. Lewis' net worth approach. His first step was to consider the properties and their mortgages as Mr. Jewett's personal assets and liabilities. The increase in the equity in the properties, taking this approach, accounted for less than a fifth of the overall assessment, approximately \$90,000.

[22] I will accept for the moment these properties might be considered Mr. Jewett's, but they are still, as Mr. Lewis rightly pointed out in his schedule, business assets, yet Mr. Lewis took no consideration of the depreciation that a business would claim against these business assets. Mr. Gray, the accountant, certainly recognized this in preparing financial statements for 802, estimating approximately \$40,000 a year for depreciation. I do not fault Mr. Lewis, in taking an asset-based approach, in not factoring this in. However, this was not a personal asset, but a business asset, which in the normal course would be reflected in the books of the business as having depreciated. In asking the question, what is the most accurate value for business purposes leading to an accurate income assessment, I am of the view that depreciation needs to be properly reflected in the capital property of a business.

[23] I therefore find that the \$34,620, \$26,043, and \$30,207 purported increased worth of the business properties is inaccurate and should be reduced to zero, based on \$40,000 a year depreciation.

[24] Of the remaining \$410,000 assessed, \$326,000 is determined by Mr. Lewis to be personal expenditures and \$85,000 to be an increase in other personal assets. The Appellant argues that, with respect to personal assets and liabilities, Mr. Lewis has underestimated the amount of the liability of the Durie loan, first, by not acknowledging the full \$200,000 was Mr. Jewett's responsibility, and second, by reducing the principal liability by the interest-only payments Mr. Jewett made.

[25] On the personal assets side, Mr. Lewis shows an amount due of approximately \$140,000 from 1399726 Ontario Limited being half the amount that the corporation owed, purportedly, to Mr. Jewett and to Mr. Witt. The evidence suggests that the \$200,000 borrowed from Sally Durie, evidenced by a promissory note, was indeed invested in 1399726 Ontario Limited. I conclude this was a joint loan and a joint investment by Mr. Jewett and Mr. Witt. The amounts from Mr. Jewett's personal liability in 2000 and 2001 should not be the \$79,000 and \$55,600, nor should it be \$200,000, but it should be \$100,000. This reduces the net worth assessment by \$21,000 in the year 2000 and by \$44,400 in the year 2001.

[26] I turn now to the personal expenditures. Recall that these were taken from records seized by the government. Both Mr. Lewis, for the Respondent, and Mr. Gray, for the Appellant, reviewed these materials. Mr. Lewis concluded there were personal expenditures of \$67,654, \$123,429, and \$135,742. Mr. Gray concluded there were personal expenditures coming out of 802 of \$94,091, \$90,256, and \$79,980. The truth likely lies somewhere between these numbers.

[27] Mr. Buote, for the Appellant, addressed some areas in the personal expenditures which he found questionable. First, bank, credit card, and legal fees, he argued, were commingled personal and business. Having received no direct evidence from Mr. Jewett as to an appropriate breakdown of these amounts, and having heard Mr. Lewis indicate he scrutinized these expenses, I am not prepared to make any adjustment. Likewise with respect to Visa and MasterCard accounts, there was no evidence to assist in a proper identification of expenditures.

[28] With respect to Edward Jones and TD Waterhouse accounts, the Appellant argues the accounts are shown to be in 802's name, though I note in the case of Edward Jones, they were in care of Mr. Jewett and in the case of TD Waterhouse, in care of Grand Trunk, a non-existent entity. Given Mr. Jewett's *modus operandi* of

using 802 as a personal vehicle, its name appearing on the accounts is not sufficient to satisfy me these were not Mr. Jewett's investments.

[29] For 2001, there is an expenditure identified by Mr. Lewis as a \$2,770 capital gain. This simply makes no sense to me. That should count as an expense and should be removed.

[30] The major item Mr. Buote asked be removed from the personal expenditure side is what he claims are expenses as yet unpaid. These are represented by the year-end credit card balances that Mr. Lewis showed as personal liabilities of Mr. Jewett. This, according to Mr. Buote, is simply a timing issue. I agree. The approximate \$40,000 credit card liability at the 2000 year end, should not be added to Mr. Jewett's personal expenditures for that year for the purposes of determining his net worth. It should be added in the year in which he makes payment, for it is in that year that the question must be asked, where did he get the income to make the payment? This is the logical approach, though it does have the effect of shifting \$47,000 of personal expenditures arising from credit card payments from 2001 into 2002 and out of the years that are before me. Therefore, the amount of \$40,280 being the credit card balance from 2000, should be removed from personal expenditures in 2000 and put in 2001, and the \$47,576 credit card balance from 2001, should be removed from personal expenditures in 2001 and put in 2002. This has the effect of decreasing 2001 personal expenditures by \$7,296 and 2000 personal expenditures by \$40,280.

[31] Following this asset-based approach for 1999, the assessed income is reduced by \$34,620 to \$76,703, for 2000 from \$194,765 to \$107,442, and for 2001 from \$195,605 to \$110,932.

[32] I would like to turn next to the second approach, an income-based approach as opposed to an asset-based approach. Mr. Buote referred to the net worth assessment as producing a result that was patently unreasonable. I would not put it in as strong a term, though I find it ignores some commercial realities.

