

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Khadra, 2010 NSPC 16

Date: February 24, 2010

Docket: 1899865 - 1899916

Registry: Halifax

Between:

Her Majesty the Queen

v.

Sonia Khadra

and

George Khadra

Judge:

The Honorable Judge Jamie S. Campbell

Decision:

February 24, 2010

Charge:

Excise Tax Act 327(1)

Counsel:

Michael MacKenzie, counsel for the Crown
Gerard Tompkins, counsel for the defendant, Sonia
Khadra
Elizabeth Buckle, counsel for the defendant,
George Khadra

1) Sonia and George Khadra operate the business known as Maritime Carpet and Flooring. They have been charged with three kinds of offences under the *Excise Tax Act*.

2) Their actions in filing documents that were inaccurate have been asserted to have been a result of deceptiveness on the one hand or of naivete or negligence on the other. That can be a difficult distinction to make.

Charges:

3) The Khadras have been charged with 26 counts of offences contrary to *Excise Tax Act* RSC 1985 (“the Act”). Ten charges allege that they made false or deceptive statements in the Goods and Services Tax returns (“GST returns”) filed on behalf of their company, contrary to paragraph 327(1) (a) of the Act. Ten charges allege that they willfully evaded or attempted to evade payment or remittance of net tax pertaining to the company’s GST returns contrary to section 327(1)(c) of the Act. Six charges allege that they willfully obtained or attempted to obtain a rebate or refund to which they were not entitled, also pertaining to the company’s GST returns, contrary to paragraph 327(1)(d) of the Act.

4) The charges allege that over \$50,000 of income was unreported for purposes of the remittance of GST/HST.

Maritime Carpet and Flooring:

5) Sonia Khadra is the registered owner of the business. Her main involvement however has been to deposit cheques and sometimes to gather the paperwork to be taken to the family's accountant. Her main work has been in the home. The Khadras have four children. The business was put in her name when it started in 1997 because she had a better credit history than her husband.

6) George Khadra is the person who is the hands on operator of the business. He takes the orders, provides quotes and either does the carpet installation or supervises that installation. The business has no office as such. It is run out of the family home, and even there it seems that no one area of the home has been designated for the business. Documents pertaining to the business may be kept in the master bedroom, the kitchen or the basement. That spreads out into the van that is used for the business. For some time the "filing system" consisted of plastic grocery bags. Business documents were put in a plastic bag and taken to the accountant to be sorted out.

7) George Khadra would sometimes provide written quotes for his work but would often provide a quote verbally. It appears to have been, and still is, a business that was, to some extent, operated on a handshake basis. George Khadra may be very good carpet installer. He may even be, in some ways, a very capable businessman. He is able to get work and satisfy his customers. He is clearly willing to work very hard. He is however, a rotten record keeper.

8) Neither of the Khadras has finished high school and neither has any business training at all. Sonia Khadra's focus has been on raising her children and running the family home. George Khadra's focus has been on installing carpets. Neither of them has focused on keeping the kind of records needed to run a business.

The Accountant: Azziz Jreige

9) Into this picture came Azziz Jreige. Mr. Jreige operates A. Jreige Accounting Services Ltd. The Khadras met Mr. Jreige through church and family connections. He started doing accounting work for them in the mid-1990's. He had become a Registered Public Accountant in the early 1990's.

10) The arrangement with Mr. Jreige was that the Khadras would drop off

paperwork to him quarterly and he would determine the amount of the quarterly tax payment. The paperwork included receipts for expenses, invoices paid by customers and the bank statements. Each year he would compare the amount of claimed income and expenses with the information shown on the bank statements.

11) The Khadras dealt only with the Royal Bank. The list of their deposits to the Royal Bank would, in theory at least, provide a complete picture of their income for a given year. Mr. Jreige would use the bank statements to reconcile the plastic bag full of receipts and make an adjustment to reflect what was considered to be their full income.

12) Mr. Jreige asked for all of their invoices paid by clients. When the bank accounts showed that there was more income than the plastic bag full of papers disclosed, he would ask them to look for more invoices. Logically, if their bank account showed more income than their bag of invoices, the income had to have come from somewhere. There must then be a paid invoice to support it, somewhere. If the invoices could not be found, in the kitchen, the basement or the van, Mr. Jreige would do an adjustment. Tax would be paid on that adjusted amount, even if it was not clear where the money had come from.

