Citation: 2007TCC320
Date: 20070615
Docket: 2006-1463(EI)
2006-1468(CPP)

BETWEEN:

BRENDA THOMPSON O/A SWEEPING BEAUTIES,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT
(Delivered orally from the Bench at Kelowna, British Columbia on February 7, 2007)

Beaubier, J.

[1] These appeals were heard at Kelowna, British Columbia on February 7, 2007. The Appellant testified and called Mona Gair, formerly Mona Bevz. The Respondent's counsel called Colleen Smith, Jillian Prouty and the Canada Revenue Agency's appeals officer on the files, Tony Lung.

[2] The period in issue is from July 11, 2003 to March 11, 2005. The particulars in appeal are set out in paragraphs 6 to 13 of the Reply to the Notice of Appeal 2006-1463(EI). They read:

> 6. By Notices of Assessment dated September 29, 2005 and September 30, 2005, (the "Assessments"), the Respondent assessed the Appellant with respect to employment insurance premiums (the "Premiums") in the amount of $4,420.98 and $3,023.84, plus applicable penalty and interest for the 2004 and 2005 taxation years (the "Period") respectively.
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> 7. The Premiums are payable by the Appellant under the *Employment Insurance Act*, S.C. 1996 c.23 (the "Act") in

connection with services performed by Smith and other individuals listed in Schedule A (collectively the "Workers") providing services to the Appellant in respect of whose remuneration the Appellant failed to make required remittances to the Receiver General for Canada.

8. The Appellant appealed the Assessments by letter dated October 11, 2005.

9. In response to the Appellant's appeal of the ruling under section 91 of the *Employment Insurance Act*, S.C. 1996 c.23 (the "Act"), the Minister determined that Smith was employed by the Appellant in insurable employment during the period from July 11, 2003 to March 11, 2005.

10. In response to the Appellant's appeal for reconsideration of the Assessments pursuant to section 92 of the *Act*, the Minister confirmed the Assessments with respect to the Workers.

11. In determining that Smith was employed in insurable employment with the Appellant and in assessing and confirming the Assessments with respect to the Workers, the Minister relied on the following assumptions of fact:

    a) the Appellant's business provided housecleaning and light commercial cleaning services;

    b) the Appellant maintained a shop/office located at 722-650 Duncan Avenue West, Penticton, British Columbia;

    c) the Appellant hired the Workers to provide the various cleaning services offered by the business;

    d) the Appellant had written agreements (the "Agreements") in place with the Workers outlining all aspects of the work;

    e) the Workers' duties included going to clients' homes to clean bathrooms, kitchens, dust, vacuum, mop make beds, do laundry, sweep, and clean windows;

f) the Workers were required to complete the Appellant's certification program prior to performing services for the Appellant;

g) either the Appellant or an experienced worker provided training to new recruits;

h) the Appellant provided the Workers with a binder which included a policy manual, weekly schedule and a [*sic*] instructions on how to clean;

i) the Workers were responsible for the first $50.00 cost in the event of damage to a client's property;

j) the Workers were required to have criminal background checks done at their own expense before providing services to the Appellant;

k) the Appellant required all Workers to be bonded before they were allowed to provide their services;

l) the Workers were paid based on an hourly rate ranging from $10.00 per hour for new recruits up to $12.00 per hour after several years of experience;

m) the Workers did not receive vacation leave or vacation pay;

n) the Appellant determined the Workers' schedules;

o) the Workers were not required to work a certain number of hours in a given period;

p) the Workers were required to provide their own transportation;

q) the Workers were required to pay a $100.00 deposit to the Appellant for a cleaning kit which consisted of a duster, mop, broom, buckets and spray bottles;

r) the Appellant provided vacuum cleaners for the Workers;

s) the Appellant provided the cleaning solutions and rags used by the Workers;

t) the Appellant provided invoice books for the Workers;

u) the Appellant required the Workers to drop off their binders, vacuum cleaners and dirty rags every Friday;

v) the Appellant held bi-weekly team meetings;

w) the Workers were required to provide their services personally; and

x) the Appellant provided the guarantee on the services provided by the Workers.

[3] All of the assumptions in paragraph 11 were proven to be true in the course of the hearing.

[4] Despite the form of "contractor" contract signed by the workers and using the tests set out in *Wiebe Door Services Ltd. v. M.N.R.* [1986] 3 F.C. 553 the Court finds:

1. Control – the Appellant hired the workers, trained them and gave them a manual of her procedures as to how to clean a house or any other premises; inspected them and their work and the hours they worked from time to time and corrected them. She obtained the customers and assigned the workers to the customers and did not permit the workers to deal with the customers. The workers signed a non-compete agreement with the Appellant. For a cleaning business such as this, essentially a home cleaning business, the control was exceptional and appears to have resulted in excellent work for a high-end customer market.

2. Tools – the tools were owned by the Appellant.

3. Chance of Profit/Risk of Loss – was entirely the Appellant's. She had the customers and it was her business. The workers worked, were assigned and were paid by the hour. Everything the workers did was on the orders of the Appellant, including how to do the work and exactly what work to do. If in doubt, they phoned the Appellant who directed them.

4. Integration – the workers were completely integrated into the Appellant's business. Only one ever obtained a substitute worker or helper and she was reprimanded for that by the Appellant.

[5] Thus, the workers were not in business for themselves. The contracts they signed were simply a form. The entire arrangement that they worked under for the Appellant was one of employer/employee. The only business was the Appellant's.

[6] The Appellant relied in part on a previous ruling which found that Mona Bevz was in a non-employee relationship with the Appellant. However, that was for an earlier time period and a different worker. The Appellant herself pointed out that as she increased her business she developed new ideas and procedures. Frankly, all of the evidence is that she runs an excellent business which provides excellent service. One worker testified that she had cleaned before she worked for the Appellant, but she did not know how to make a premises "shine" until the Appellant showed her how. Another still uses the Appellant's methods in her own home.

[7] As a result, this Court, like the workers themselves, has a great deal of respect for this excellent business woman, but the appeals must be dismissed.

Signed at Kelowna, British Columbia this 8th day of June 2007.

Beaubier, J.

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COURT FILE NO.:	2006-1463(EI) and 2006-1468(CPP)
STYLE OF CAUSE:	Brenda Thompson O/A Sweeping Beauties v. M.N.R.
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ORAL REASONS FOR JUDGEMENT BY:	The Honourable Justice D.W. Beaubier
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APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Sara Fairbridge

COUNSEL OF RECORD:

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