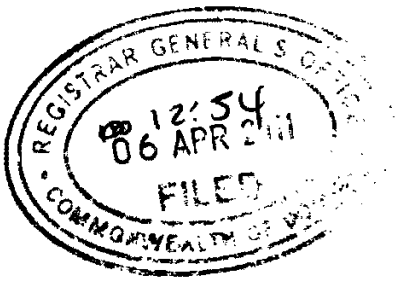
COMMONWEALTH OF DOMINICA

DOMHCV2006/0292

BETWEEN:



KEIRON PINARD-BYRNE **Claimant**

and

COMPTROLLER OF INLAND REVENUE **Defendants**

Before: **The Hon. Justice Brian Cottle**

Appearances:

Mrs. Hazel Johnson for Claimant

Mr. Gerald Burton for Defendants

[2011: February 23rd]

[2011: April 6th]

JUDGMENT

[1] **COTTLE J:** The Claimant was the resident partner of the international accounting firm Coopers and Lybrand. On 16th March 1998 he filed his individual tax return for the tax year 1997. He indicated that his share of the partnership loss for the year was $9, 763.00. At the time the partnership consisted of 15 persons. The Inland Revenue accepted this return.

[2] One year later the claimant filed an amended return for 1997. In it he declared that his share of the partnership loss for 1997 was now $162,719.00. This

represented the entire loss for the partnership. Accompanying this amended return was a letter by the claimant. It is quite brief. I reproduce it in full

MARCH 29th, 1999

The Comptroller

Inland Revenue Division

High Street

Roseau

Dominica

1997 INCOME TAX RETURNS- COOPERS & LYBRAND & NON-RESIDENTS PARTNERS OF COOPERS & LYBRAND

"I hereby inform you that the captioned returns submitted by the undersigned under cover letter dated March 25th,1998 require to be corrected due to the error in the division of the Partnership loss per page 6 of the attachments. The division of the loss is corrected as follows:

Adjusted loss		***$162,719***
Division of loss		
Resident Partner:	***Keiron Pinard-Bryne***	***$162,719***
	Non-Resident Partners	***Nil***
		$162,719

Accordingly I enclose herewith the corrected returns of the Non-resident Partners and the Resident Partners.

Yours faithfully

Kieron Pinard-Byrne

[3] Before this missive there had been no suggestion to the Comptroller of Inland Revenue that anything was amiss with the 1997 return originally filed. The letter reproduced above offers no explanation for the "error in the division". Indeed it appears to the court that this was no arithmetical error in division. What the claimant was saying is that he should be permitted to claim the entire loss of the partnership rather than the proportion. No reason is given for adopting this new position.

[4] From the correspondence of the Comptroller of Inland Revenue it appears that up to that time the claimant had been taxed only on a part of the total partnership income for previous years. The claimant again wrote to the Comptroller of Inland Revenue on 10th September 1999 indicating that he was acting under section 81(3) of the Income Tax Act. The section reads

> ***"where, for any year of assessment a person who has furnished a return of income for that year and has been assessed under Section 79 or 80, notifies the Comptroller in writing within six years after the end of the basis period for that year of assessment that by reason of some error or mistake in the return the assessment was excessive, the Comptroller after taking into account all relevant circumstances and subject to subsection (4), shall reduce the assessment to provide such relief as appears to him to be fair and reasonable."***

[5] The Comptroller replied by letter. He requested that the claimant furnish documentary evidence to show that the overseas partners expected the claimant to bear the whole loss. The claimant provided no supporting documentation. It appears that he expected the Comptroller to take him at his word. He now says that he did not know what documentary evidence would satisfy the Comptroller. He only discovered at the hearing before the appeal commissioners that the Comptroller might be satisfied with a letter from the partnership. Without the documentation the Comptroller did not adjust the assessment of the claimant for 1997.

[6] The claimant appealed to the appeal commissioners. The commissioners varied the assessment to the extent that they allowed the claimant to claim $15,000 as his share of the partnership loss. Dissatisfied, the claimant now

appeals to this court. Counsel for the claimant relies on CPR 2000 part 60.2 he seeks to persuade the court to have regard to two letters from Marcus Hatch of Price water house. I reproduce both.

AUGUST 24TH 2006

The Comptroller

Inland Revenue Division

High Street

Roseau

Dominica

"Dear Sir

1997 Income Tax Returns- Coopers & Lybrand and Non-Resident Partners of Coopers & Lybrand

We have been requested by Mr. Kieron Pinard-Byrne to confirm to you that as the resident partner of Coopers & Lybrand he was entitled to claim the loss incurred by the Dominica office for the 1997 income year.

As you are probably aware, subsequent to the above 1997 income year, the accounting firms Price Waterhouse and Coopers & Lybrand merged and the combined firm agreed to practice in the name of Price Waterhouse Coopers."

APRIL 23, 2009

The Comptroller

Inland Revenue Division

High Street

Roseau

Dominica

"Dear Sir

Re: 1997 Income Tax Returns- Coopers & Lybrand and Non-Resident partners of Coopers & Lybrand

We refer to our letter of August 24th 2006 (copy attached for ease of reference) and hereby confirm the contents thereof. For the avoidance of any doubt we hereby unequivocally confirm that Kieron Pinard-Byrne as Resident Partner of Coopers & Lybrand was entitled to claim the loss incurred by the Dominica Office for the 1997 income year"

[7] At the trial of this matter, (which operates as a rehearing) the court received evidence from the claimant and Ms Rochelle Casimir of the Inland Revenue Department. The claimant explains that in June 1996 the Executive council of Coopers & Lybrand made the decision regarding allocation of profit and loss for the year. He was a member of the council. He was tasked with disseminating the decision to the other partners. He could produce no resolution or memoranda which would attest to the decision. It was not until seven and ten years after the claimed decision that the above letters were written.

[8] The first letter from Mr. Hatch is equivocal. It led to a second letter as seen above. This is the evidence the claimant would have the court rely on to bolster his claim to be entitled to claim the loss. The letter does not tell us the basis that Mr. Hatch uses to arrive at his conclusion. We are not told whether he was a member of the Coopers & Lybrand Executive Council when the decision was made.

[9] The evidence of the claimant seems to suggest that the partnership did not formally memorialize its decisions. Had such evidence been led before the

Comptroller he could not be faulted for not being satisfied. I have considered the letters and I remain far from satisfied.

[10] The onus in this case remains on the claimant, the taxpayer, to satisfy the court that the assessment was wrong. The initial assessment was by the claimant himself. He knew of the alleged decision to no longer apportion losses or profits among all the partners. Nine months after that decision he filed his return. A full year later he says that the return contains an error. I find this difficult to accept. The claimant is a very experienced chartered accountant. I do not believe that he would have conducted his business as he would now have me conclude.

[11] The decision at which the appeal commissioners arrived commends itself to me with one adjustment. The commissioners were content to allow the claimant to claim a loss of $15,000 for the tax year. With the greatest respect for the commissioners I cannot see how they arrived at the figure. The original amount was $9,763.00. The commissioners would have been happy, like the Comptroller to allow a larger sum on the basis that the claimant has earned a larger proportion of the profit in previous years.

[12] This is a reasonable position. But it is for the claimant to lead credible evidence to show the share of the loss he should be allowed. He failed to do so. I would then restore the original assessment of the Comptroller of Inland Revenue. The claim is dismissed. The assessment of the Comptroller of Inland Revenue is restored. I make no order as to costs

Justice Brian Cottle

High Court Judge