13) As with many elegantly simple theoretical solutions, that system seems to have fallen short of some of the more exacting practical requirements. Mr. Perry McCarthy is an investigator in the Enforcement Division of the Nova Scotia Tax Services Office of Canada Revenue Agency. He maintained that the idea of providing bank statements as a substitute for invoices was “ridiculous”. GST/HST is collected from customers and remitted to Canada Revenue Agency. It is not collected based on a family’s income deposited in their bank. He did allow however that he had seen some people report income in that way and that perhaps to a person who is not familiar with these kinds of things, a bank statement might be seen as reflecting income.

14) That system appears to have operated satisfactorily for the Khadras at least. They both said that they assumed that they were in compliance with the law. They assumed that if Mr. Jreige had their bank statements everything would be worked out because they were not trying to hide anything. There is no evidence and no allegation of money being deposited anywhere other than in the Royal Bank accounts for which Mr. Jreige had the statements.

Specific Charges:

15) The charges here all relate to a number of invoices that were never provided to Mr. Jreige. When a search warrant was executed at the Khadras home in May 2007, two invoice books, a beige file folder and an envelope were found on the computer desk in the master bedroom. They all contained a number of invoices indicating that income had been received from customers. The documents were never provided to Mr. Jreige. No tax was paid in respect of them.

16) The invoices are in amounts that range from quite small to very significant.

17) Sonia Khadra says that she found the invoices that were located on the computer desk when she was doing spring cleaning in March 2007, just a few months before the search warrant was executed. She said that they may have been in the furnace room or the storage room of the house. She testified that she called George Khadra to tell him that she had found documents that related to the period for which they were being then audited. To that extent, she knew that they were of some significance. The audit had been going on for about three years at the time.

18) Their evidence is that George Khadra felt that the papers should be put in one place in case they were needed by the auditor or the accountant. Neither felt that it was necessary to tell anyone that they had found those papers. If they needed them, they would ask. That of course begs the question of how the auditor or the accountant was expected to specifically ask for documents of which neither the auditor nor the accountant were aware.

19) When the search warrant was executed in May 2007, Sonia Khadra told Perry McCarthy that they had already provided all of the relevant information and documents. That search then turned up the invoices on the computer desk.

The Elements of the Offences:

20) There was no dispute as to the law to be applied. The charges under the Act are criminal in nature. The Crown has to prove beyond a reasonable doubt that the person performed the act that constitutes the offence and that he or she intended to do so.

21) Paragraph 327(1)(a) requires that the Crown prove that the person filed a false or deceptive return and that he or she intended to do just that. The person

must be proven to have made statement, knowing that it was false and intending that it be acted upon as being true.

22) Paragraphs 327(1)(c) and (d) contain the requirement that person file documents with the intent to evade tax that he or she knows or believes to be payable. The conduct itself may be blameless if the criminal intent is not present. Carelessness or negligence is not enough.

23) The Act provides for a graduated scale of consequences. Mr. Tompkins very succinctly described the first of those consequences. “If you owe the tax, you owe the tax.” If a person innocently files documents that are incorrect, he or she can be reassessed and the tax collected, within a prescribed period. Further along the scale, if the person has been grossly negligent in the manner of reporting, certain penalties will apply. If there has been found to have been misrepresentation, then the limitations periods that would otherwise apply can be set aside.

24) The criminal charges here are at the highest end of that scale of consequences. They require an intent to obtain a benefit or advantage to which a person “knows” he or she is not entitled. That knowledge aspect cannot be used to weasel out of the consequences of filing false information by taking a position of

active ignorance. A person may be suspicious that the information being filed is false. Rather than checking it out, he or she may deliberately fail to make further inquiries. The plan is to plead ignorance. The theory is that there are some things you are just better off not knowing. The theory is wrong, in this situation at least. In those circumstances the person is considered to have the knowledge that they so carefully avoided acquiring. Acting on the conscious choice that it is better not to know, simply doesn't work, when it comes to tax.

Inferences:

25) The issue is whether it can be inferred, beyond a reasonable doubt, from the surrounding facts, that Sonia and George Khadra intended to file returns that were false or about which they made the conscious choice not to know. It is not a question of whether they had concocted a complicated scheme to defraud the government.

26) The returns filed were incorrect. That much is clear. The Khadras did not remit the full amount of tax required based on the tax that they had collected from their customers. They received refunds to which they were not entitled. They owe the money and will have to pay it.

27) Determining intent can only ever be done by making inferences from the surrounding circumstances. Even a clear statement of intent does not give clear and privileged access to the mind of the person involved. Often people act with intentions that are less than precise even to themselves. Determining intent from inference should be undertaken with that in mind.

28) Counsel have argued for two different inferences to be made.

29) The Crown asserts that the only inference that can or should be made is that the Khadras knew that the returns that were filed on their behalf were false. Simply put, they knew that Azziz Jreige needed invoices in order to accurately report the amount of tax owing and they not only didn't provide them, but had them sitting on a desk in their bedroom.

