
BETWEEN:

LAVERNE CLIFFORD KINDREE .....APPELLANT;

1964
Sept. 17, 18
Oct. 16

AND

THE MINISTER OF NATIONAL REVENUE ..... RESPONDENT.

Revenue—Income—Income tax—Practice of medicine—Physician entering into contract of employment with limited company—Corporation holding itself out as authorized to practice medicine—Physician precluded from practicing medicine as agent of a body corporate—Fees received by corporation for professional services performed by physician not earned income of corporation—Fees assigned by physician to corporation purportedly employing him are income of physician—Income Tax Act, R.S.C. 1952, c. 148 s. 21(2)—Medical Act, R.S.B.C. 1960, c. 239, s. 71.

The appellant, a medical doctor practicing in the Village of Squamish, British Columbia, incorporated a Company called Squamish Holdings Limited which employed the appellant as a doctor and appellant's wife as a nurse and which company also entered into contracts of employment with a succession of doctors who assisted the appellant in the practice of medicine.

The evidence established that there was no real change in the manner in which the appellant's practice was conducted after the incorporation

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of the Company from the manner in which it was conducted prior thereto insofar as the supplying of medical attention to patients was concerned.

The respondent assessed the appellant for income tax on the income credited to the Company over the percentage thereof to which the appellant and the other doctors in the clinic were entitled by virtue of the respective contracts into which they had entered with the Company, on the ground that such revenue represents income of the appellant and not of the Company.

Held: That Squamish Holdings Limited was not entered in The British Columbia Medical Register maintained by The College of Physicians and Surgeons of British Columbia in accordance with the *Medical Act,* 1960, R.S.B.C., c. 239 and could not be so registered, and, by s. 71 of that Act any person not so registered is prohibited from engaging in the practice of medicine, surgery or midwifery, so that it is clear that a corporation cannot hold itself out as being authorized to practice medicine in any way whatever.

2. That the appellant is precluded in fact and in law and as a matter of public policy from practicing the profession of medicine in any of its forms as agent of a body corporate and the document purporting to be a contract of employment between the appellant and the Company did not establish an employer-employee relationship; and, similarly, the documents purporting to be contracts of employment between the other doctors and the Company did not establish an employer-employee relationship as between them and the Company but rather such relationship subsisted between them and the appellant.

3. That the monies received by the Company for services rendered by the appellant and the other doctors were fees already earned by him either personally or through the doctors employed by him, and the Company was merely the assignee of these fees which the Company did not and could not earn and to which it had no right other than as assignee of the appellant's earnings.

4. That since the monies in the hands of the Company are income of the appellant which his wife, by her services, assisted him in earning, it follows that sums paid by the Company to the appellant's wife were remuneration received by her as an employee of her spouse and as such are not properly deductible in computing the appellant's income.

5. That the appeal is dismissed.

APPEAL from a decision of the Tax Appeal Board.

The appeal was heard by the Honourable Mr. Justice Cattanach at Victoria.

L. C. Kindree on his own behalf.

Alan F. Campney and *F. D. Jones* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

CATTANACH J. now (October 16, 1964) delivered the following judgment:

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This is an appeal from a decision of the Tax Appeal Board[1] dated December 27, 1962 whereby the assessment by the Minister of the appellant's liability under the *Income Tax Act*, R.S.C. 1952, c. 148 for the taxation year ending December 31, 1957 was confirmed, together with appeals from the assessments under the *Income Tax Act* for the taxation years 1958, 1959, 1960, 1961 and 1962.

The appellant is a duly qualified physician and surgeon who, upon completion of his medical training in 1948, began the practice of his profession in the Village of Squamish, situated in an area of limited access in the Province of British Columbia. He was accompanied by his recent bride who was a registered nurse and who assisted him in the conduct of his profession.

The appellant conducted his profession, at the outset, in rented quarters, which with the expansion of his clientele became inadequate. Accordingly the appellant contracted for the construction of larger premises in which to establish a medical clinic. Because of the increase in the number of patients and because the appellant supervised the construction of the clinic premises in addition to doing the cabinet work himself, on June 27, 1957, he employed one, Dr. D'Appolonia to assist him in the conduct of his profession at a remuneration of 35 percent of the net profits for the first year, 40 percent for the second year, 45 percent for the third year and 50 percent in each year thereafter. For a period of approximately 6 months Dr. D'Appolonia was in sole charge of the practice, the appellant devoting himself exclusively to the supervision of the construction of the clinic premises.