[33] Mr. Gray's attempt at preparing corporate financial statements results in net income from the rental properties of approximately \$40,000, \$43,000, and \$44,000 for the three years, for a total of \$127,000, as opposed to the CRAs \$501,000. I acknowledge that Mr. Gray cobbled together these numbers from the same records as Mr. Lewis and from discussions with Mr. Jewett. Both sides are close on the gross revenue figures. So, are Mr. Gray's determinations of expenses reasonable? Again, I acknowledge Mr. Jewett did not take me through these expenses, justifying them,



but simply let Mr. Gray's statements speak for themselves. That was not particularly helpful. Certainly, the following rental expenses, I would suggest, are justified and amounts are not in dispute. I will use one year, the 2000 year, as an example, from Mr. Gray's financial statements. It shows the following:

- mortgage interest	\$90,766.00
- utilities	44,869.00
- depreciation	40,785.00
- property taxes	22,697.00
- insurance	<u>7,230.00</u>
Total	\$206,347.00

Bringing income down to \$157,985.

[34] The following expenses are plausible, but the accuracy of the numbers is somewhat suspect:

- vehicle expenses	\$22,320.00
- professional fees	13,914.00
- supplies	17,900.00
- advertising and promotions	12,713.00
- repairs	8,368.00
- telephone	9,977.00
- bank	<u>5,511.00</u>
Total	\$90,703.00

[35] If I consider half of these expenses as legitimate, it would reduce income from the rental properties by another \$45,000, from \$158,000 down to about \$112,000, which, as it turns out, is very close to the \$107,000 I determined by analyzing the net worth approach.

[36] I use this income approach only as a check to see if the income, as determined under the net worth asset-based approach, makes sense if looked at from an income approach perspective. I believe it does make sense, and I am prepared to stick to my findings under the asset-based approach.

[37] I wish to briefly address the Appellant's position that it was 802 that earned the income, and that Mr. Jewett withdrew money through a reduction of his shareholder's loan account. I do not accept that argument, for reasons already covered and explained in detail by Ms. Mboutsiadis. Had I, however, concluded that 802 was

entitled to the rental income and not simply acting as Mr. Jewett's management company to collect his rents, I find my end result would not have been significantly different, as I would have adopted more carefully the income approach to determining the net rental income, and I was not swayed that the shareholder loan account was in any way proven to be an accurate reflection of Mr. Jewett's in-flows and out-flows. There simply was not enough evidence presented by him to convince me in that regard.

[38] I find Mr. Jewett is also liable for the subsection 162(1) of the *Income Tax Act* (the "Act") penalties to be based on tax determined in accordance with this decision. Given the 12-month maximum referred to in paragraph 162(1)(b) of the *Act*, there should be no issue with respect to whether Mr. Jewett filed in 2005. He will be subject to the maximum penalty under section 162 of the *Act* regardless.

[39] I would like to address costs. While the Crown has achieved greater success than the Appellant, the Appellant has reduced the assessment from \$500,000 of income to approximately \$295,000 of income. Given this mixed success, and given that the Appellant was prepared the week before trial to engage in a settlement conference, while the Crown was not, I am not prepared to order costs either way.

[40] Net worth assessments, more than many other types of cases, can often benefit from a settlement conference. In this case, the Crown was of the view it was all or nothing. Obviously, I have not shared that view, though I do understand that in the case involving the type of business practices shown by Mr. Jewett, that the Crown might prefer to go to trial. All the same, I make no order with respect to costs.

[41] These appeals are allowed without costs and referred back to the Minister of National Revenue for reconsideration and reassessment on the following basis:

1. for the 1999 taxation year, the Appellant's income is to be reduced by \$34,620 from \$111,323 to \$76,703;
2. for the 2000 taxation year, the Appellant's income is to be reduced by amounts of \$26,043 plus \$21,000 plus \$40,280, totalling a reduction of \$87,323, bringing the Appellant's income from \$194,765 to \$107,442;
3. for the 2001 taxation year, the Appellant's income is to be reduced by amounts of \$30,207 plus \$44,400 plus \$2,770 plus \$7,296, totalling \$84,673, bringing the Appellant's income from \$195,605 to \$110,932; and

4. the Appellant is subject to the maximum penalties for the 1999, 2000 and 2001 taxation years, pursuant to subsection 162(1) of the *Act*.

[42] These net worth assessments are a relatively rough form of income determination, forced in most cases by the lack of accurate books and records of the taxpayer. This case goes beyond a matter of poor bookkeeping and filing, and enters the realm of very questionable practices altogether, which makes a difficult task even more difficult.

[43] I was going to say to Mr. Jewett, had he been here, that he cannot operate a business in the manner that he did and expect the government to accept that he had no income. If he wants to run a business through a company and finance it with shareholders' loans, I suggest he document his affairs meticulously and honestly, leaving no doubt as to the amount of income and the recipient of the income. He failed to do so, and the consequences have resulted.

Signed at Ottawa, Canada, this 18th of January, 2010.

"Campbell J. Miller"

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C. Miller J.

CITATION: 2010 TCC 4

COURT FILE NO.: 2006-3297(IT)G

STYLE OF CAUSE: ROBERT JEWETT and  
HER MAJESTY THE QUEEN

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REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller

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APPEARANCES:

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