

Docket: 2017-2999(IT)I

BETWEEN:

SERVICE DE CONSULTATION DENTAIRE PLANIDENT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2017-3001(IT)G

AND BETWEEN:

THÉRÈSE ST-JEAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard by videoconference on June 21 and 22, 2021, at Ottawa,
Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Appellants: Etienne Rolland
Counsel for the Respondent: Anne-Marie Boutin

JUDGMENT

The appeals are dismissed with costs.

Signed at Vancouver, Canada, this 14th day of October 2021.

"Patrick Boyle"

Boyle J.

Translation certified true
on this 17th day of May 2022.

Melissa Paquette

Citation: 2021 TCC 67
Date: 20211014
Docket: 2017-2999(IT)I

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REASONS FOR JUDGMENT

Boyle J.

I. Issues

[1] These two appeals were heard together. Service de consultation dentaire Planident inc. ("Planident") owns a dental clinic in Westmount and rents furnished dental offices to dentists. Thérèse St-Jean is the sole shareholder of Planident.

[2] Ms. St-Jean's son, Carl Benoît, is the president and director of Planident. He is also a dentist and rents the main dental office at the Planident clinic. At the time of the hearing, Ms. St-Jean was 93 years old, and her son had held a general power of attorney for at least several years prior to the years at issue. Ms. St-Jean was about 80 years old at that time.

[3] The reassessments relate to the costs paid for a second property—an all-weather home in St-Donat—that Planident had purchased, as well as with whether this residence was acquired and used for the purpose of earning income or whether it was a personal expenditure giving rise to a benefit conferred on a shareholder for Ms. St-Jean.

[4] The reassessments were made in respect of the 2009 to 2013 taxation years. For each appellant, some of the reassessments were made after the normal reassessment period under subsection 152(4). This issue was raised only by the respondent in her reply. In addition, penalties for gross negligence were assessed against both taxpayers, pursuant to subsection 163(2): against Planident for claiming non-deductible expenditures, and against Ms. St-Jean for the unclaimed benefits from Planident that had been conferred on a shareholder. The Minister also made consequential assessments with respect to Old Age Security overpayments to Ms. St-Jean.

[5] Ms. St-Jean did not present any evidence or submissions to challenge the computation of the value of the benefit conferred on a shareholder as a result of the personal use of the second home that Planident had purchased.

II. The appellants' admissions

[6] During the trial, counsel for the appellants acknowledged that many of the expenditures at issue were non-deductible capital expenditures. However, counsel did not recognize that this warranted making reassessments after the normal reassessment period or assessing penalties for gross negligence. The other expenditures were only home insurance, property taxes, school taxes and mortgage interest.

III. Vacation home

[7] Planident purchased the residence on June 12, 2009, for \$550,000. Planident used \$70,000 of its own funds and borrowed the remainder from a financial institution and from the seller. It is an all-weather vacation home in a prime location

at Lake Archambault. Mr. Benoît had looked at three or four houses before buying it. He stated that Planident was looking for a house that could be renovated and resold for a profit and that could also be rented out during the renovations. The date on which the agreement of purchase and sale was entered into was not clearly stated. The mortgage commitment was made at the end of May. The first lease agreement for the house was entered into on April 10, 2009.

IV. Witnesses

[8] Mr. Benoît was the appellants' main witness. The only other witness was Planident's real estate broker who took care of the purchase in 2009. He confirmed only that in 2009, Mr. Benoît had stated that he was looking for a house in a prime location along the shoreline that could be lived in year-round and that he could easily rent out. His brief testimony was not sufficient to corroborate the main issues regarding the purpose, intended use and actual use of the house for rental income. He has never been a rentals agent and was never asked to put the house back up for sale. His understanding was that Planident still owned the house, and he thought that its value has increased a great deal.

V. Findings and decisions

[9] Neither of the two appeals can be allowed. This is because, on a balance of probabilities, the evidence submitted does not establish that Planident purchased or used the vacation home for the purpose of earning income. The evidence supports the finding that the house was purchased and used so that Ms. St-Jean, through her agent Mr. Benoît, could allow her son Mr. Benoît, his spouse and their daughters to make personal use of the house. Although there might have been a few short-term rentals of the house, the evidence does not establish, on a balance of probabilities, that this was the case. In addition, the evidence does not establish, on a balance of probabilities, that Mr. Benoît's spouse actually paid the rent that was stipulated in the initial lease of the house.

[10] The two main reasons for these findings are as follows:

- 1) Mr. Benoît's testimony raised significant credibility concerns that cast doubt on most of the important aspects of his testimony on account of a lack of corroborating evidence.

2) There is, for all intents and purposes, no contemporary supporting document about Planident's efforts to rent the house or about an actual rental of this house, which could have corroborated Mr. Benoît's testimony.