30) The Crown does not accept that the Khadras were as naive as they have portrayed themselves to be. While it may be that some people believe that the reporting of income through bank statements is sufficient, the Khadras knew, from Mr. Jreige that invoices themselves were important. He told them he needed them and sometimes they looked for them and provided them. Moreover they knew that the invoices found by Sonia Khadra in March 2007 were very important, yet did

not disclose them.

31) The “smoking gun” appears in the form of the two receipt books found as part of the search of the Khadras home. The two invoice books had previously contained expense documents that were claimed through the normal process. The expense related documents had to be removed from the book and sent to Mr. Jreige, while the income portions were left in the book and not reported. The expenses were not located as consecutively numbered documents. They would have to have been removed individually, knowing that they were expense related and not income related.

32) The Crown asserts that Sonia and George Khadra deliberately withheld information from their accountant, Azziz Jreige, so that returns would be filed that would benefit them. This behavior became more brazen as they become emboldened by their success. Significant portions of their business income were not reported.

33) The inference that the Crown sought to have made is a reasonable one. Providing documents to the accountant that reduced the amount of tax while holding on to the documents that would increase the amount of tax, when the

documents are in the same book, is consistent with the intent to file false returns.

34) For their part, the Khadras contend that have done nothing with any intent to defraud or deceive.

35) All of their income was reported to Mr. Jreige. That was not disputed. There were no bank accounts at other institutions or held off shore. All of the income that the Khadras received was deposited to their bank account at the Royal Bank and all of their bank statements were provided to Mr. Jreige. If they were indeed trying to hide income their counsel suggested that this would have been a very strange way to have done it. It does not take even a moderately sophisticated fraudster to know that running all of the money through the same account and giving it to the accountant would be unlikely to succeed in the long run.

36) They relied on Azziz Jreige to tell them the amount of tax that they should pay. They did not argue with him or ever try to convince him to somehow fudge the numbers. Mr. Jreige and his accounting procedures are not on trial. It would be profoundly unfair to make what would amount to gratuitous comments about his office procedures or the accounting methods he used. It can be said with some confidence however that like most people and most professionals, he did not attain

a standard of perfection. Using what has been called the “past exonerative tense”, mistakes were made. Mr. Jreige himself frankly acknowledged that.

37) There were returns on which overpayments of tax were made. There were returns where amounts of tax remitted or owing were somehow lost or reversed.

When dealing with clients who provide their information in grocery bags that seems somehow less than shocking.

38) What remains as an accounting mystery, if indeed there can be such a thing, is how Mr. Jreirge’s system failed to pick up the income disclosed in the found invoices that form the basis of the charges here. All of that income was deposited to the bank. If Mr. Jreige made adjustments to account for income deposited but not represented by invoices, it should have picked up that discrepancy. No explanation has been offered.

39) The Khadras say that they operated on the basis that the system worked. It didn’t. It also happened to favour them and result in their paying less tax rather than more tax. It could be argued that from their perspective, it was working just fine.

40) Mr. Jreige did ask that they provide invoices. Communication between Mr. Azziz and the Khadras was not always precise. What Mr. Jreige asked for and what the Khadras understood him to ask for could be different things. To them the invoices were not as important as the bank statements indicating their income. They could infer that from the fact that Mr. Jreige was able to calculate the amount of tax owing even when they were not able to locate invoices to support that income. Had he simply refused to file returns without invoices or had he been unable to do his adjustment, they might have reached a different conclusion. As it stands, the Khadras maintain that they hid nothing because they provided records of all of their income, in the form of bank statements to Mr. Jreige. If they were trying to hide income they could have at least taken the step to have put in another account, at another bank or kept it in cash.

41) Both Sonia and George Khadra knew that the invoices forming the basis of the charges were there, in their bedroom, as of March 2007. They did not provide them to either Mr. Jreige or the auditor. The Crown contends that waiting for the auditor to specifically ask for documents that he doesn't even know exist is consistent with guilt or with a fabricated story about finding the documents only months before the search.

42) A different interpretation was advanced on behalf of the Khadras. They say that the invoices were not destroyed. If the documents were known to have been some kind of documentary smoking gun that should never be disclosed, they could have been easily destroyed or hidden. They were not. Why would they hold onto evidence that would help to prove their guilt and have no other real value?

