[OFFICIAL ENGLISH TRANSLATION]

2002-199(GST)I

BETWEEN:

LUC BERGERON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 17, 2002, at Trois-Rivières, Quebec, by

the Honourable Judge Alain Tardif

Appearances

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Louis Cliche

JUDGMENT

The appeal from the assessment, notice of which is numbered 02304009 and is dated October 30, 1998, made under Part IX of the *Excise Tax Act* for the period from January 1, 1995, to June 30, 1998, for a total of $18,405.17 including taxes, interest and penalties, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of December 2002.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 29th day of January 2004.

Sophie Debbané, Revisor

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Date: 20021204
Docket: 2002-199(GST)I

BETWEEN:

LUC BERGERON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] This is an appeal from an assessment numbered 02304009 and dated October 30, 1998, for the period from January 1, 1995, to June 30, 1998. The appeal concerns the assessment and the penalties. The assessment, the interest and the penalties total $18,405.17.

Facts

[2] The appellant, an engineer by profession and a well-informed businessperson who had worked in the construction industry for several years, had a good knowledge of management, administration and the construction industry.

[3] At the end of 1994, the appellant, who owned a large lot, decided to construct three buildings on the lot: two with six apartments and a third with two apartments. The buildings with six apartments were located at 62, rue Larivière and

4, rue Aqueduc in Victoriaville respectively; the third building was located at number 60, also on rue Larivière.

[4] The appellant, who was very familiar with the rules of self-assessment in business matters, nevertheless stated that he was not aware that he was subject to these rules if he constructed buildings for himself.

[5] The appellant then checked with Guy Samson, his brother-in-law, a Revenu Québec employee. Mr. Samson apparently told the appellant that self-assessment was not required for the construction of buildings the appellant would own himself.

[6] The appellant, sceptical of the information he had been given, checked with his accountant who told him the opposite, that is, that the self-assessment requirement was indeed applicable to the appellant. The appellant again consulted his brother-in-law, who confirmed once more that the appellant was not required to self-assess.

[7] In support of his claims, the appellant adduced as Exhibit A-5 a signed statement from Mr. Samson, which reads as follows:

> [TRANSLATION]
>
> 2002-09-16
>
> I the undersigned, Guy Samson, state that I provided my brother-in-law Luc Bergeron with information about certain aspects of the law. I did so in good faith because Mr. Bergeron knows that I am employed by Revenu Québec. I had told him that persons who construct buildings for themselves and are not registered must pay their taxes but need not do anything further. That information was an error on my part, because the law sets out special terms and conditions for self-builders (self-assessment).
>
> Guy Samson

[8] After the assessment was made, the appellant made his objection.

[9] Unable to gather within the prescribed time period all the vouchers, information and figures to support his claim, the appellant sought leave for additional time; his request was denied. In some ways, the hearing is the appellant's first opportunity to put forward his arguments.

[10] The Court must first determine the fair market value of the buildings subject to the Goods and Services Tax ("the GST"). The appellant argued that the value of each of the two buildings with six apartments, located at 62, rue Larivière and 4, rue Aqueduc in Victoriaville, was $212,000, and that the value of the third building, located at 60, also on rue Larivière, was $101,500.

[11] In support of the appellant's claims, the appellant and René Bacon, an appraiser whose services the appellant requested, briefly explained the steps they had taken. They provided very little justification for their appraisals of the buildings subject to the GST. They assumed that their conclusions would be accepted. Rather than establishing the soundness of their own appraisals, they challenged the correctness of the appraisals used by the respondent.

[12] Essentially, the appellant argued that the fair market value used by the respondent was incorrect. At the objection stage, the respondent called upon Francyne Bélanger, an appraiser, to analyse the appellant's claims concerning the fair market value of the buildings at issue. Ms. Bélanger did not prepare or submit detailed appraisals. In criticizing the appellant's appraisals, she relied on the price the appellant himself obtained when one of the buildings was sold some months after construction was completed; in her opinion, that price was a reliable and indisputable figure.

[13] In appraising the buildings at issue, Ms. Bélanger did not have a detailed file prepared; essentially, she analysed and criticized René Bacon's work and checked certain figures. She drew conclusions from that exercise; she took for granted that part of René Bacon's work was in order. In justifying a fair market value higher than the one claimed by the appellant, she expressed reservations about other aspects of the work and provided reasons for these reservations.

[14] Computing the GST on a new building subject to this tax should normally be relatively simple—an exercise based theoretically on construction costs. This approach is all the more acceptable given that the courts have stated a number of times that construction costs are a reliable basis for computing the GST on new buildings.

[15] Appraising is not an exact science. Generally accepted appraisal practices provide for three very different approaches: the parity method; what is referred to as the income method; and what is referred to as the replacement cost method.