I will explain these findings below.

VI. Rental to the spouse and listing on the Internet

[11] Mr. Benoît described the efforts to rent the house. He stated that after the house was purchased, short-term rental offers were immediately posted on at least two websites. One of the sites indicated that Mr. Benoît had been a member since November 2010, and the other since May 2009. These screenshots were taken in August 2019. He also filed a text that he stated he found on his computer shortly before the trial; it could be his draft of the listing that was posted on the Internet. The text is not dated.

[12] Mr. Benoît entered into evidence a copy of the house's first lease. The tenant was his spouse at the time, and the lease was for 12 months, from June 2009 to May 2010. The lease was signed on April 10, 2009. Ms. St-Jean signed the lease herself with her son's spouse. Mr. Benoît later stated that his spouse may have continued to rent the house until 2014, at which time she ceased to be his spouse. It is not clear whether the 12-month lease that was signed in 2009 was extended or whether there were several short-term or seasonal rentals after the first year.

[13] At discovery in 2009, Mr. Benoît was given a written questionnaire in which he was asked to name the tenants of the house during the years at issue, and he named only himself and his ex-wife. Mr. Benoît confirmed that there were no other long-term or short-term rental records or financial records other than the initial 12-month lease that was signed with his spouse in 2009. At trial, Mr. Benoît was able to name three other people who had rented the house on a short-term basis over the years, but he was unable to provide further details. He stated that in order to reduce the risk of loss or damage, he preferred to rent the house to friends, colleagues and patients.

[14] Given that the two initial website listings were posted after Planident signed the 12-month lease with Mr. Benoît's spouse, I do not believe that these listings were bona fide attempts to put the house up for rent. I find that these listings were only window dressing; they show that from the outset, the intention was to deceive the Canada Revenue Agency (CRA).

[15] Mr. Benoît's spouse did not testify. There is no indication that she was contacted to find out whether she had more detailed documents or cashed cheques, for example. No further records and no satisfactory explanation were provided. On the basis of the evidence submitted, the Court cannot conclude that Mr. Benoît's spouse actually paid Planident the rent stipulated in the lease. The only thing Mr. Benoît submitted was a table that he had recently prepared based on bank statements that were not filed into evidence at the hearing and statements regarding all the rents that Planident had received; he submitted the table as an aggregate amount that, according to him, primarily represented the rents paid to Planident for his dental office, but also his spouse's payments and short-term rental payments. During his testimony or when referring to Planident's financial records, he was unable to provide a reliable breakdown of the rental income from the vacation home for the years at issue. He also acknowledged that the Planident accountant had prepared the financial statements according to the information and instructions that he had given him.

[16] Mr. Benoît could not provide a satisfactory explanation as to why he had not kept records of the vacation home rentals, especially since some of the reassessments were made during the appellants' normal reassessment period. Furthermore, this seems inconsistent with the fact that he was able to find and enter into evidence contemporary records regarding the operating costs of the vacation home.

VII. Home insurance

[17] The 2009 home insurance certificate is a renewal of a policy for a [TRANSLATION] "second home", described as a [TRANSLATION] "second home occupied by third parties", at a cost of \$4,600.

[18] The new insurance policy for 2010 describes the second home as a [TRANSLATION] "second home occupied by the insured"; it is an [TRANSLATION] "owner-occupant" policy. The annual cost was \$2,000. The renewal documents for the 2012 policy describe the policy and the second home in the same terms as for 2010, and the cost was also \$2,000.

[19] Mr. Benoît testified that he had changed the description for the insurance because it cost less, not because there had been a change in the use of the residence. He stated that his broker may have suggested it. The insurance broker was not called to testify, and no satisfactory explanation was given. Mr. Benoît stated that he did not recall whether he had attempted to contact his insurance broker to obtain more information or to ask him to testify. In the circumstances, I cannot accept

Mr. Benoît's unsubstantiated explanations. I am of the opinion that the change in the declared use of the residence was made to reduce the insurance costs by more than half, and that it was done deliberately for this purpose. Given that the residence was in fact rented to his spouse, and given the window dressing that he had subsequently attempted to create by posting the house on short-term rental websites, it appears that Mr. Benoît had simply decided to reduce the cost of the window dressing to make it appear as though the house was a residence owned by Planident that was being put up for rent in good faith. In any event, on account of the irreconcilable descriptions regarding the use of the home and the different types of policies that were purchased, the Court cannot recognize that the 2009 policy is the one that accurately describes the use of the house.