43) Mr. MacKenzie for the Crown parried that with the suggestion that people do not anticipate that the documents in their bedrooms may find themselves in the hands of the authorities. Apparently, when it comes to search warrants, no one expects the Canada Revenue Agency. He also noted that criminal masterminds are few and far between. People who commit crimes often leave behind evidence of their actions. If the fact that evidence of the crime was left were somehow consistent with innocence instead of guilt the result would be very strange indeed. Evidence of the crime somehow becomes evidence of innocence.

Conclusion:

44) The matter is not resolved by the weighing of the inferences. These are criminal charges, involving criminal sanctions and must be proven to the standard required in a criminal trial. The issue is not which of the two inferences is most

reasonable. It is whether the evidence, assessed as a whole, raises a reasonable doubt as to their guilt.

45) It is troubling and suspicious that Sonia and George Khadra did not take any action when the documents in question were located by them, in their home. It is also troubling that they could provide no specific explanation for why expenses were provided to Mr. Jreige while invoices in the same book were not. They bridged to their main message on those questions and said that they provided Mr. Jreige with all of their bank statements. It is troubling that the system upon which they relied happened to make many more errors that resulted in their paying less tax than the other way around. The allegations made by the Crown not unfounded.

46) The evidence is however also consistent with a pattern of behaviour that suggests naivete rather than deceit. The Khadras placed total reliance on Mr. Jreige with regard to tax and accounting matters. His office procedures with respect to their accounting services resulted in some inaccuracies and some results that could not be explained in the context of this matter. That situation was compounded by their own chaotic non-system of providing papers in grocery bags.

47) That method of doing business was not aimed at avoiding tax. It was not a

way to allow them to remain unaware of mistakes or miscalculations. It was naive and perhaps negligent. Their behavior with respect to the found invoices should be considered in that broader context.

48) In some circumstances if documents are found and withheld, an inference can be made that the reasons were self serving ones. Sometimes documents are not disclosed for fear that they may say something one doesn't want to hear.

49) Here, I accept that the Khadras were operating on the assumption that their bank statements were really what mattered, despite Mr. Jreige's requests for more papers. At the time that the invoices were found, in March 2007, it appeared as though nothing was pressing. There is no evidence to support the contention that the Khadras were lying when they said how and when the documents were found. At that time the audit had been going on for some considerable time. Things had gone more or less quiet. Letting the documents sit on the computer table in the bedroom matters would be entirely consistent with the handshake and grocery bag model of business operation. Most people might see the importance of taking them to the accountant straight away. The Khadras did not.

50) It must be acknowledged that those who through deceit or other means

commit crimes are not always of the criminal mastermind variety. Actions that are inconsistent with a perfectly planned crime will not always support an inference of innocence. At the same time, simply to make their actions comport with the inference of guilt, it cannot be presumed that people behave illogically, even if they are rather naive. The fact that receipts were retained and not destroyed, standing on its own, may have little weight. It does however fit together with other inferences to form a coherent picture.

51) The fact that all of their income went through that bank account supports the legitimacy of the Khadras' belief that the information reported by Mr. Jreige was accurate. They did not think that they were hiding anything, certainly not from him. Their bank account was an open book. Had they intended to file false statements they would not have provided a full and complete statement of their income to their accountant who tried in good faith to accurately report the amount of tax owing. They were naive enough to think that providing their bank accounts would be sufficient for accounting purposes. Their naivete did not extend to thinking that somehow a person could get away with a fraudulent scheme that would involve such transparency with respect to that bank account.

52) As it turns out, there was no explanation from an accounting perspective or

otherwise as to why Mr. Jreige's system did not capture the amounts on the found invoices. They were after all, deposited to the bank. The system did not work but neither the Khadras nor Mr. Jreige knew that at the time. Their reliance on that system may have been wrong in retrospect, but was at least understandable, from their perspective, at the time.

53) The openness with which they dealt with their income is consistent with their holding on to the found invoices until they were called upon to provide further information. If Mr. Jreige had all of their bank statements, in their view, there was nothing more that was important or relevant.

54) The presence of those invoices, and the absence of the expense receipts in the same books, could not be explained with any specific answer. That is once again consistent with the manner in which the business operated and the general lack of any concern for "papers". Those receipts would have been written and handled years before. While George Khadra had a clear recollection of the jobs involved and what they entailed, it is hardly surprising that he had no idea at all about how some papers were removed and others remained. Papers matter less than carpets.

55) There are two inferences that can be made. One is consistent with guilt and the other with innocence. The evidence supporting the inference of innocence is sufficient to raise a reasonable doubt.

56) I am not satisfied that the Crown has proven beyond a reasonable doubt that Sonia Khadra or George Khadra filed or caused to be filed false statements, that they knew or ought to have known were false. I find them not guilty with respect to all of the charges.

J