[16] In this case, after analysing the evidence and considering the various arguments by the parties, I conclude that the respondent's appraisals of the three buildings correspond to the fair market value that should have formed the basis for computing the GST: $247,500 for [each of] the buildings located at 62, rue Larivière and 4, rue Aqueduc; and $115,000 for the building located at 60, rue Larivière. My conclusion is based on the following reasons.

- The buildings with six apartments, located at 62, rue Larivière and 4, rue Aqueduc in Victoriaville, were sold for a consideration of $247,500 on December 22, 1995.

- The appellant argued that the consideration obtained was higher than the fair market value and, as he contended, was the only reason he had decided to sell. This explanation is self-interested and unsupported by objective facts. Why would the purchaser have agreed to pay a consideration that was higher than the fair market value? The purchaser did not testify, and there is no evidence that justifies or supports the appellant's interpretation.

- As for the other arguments relating to the furniture in one of the buildings, the various clauses regarding the benefits conferred when the initial leases were signed, and the other outlays involved in and for the management and sale of a condominium taken in exchange, first, the amounts involved are marginal with no effect on the fair market value and, second, are irrelevant in determining the values of the buildings at issue in this case.

- The appellant criticized the respondent for failing to consider the amount of a transaction occurring more than three years after the building located at 60, rue Larivière was completed when the same information had been considered decisive in the case of the other building. A period of more than three years between construction and sale is sufficient to invalidate this comparison particularly since real estate values fluctuated during this period. For a great many reasons, the most important of which is the economic situation, any property can gain or lose considerable value over a period of a few years.

- The first two buildings were sold a few months after construction was completed. This distinction alone invalidates the appellant's argument that the respondent's approach was inconsistent.

[17] The onus was on the appellant. In order to discharge this burden of proof, the appellant had to not only discredit the quality of the respondent's work but also establish convincingly and conclusively that his claims were justified.

[18] In this respect, the appellant instead tried to discredit the respondent's work and failed to show that his claims were justified. His strategies and tactics failed completely. The appellant not only failed to undermine the quality of the respondent's arguments but his strategies enabled the respondent to reinforce and strengthen the soundness of the basis for her appraisals.

[19] In light of the respective representations by the parties, I conclude that the arguments, explanations and reasons submitted by the respondent are more credible and thus make her conclusions more convincing.

[20] Discharging a burden of proof indeed means criticizing work that has produced a result with which one disagrees but also, and most importantly, it means presenting credible, plausible and convincing evidence that the Court can accept in whole or in part. In the absence of such evidence, an appellant's appeal may well be dismissed.

[21] In this case, the evidence adduced by the appellant had two aspects: the first consisted of an oral explanation and a written document indicating the reasons he failed to self-assess; the second consisted of a harsh criticism of the respondent's position to his claims concerning the fair market value.

[22] I exclude the part of the evidence regarding the appellant's obligation to provide a defence of due diligence to avoid assessment of a penalty for the following reasons:

- The appellant was a well-informed businessperson who had every means of obtaining the relevant information. He first asked his brother-in-law, whose employment, I agree, might suggest that he had the necessary qualifications to provide the appellant with appropriate information.

- In considering it advisable to discuss the matter with his accountant, who gave him a contrary opinion, the appellant himself admitted to some scepticism. At that point, the appellant ought to have done what was needed to obtain the right information from qualified persons who had the skills to provide it and was required to do so.

- The appellant not only did no such thing, he again asked his brother-in-law for confirmation of his first opinion. It is clear to me that the brother-in-law's opinion made life simpler for the appellant.

[23] Given the employment of Mr. Samson, the appellant's brother-in-law, the appellant undoubtedly told himself that, if a problem arose, that employment would be more than sufficient as an excuse or an explanation to avoid any unpleasant repercussions.

[24] In ordinary circumstances, that explanation certainly carries some weight; in this case, however, the circumstances were entirely different. The appellant, an engineer by profession, had worked in the construction industry for a number of years; he was familiar with the rules of self-assessment in commercial matters and quite obviously had access to or associated with a number of professionals who worked directly in this field. In addition, the applicable rules had been in force for a number of years.

[25] In these circumstances, I do not believe that the appellant's behaviour can be described as reasonable. He chose to do nothing in order to avoid facing a fact that complicated his life.

[26] Concerning the fair market value of the buildings that are the subject of the self-assessment, the appellant has not discharged the onus on him of establishing, on the balance of evidence, the merits of his claims. Essentially, he criticized and challenged the work of the respondent, who took advantage of the questions to justify and strengthen the reasonableness of her conclusions and, at the same time, to establish that the grounds for appeal were completely unfounded.

[27] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 4th day of December 2002.

"Alain Tardif"

J.T.C.C.

Translation certified true
on this 29th day of January 2004.

Sophie Debbané, Revisor