VIII. Audit

[20] Few documents were also produced during the audit. Mr. Benoît refused to meet with the auditors and provided the auditors with scant documentation regarding these matters. In addition, Mr. Benoît wrote letters that were personally addressed to the auditors and that argued in pseudo-legal terms that the CRA's requests were not legitimate because there was no hand-signed contract binding Planident to the authority of the CRA. The letters also argued that the *Income Tax Act* is beyond the powers of Parliament and that it was void from inception because it is a finance bill that was never authorized by the Governor General. The letters contended that if the recipients did not provide Mr. Benoît with what he requested within 10 days, he would consider the matter closed, and that if collection action was taken after this time, the auditors would then have agreed, in a personal capacity, to summary judgments against them. Finally, if the recipient wanted to obtain an extension of the 10-day time limit, he stated that "[i]f I deem your request for an extension of time reasonable, I may grant it." Two years later, in response to a letter about a proposed reassessment, Mr. Benoît referred the CRA to the letters that had been previously addressed to the auditors and ended by telling the CRA official that he was complicit in an abusive government and an illegal system, which proved his personal weaknesses. Although Mr. Benoît was within his rights not to meet with the auditors and to write them meaningless letters, and although he could not provide documents that neither Planident nor his mother possessed, this does not improve his credibility or reliability in these appeals.

IX. Expenditure deductions and income tax returns

[21] Planident's financial statements entered into evidence begin with the following sentence: [TRANSLATION] "On the basis of the information provided by management, we have compiled [Planident's] balance sheet" (emphasis added).

[22] Mr. Benoît stated that he had given the accountant the receipts that he had with the descriptions that he had indicated. Mr. Benoît did not discuss the difference between capital expenditures and current expenditures with the Planident accountant. Mr. Benoît did not provide the Court with an explanation of his understanding of current expenditures, capital expenditures and personal expenditures, nor did he explain how he distinguished between them. There is also no indication that Mr. Benoît discussed the difference between personal expenditures, business expenditures and expenditures related to income from property with the Planident accountant.

[23] There is absolutely no evidence to show that Mr. Benoît reviewed Planident's or his mother's income tax returns or discussed them with the accountant or with anyone else before they were filed. The Court did not hear any testimony regarding the preparation and filing of the appellants' income tax returns. There is no indication that, on behalf of Planident or his mother, Mr. Benoît discussed the definition of a rental property or a personal-use property with the Planident accountant or with anyone else. The accountant was not called as a witness, and no explanation was provided to justify his absence.

X. Ruling on the appeals

[24] On the basis of the evidence, the Court finds that the vacation home located in St-Donat at Lake Archambault was purchased by Planident and was used by Planident so that its shareholder and her son Carl Benoît, as well as other people of their choice, could make personal use of the property. The Court finds that it has always been Mr. Benoît's intention to make the residence available to himself and to his spouse, for their personal use. The misleading listings for the residence that were posted on the Internet when the property had already been rented out to his spouse, even before the sale had closed, as well as the misleading description of the use of the residence in the insurance policy, confirm that Mr. Benoît had always intended to mislead the CRA as to the residence's real use. Given the Court's significant doubts regarding the credibility of Mr. Benoît and of his testimony, and given the scant evidence to support his claims, the Court cannot find, on a balance of probabilities, that Mr. Benoît's spouse or Mr. Benoît himself actually paid rent to

Planident for their use of the residence. For the same reasons, the Court cannot find, on a balance of probabilities, that the house was rented to third parties. Planident therefore conferred a benefit on its shareholder each year, and the expenditures that were claimed are not deductible.

[25] It is clear from the evidence that the appellants' income tax returns for each of the years at issue contained a misrepresentation and a false statement or omission in respect of the use of the residence and the expenditures associated with it. As I have indicated above, the Court finds that this was a wilful omission knowingly made by Mr. Benoît, who is the president and director of Planident and his mother's agent. For this reason, reassessments could be made after the normal reassessment period. For the same reasons, the penalties under subsection 163(2) were properly assessed.

[26] The appeals are dismissed with costs.

Signed at Vancouver, Canada, this 14th day of October 2021.

"Patrick Boyle"

Boyle J.

CITATION:

COURT FILE NOS.: 2017-2999(IT)I
2017-3001(IT)G

STYLES OF CAUSE: Service de consultation dentaire
Planident inc. v. Her Majesty the Queen

Thérèse St-Jean v. Her Majesty the Queen

PLACE OF HEARING: By videoconference at Ottawa, Ontario

DATES OF HEARING: June 21 and 22, 2021

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: October 14, 2021

APPEARANCES:

Counsel for the Appellants: Etienne Rolland
Counsel for the Respondent: Anne-Marie Boutin

COUNSEL OF RECORD:

For the Appellants:

Name: Etienne Rolland

Firm:

For the Respondent: François Daigle
Deputy Attorney General of Canada
Ottawa, Canada