

BETWEEN:

METROPOLITAN MOTELS COR-
PORATION }

APPELLANT;

AND

THE MINISTER OF NATIONAL
REVENUE }

RESPONDENT.

1966
Montreal
May 3, 4
May 6

Income tax—Adventure in nature of trade—Purchase of land by company as site for motel—Failure to obtain necessary financing—Sale of property at profit—Intention of company—Income Tax Act, s. 139(1)(e).

In 1958 appellant company, which was controlled by R, acquired from another company controlled by R a parcel of land which the latter company had bought in 1957. The property adjoined a shopping centre in Dorval, Quebec, and it was R's intention that appellant company should construct a motel on the site and rent it to someone who could operate it. In order to finance the transaction appellant company, which had a paid-up capital of only \$4,000, required to borrow some \$600,000 and approached several lending institutions for that purpose. Despite diligent efforts, however, no lending institution would advance the money unless appellant company could arrange to rent the motel when constructed to an experienced motel operator. Appellant was unable to meet this requirement and therefore decided to sell the property, which it did in 1959 at a profit of \$97,000. The Court found that R acquired the property with the intention of building a motel if possible but otherwise to turn the property to account at a profit.

Held, appellant company was chargeable to tax on its profit as being income from a business within the meaning of s. 139(1)(e) of the *Income Tax Act*.

Appellant company was incorporated in Quebec in 1958, its stated purposes including carrying on a motel business. The company was controlled by Isaac Rawas, who came to Canada from Italy in 1953 and engaged in speculative home building through Meteor Homes Limited, a company also controlled by him. In 1957 Meteor Homes Limited endeavoured to buy some vacant land adjoining a shopping centre in Dorval with the intention of setting up a revenue-income complex. There was initial disagreement as to the terms of the proposed purchase but after further negotiations and the preparation of several plans Meteor Homes Limited purchased the property on July 26th 1958 for \$60,080.63. It sold two small parcels of land for use as gasoline service stations and on October 24th 1958 conveyed the remainder to appellant company for \$60,080.63, of which \$5,000 was paid in cash, the balance being secured

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by a mortgage. Appellant company's paid-up capital was only \$4,000 and in order to construct a motel it required \$600,000. With this in view it approached several lending institutions but was unable to meet their requirements for a loan, viz a lease or management contract with a chain of hotel or motel operators or a management contract with a first class hotel man, and appellant company accordingly decided to sell the property. The property was sold to Colonial Motels Corporation in June 1959 for \$157,062.40. Appellant company was assessed to income tax on the profit made.

APPEAL from decision of Tax Appeal Board.

H. Heward Stikeman, Q.C. for appellant.

Paul M. Ollivier, Q.C. and *Paul Boivin, Q.C.* for respondent.

JACKETT P.:—This is an appeal from a decision of the Tax Appeal Board dismissing appeals from assessments of the appellant under the *Income Tax Act* for the 1959 and 1960 taxation years.

The sole question raised by the appeal is whether a profit made by the appellant on the sale of a parcel of land was properly included by the Minister in the computation of the appellant's income under the Act for the year in which the sale was made as being income from a business within the extended meaning given to that word by paragraph (e) of subsection (1) of section 139 of the Act.

The facts of the matter as established by the evidence given in the Tax Appeal Board are fully set out in the reasons for the judgment of the Board. The facts established by the evidence given in this Court are, for all practical purposes, substantially the same as the facts as set out in the Board's reasons for judgment. There are minor differences, to which counsel for the appellant has, very helpfully, drawn my attention.¹ These differences do not, in my view, affect the matter in any material way.

¹ There is only one finding of fact made by the Board of any possible significance for which there is no basis in the evidence before this Court to which I should refer. There is no evidence before me to suggest that the architectural studies and other preliminary work carried on by Mr. Rawas and the appellant were "promotional steps taken to attract a prospective purchaser".

Counsel for the appellant did not suggest that they did. I therefore adopt the Board's narrative of the events without repeating it. I should also say that I am, generally speaking, in agreement with the Board's approach to the determination of the issue raised by the appellant. I have, after giving very careful consideration to the question upon which, in my view, the appeal turns, reached the same conclusion as that reached by the Board. I must, however, state my reason for reaching that conclusion in my own words.

It is common ground that, for purposes of this appeal, the appellant's intentions are those that Isaac Rawas, by whom the appellant was managed and controlled, had for it. It is also common ground that nothing in this appeal turns on the fact that the property in question was originally acquired by Meteor Homes Limited, another company managed and controlled by Mr. Rawas. The appeal must be decided as though the property had been acquired by the appellant when it was acquired by Meteor Homes Limited.

The situation is then, in brief, that, in 1957 the appellant acquired for a price of \$60,080.63 a property that was regarded as a good site for a motel, and, in 1959, after unsuccessfully attempting to make the arrangements necessary to build on the site a motel from which it could get a rental income, it resold the property for \$157,062.40, thus realizing a profit of \$96,981.77.

It is clear on the evidence given before me, and I so find, that, at the time of the acquisition of the property, the appellant had a firm intention, if it could make the necessary arrangements, to build a motel and rent it to some one who could operate it. It also knew at that time, however, that, before it could carry out that intention, it had to formulate a project for a motel in which it could interest an experienced operator of motels to such an extent that it would commit itself, in advance, to rent the motel to be built and that such operator of motels and its commitment had to be sufficiently acceptable to a lending institution for that institution to be prepared to lend an amount in the neighbourhood of \$600,000 on first mortgage to finance, in part, the construction of the motel. The appellant tried to get such a commitment from an operator of motels and

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failed. The appellant did not, therefore, build a motel but, instead, was able to negotiate the very profitable sale to which I have already referred.

If the property in question was acquired for the exclusive purpose of building a motel—if that was the sole motivating reason for its acquisition—the profit is a profit from an affair of capital and is not part of the appellant's income. If, on the other hand, the appellant was also motivated in deciding to buy the property by the possibility that, if it could not build a motel, it could in any event sell it at a profit, then a sale made in the course of realizing that possibility is, in my view, the consummation of a venture in the nature of trade and the resulting profit is taxable.

I observed Mr. Rawas as he gave evidence with great care. He told the Court that the land values in the area in question were, at the time the property was acquired, going up and were going to continue to go up. He said that if this project were not a good buy he would not have bought it. He said that, had he been asked at that time what he would do if the motel proposal were frustrated, he would have said, "We'll do something else". He is a very careful and able business man. He is not some inexperienced or reckless person who would embark on a major transaction without considering all the possibilities. Without in any way doubting his honesty or sincerity, I cannot escape the inference that, when he acquired this property, it was with the intention of building a motel, if possible, and, if that were not possible, of otherwise turning the property to account at a profit.

The appeal is dismissed with costs.