

[OFFICIAL ENGLISH TRANSLATION]

Docket: 2001-1265(IT)G

BETWEEN:

BERTRAND JOBIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on March 16th, 2005, in Chicoutimi, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant: Mario Bouchard

Counsel for the Respondent: Martin Gentile

JUDGMENT

The appeals against the assessments made under the *Income Tax Act* for the taxation years 1991, 1992, 1993 and 1994 are dismissed for the reasons for judgment attached hereto.

Signed at Ottawa, Canada, this 24th day of October, 2005.

"Paul Bédard"

Bédard J.

Citation: 2005TCC431
Date: 20051024
Docket: 2001-1265(IT)G

BETWEEN:

BERTRAND JOBIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bédard J.

[1] These appeals filed under the general procedure were heard in Chicoutimi, Quebec, on March 16, 2005. On the day prior to the hearing of these appeals, I presided over two series of appeals filed by two other taxpayers added as defendants in proceedings related to the same scheme as the one at hand involving fraudulent tax refunds issued to certain taxpayers by two employees of the Jonquière Tax Centre, one of whom is Mario Boucher. On June 14, 2005, I issued a judgment in each of these two taxpayers' cases. In the first case, I allowed the appeal (*Madeleine Gagnon ès-qualité d'héritière de feu Richard Boucher c. La Reine*, 2005CCI311), and, in the other one, I dismissed the appeal (*Turner c. La Reine*, 2005CCI313). Based on the evidence before me, I find that the circumstances surrounding the appellant's case are even worse than in the *Turner* case referred to above. I should therefore dismiss his appeals as well.

[2] The facts upon which the Minister of National Revenue (the "Minister") relies to establish the assessments for the relevant years are stated at paragraph 23 of the Reply to the Notice of appeal:

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- a. this case results from an internal investigation regarding certain employees of the Jonquière Tax Centre who set up a scheme aimed at issuing fraudulent tax refunds to a number of individuals in consideration for the payment of a commission based on a percentage of the said refunds;
- b. the appellant is the brother-in-law of Mario Boucher, an employee for about 15 years at the Jonquière Tax Centre of Canada Customs and Revenue Agency who was assigned the examination of refunds;
- c. Mario Boucher had access to the Canada Customs and Revenue Agency's computer system containing all the tax data concerning Canadian taxpayers;
- d. with the assistance of Mario Boucher, the Appellant pocketed tax refunds to which he was not normally entitled;
- e. on May 8, 1995, the Appellant received a tax refund in the amount of \$6,490.25;
- f. this refund results from an amendment made on May 5, 1995, to the Appellant's tax returns for the years 1992 and 1993 allowing business investment losses and further losses other than capital losses regarding other years;
- g. on July 4, 1995, the Appellant received a tax refund in the amount of \$180.06;
- h. this refund results from an amendment made the same day to the Appellant's 1994 tax return adding a loss other than a capital loss from other years;
- i. on January 29, 1996, the Appellant received a tax refund in the amount of \$2,121.75;
- j. this refund results from an amendment made the same day to the Appellant's 1994 tax return adding a \$14,450.00 deduction for support payments;
- k. the Appellant did not file any document supporting his entitlement to such losses or deductions;
- l. in support of the revised assessments dated September 25, 2000, the Respondent argues that the Appellant has filed erroneous facts with respect to the taxation years 1991, 1992, 1993 and 1994, through

negligence, lack of attention or voluntary omission, or by acting fraudulently or submitting information under the *Income Tax Act*;

- m. the claim for losses and deductions pertaining to the taxation years 1992, 1993 and 1994 gives the Minister reason to believe that the Appellant, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in the tax returns filed for the taxation years 1992, 1993 and 1994, in such a way that the income tax owing as a result of the information submitted in the tax returns filed for those years was less than the amount actually payable for those years.

[3] The issues are summarized as follows by the Respondent at page 5 of the Reply to the Notice of appeal:

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- a. determine whether or not the appellant, in computing the federal income tax payable for the taxation years 1992, 1993 and 1994, is entitled to claim losses other than capital losses pertaining to other years and a deduction for paid support payments.
- b. determine, absent such entitlement, whether or not the assessment of a penalty under subsection 163(2) of the *Income Tax Act* against the Appellant for the taxation years 1992, 1993 and 1994, with respect to these losses and deductions was justified.

[4] To these issues I would add the one dealing with the applicability of subsection 152(4) of the *Income Tax Act* (the "Act") referred to by the Appellant in the Notice of appeal.