For reasons best known to himself and conceivably upon the advice of his chartered accountant and his solicitor, the appellant applied for and obtained the incorporation of a private company pursuant to the laws of the Province of British Columbia, under the name of Squamish Holdings Limited (hereinafter sometimes referred to as the Company) the certificate of incorporation bearing date June 28, 1957. Paragraph 3 of the Memorandum of Association sets out the objects for which incorporation was obtained in seven clauses, the pertinent clauses reading as follows:

[1] (1963) 30 Tax A.B.C. 333.

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(a) To purchase or otherwise acquire and hold, or otherwise deal in, real and personal property and rights, and in particular land, buildings, medical and hospital equipment and supplies, furniture, supplies of all kinds, hotels, motels, trailer courts and equipment for the same.

(b) To enter into contracts or arrangements with any person, firm or corporation or agency for the furnishing and supply of medical and surgical aid and treatment of all kinds including hospital care, house care, drugs, medicines, medical apparatus.

(e) To employ duly registered physicians, surgeons and nurses as required in order to carry out any contracts entered into by the company.

The authorized capital of the Company consists of 20,000 preferred shares of the par value of $1 each and 10,000 shares without nominal or par value, the maximum consideration for which shares can be issued being $1 per share. Of the 10,000 shares without nominal or par value, 100 were issued to Mrs. Kindree, the appellant's wife, which were paid for by a loan from the Company to Mrs. Kindree, repayable from her salary as an employee of the Company, and 200 were issued as fully paid to the appellant.

The authorized preferred shares were all issued, 2,000 to Mrs. Kindree and 18,000 to the appellant. A substantial number of the preferred shares have been transferred to their children, five in number and all of tender years.

The appellant admitted in his testimony that he was the only shareholder who injected capital into the Company, the consideration for the issuance of shares to him being the transfer of assets owned by the appellant to the Company.

Immediately upon the Company coming into existence the appellant and his wife executed a Bill of Sale dated July 2, 1957 transferring to the Company their goods and chattels, comprising office equipment and furnishings, surgical instruments, medical equipment and two automobiles, all set forth in detail in a schedule to the Bill of Sale, for a consideration of $6,368.32. In addition two blocks of real property, owned by the appellant and his wife, were transferred to the Company on the same date, one block being land occupied by a trailer court and the other being the land upon which the medical clinic had been constructed.

The construction of the building housing the medical clinic was begun in 1956 and completed in January 1957

from which time the appellant carried on his medical practice in those premises.

The contract of employment between the appellant and Dr. D'Appolonia, dated June 27, 1957 was assigned by the appellant to the Company, also on July 2, 1957.

On June 27, 1957 the appellant purported to enter into a written contract of employment with the Company whereby he was to enter its service at a salary of $7,200 per year plus a bonus to be fixed on the basis of the net profit of the Company for the year. A similar contract was made on the same date between the Company and Mrs. Kindree whereby she was to receive a monthly salary of $200 for her services in connection with the operation of the medical clinic and $100 per month for her services in connection with the trailer court.

The Company maintained two bank accounts with the local branch of the Bank of Nova Scotia designated as Squamish Holdings Limited accounts "A" and "B". All receipts of the medical clinic were deposited in account "A" and all disbursements pertaining to the medical practice were made therefrom. The "B" account was used exclusively for deposits and withdrawals pertaining to the operation of the trailer court.

The operation of the trailer court was temporary in nature and was terminated well before the taxation years here in question so that the revenues therefrom and expenditures in connection therewith do not enter into the consideration of the present appeals.

The appellant and Mrs. Kindree also had a joint bank account into which their salaries were deposited and from which withdrawals were made for their personal needs.

The corporate name of Squamish Holdings Limited was not displayed on the medical clinic premises, it was not listed in the telephone directory, nor was the Company entered in The British Columbia Medical Register maintained by The College of Physicians and Surgeons of British Columbia in accordance with the *Medical Act,* 1960, R.S.B.C., c. 239. The Company could not be so registered because membership in the College is predicated upon a prescribed period of study and passing qualifying examinations. From their very nature these requirements can only be met by natural persons. Further, section 71 of this

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Act prohibits any person not registered thereunder from engaging in the practice of medicine, surgery or midwifery. Nowhere in the Act is it provided that the word "person" where it is used, shall include a corporation. It is clear that a corporation cannot hold itself out as being authorized to practise medicine in any way whatever.