[5] From the outset, the Appellant has admitted that he was not entitled to the deduction for support payments. As for the Appellant's alleged losses other than capital losses, they lack credibility; they are uncorroborated and appeared at times unlikely and confused. Accordingly, the Appellant is not entitled to claim these losses. Based on the evidence, I also find that the Appellant knowingly made false statements in his tax returns and that he participated in, assented to or acquiesced in the making of these false statements. As such, the penalty assessed under subsection 163(2) of the *Act* is appropriate and further justifies the application of subsection 152(4) in favour of the Respondent.

[6] Briefly stated, below are the factors weighing against the credibility of the Appellant in general:

- a. his memory is very selective and particularly very vague; in spite of his inability to recall material facts, he was quite adamant about his ability to recall a couple of points weighing in his favour;¹
- b. because he chose not to call as witnesses several individuals who could have corroborated his own version on a number of points, the Court is inclined to believe that the evidence obtainable from these individuals would have been detrimental to the Appellant's case. Some of these individuals include Georges Marcotte,² Fabien Tremblay,³ Martin Bouchard,⁴ as well as an agent of the Caisse populaire de Roberval;⁵
- c. by his own admission, he still trusted Mr. Boucher, the same person who implicated him in the scheme, enough to seek his assistance in the preparation of this appeal.⁶

[7] I also reject the evidence given by Mr. Boucher for the following reasons:

- a. he handled the Appellant's file despite the fact that the Appellant was getting romantically involved with his sister at the time; it would seem that the Appellant attempted to conceal this fact by referring to Mr. Boucher in his Notice of appeal as an "agent of Revenue Canada";⁷
- b. in spite of his experience with Revenue Canada (his employment with the Department – as it then was – started in 1983), he nevertheless allowed the conveyance of real estate to justify a deduction for support payment in 1996;⁸
- c. he admitted acting fraudulently in other cases brought before this Court.⁹

¹ See, for instance, pp. 229-230 of the official Court transcript dated March 16, 2005 (the "transcript").

² Transcript, pp. 139 and 149.

³ Transcript, p. 196.

⁴ Transcript, p. 197.

⁵ Transcript, pp. 141 and 202.

⁶ Transcript, pp. 235, 243 and 244.

⁷ See more specifically par. 26 of the Notice of appeal and pp. 131, 160, 177, 185 and 188 of the transcript.

⁸ Transcript, p. 271.

⁹ Transcript, p. 275.

[8] As to the credibility of the Appellant and Mr. Boucher in connection with the issue of the losses:

- a. the explanation offered by the Appellant about the cause of the losses was very confusing and still remains somewhat so in my mind, in spite of the Appellant's claim that the losses resulted from a loan to, and the pledging of assets as collateral for the benefit of, Transport Rob-Lac Inc., his now bankrupt company;¹⁰
- b. his answer to the question as to why his name does not appear on the list of creditors of Transport Rob-Lac Inc. failed to satisfy me;¹¹
- c. the Appellant failed to convince me that a claim concerning these losses had been sent to Revenue Canada before he ever met Mr. Boucher. According to his version of the facts and that of Mr. Boucher, it appears that the appellant waited eight months before simply asking the "Revenue Canada agent" (Mr. Boucher) why it took so long to process his claim.¹² In fact, even though a claim was indeed made to Revenue Canada before these two individuals met (a fact undisputed by the Respondent), I am convinced that the claim had no connection with a tax refund owed the Appellant. I am more inclined to believe that this data input in the system simplified the operation of the scheme in this case.

[9] With regard to the support payments, I would add that the Appellant failed to provide me with a satisfactory explanation as to why he omitted to claim a deduction for the same support payments at the provincial level, which is what taxpayers would normally do.¹³

¹⁰ Transcript , pp. 146 to 153.

¹¹ Transcript, pp. 210 and 219. See also Exhibit I-5 where 31 persons are listed as creditors with the exception of the Appellant.

¹² Transcript, pp. 128, 157, 199 and 267.

¹³ Transcript, pp. 182, 222 and 223.

[10] For these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 24th day of October 2005.

"Paul Bédard"

Bédard J.

CITATION: 2005TCC431

COURT FILE NO.: 2001-1265(IT)G

STYLE OF CAUSE: Bertrand Jobin and The Queen

PLACE OF HEARING: Chicoutimi, Quebec

DATE OF HEARING: March 16, 2005

REASONS FOR JUDGMENT: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: October 24, 2005

APPEARANCES:

 Counsel for the Appellant: Mario Bouchard

 Counsel for the Respondent: Philippe Dupuis

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