Throughout the taxation years in question, the appellant was assisted in the medical practice by a succession of doctors, usually one at a time, all of whom had signed documents purporting to be contracts of employment with the Company. Each of such contracts contained a provision that the employee, (the doctor) was not limited or impeded in the practise of medicine to the best of his skill, knowledge and ability.

From the evidence adduced, it is clear that there was no real change in the manner in which the practice was conducted after the incorporation of the Company from the manner in which it was conducted prior thereto, insofar as the supplying of medical attention to patients was concerned.

After the incorporation of the Company, however, bills for professional services were rendered in the name of Squamish Holdings Limited. The corporate name was printed on the bills in bold type and below it the words "Medical Clinic of Dr. L. C. Kindree and Associates" appeared in smaller type. The account designated the professional services as having been rendered by the doctor who, in fact, performed the services and ended with a request that cheques be made payable to Squamish Holdings Limited.

Despite such admonition many cheques were made payable to the doctor who attended the patient, which cheques were invariably endorsed by the payee to the Company and credited to its "A" account.

Cheques drawn on the Company's bank account were signed "L. C. Kindree M.D." beneath which manual signature the words, "Medical Clinic: Squamish Holdings Ltd." were either stamped or written.

Under date of January 22, 1959 there was a contract between the Company and Howe Sound Company, a Company engaged in mining operations, whereby employees of that Company were to be given pre-employment medical

examinations, an annual examination and medical treatment in the event of industrial accidents, in medical quarters supplied by the mining company at a nominal rental. This contract was effected by means of a letter addressed in the first instance to Dr. Kindree, the appellant herein, but was subsequently amended by consent of both parties, so that the letter was addressed to Squamish Holdings Limited and the terms embodied in the letter were accepted by the appellant in his capacity as president of Squamish Holdings Limited.

The appellant, who appeared on his own behalf without counsel, strenuously contended that his income was limited, by virtue of the foregoing arrangements, to salary and bonuses received by him from the Company and that he is entitled to adopt any method for the conduct of his medical practice which he, in his absolute discretion, should determine as being best suited thereto.

On the other hand, counsel for the Minister contended that the revenue arising from the medical services performed by the appellant and other doctors in the clinic over the percentage to which they were entitled by virtue of the respective contracts into which they had entered, and credited to the Company, represents income of the appellant and not that of the Company and that the monies in the hands of the Company came into its possession simply by assignment.

In my view there is no doubt whatsoever that the practice of medicine can only be carried on by a natural person involving a personal responsibility to the patient and to the governing body of the profession, such conclusion being obvious from the general tenor of the *Medical Act (supra)* and the code of ethics of the medical profession to which the appellant subscribed. In so far as clause (*b*) of the objects of the Company purports to authorize the Company to conduct the practice of medicine it must be ineffective.

As indicated by the evidence, the incorporation of the Company did not alter in substance the conduct of the business. In my opinion the crucial test is whom the patients thought they were consulting and were in fact consulting. They had no knowledge, or any means of knowledge, of the Company until accounts were rendered to them in the name of the Company after treatment.

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In my opinion, the appellant is precluded in fact and in law and as a matter of public policy from practising the profession of medicine in any of its forms as agent of a body corporate and the document purporting to be a contract of employment between the appellant and the Company, did not establish an employer-employee relationship. Similarly so the documents purporting to be contracts of employment between the other doctors and the Company did not establish an employer-employee relationship as between them and the Company, but rather such relationship subsisted between them and the appellant.

It is, therefore, my understanding of the facts that the monies received by the Company for services rendered by the appellant and the other doctors were fees already earned by him either personally or through the doctors employed by him and the Company was merely the assignee of these fees which the Company did not and could not earn and to which it had no right other than as assignee of the appellant's earnings.

There was no dispute between the appellant and the Minister as to the accuracy of the figures by which the appellant's income has been increased in the taxation years in question.

Since I have found that the monies in the hands of the Company are income of the appellant which his wife, by her services, assisted him in earning, it follows that sums paid by the Company to the appellant's wife were remuneration received by her as an employee of her spouse and as such are not properly deductible in computing the appellant's income by reason of s-s (2) of s. 21 of the *Income Tax Act* which reads as follows:

> 21. . . .
>
> (2) Where a person has received remuneration as an employee of his spouse, the amount thereof shall not be deducted in computing the spouse's income and shall not be included in computing the employee's income. . . .

The Minister was, therefore, right in assessing the appellant as he did and the appeals herein must be dismissed with costs.

Judgment accordingly.