

Docket: 2002-3037(EI)

BETWEEN:

MARIA STAVROPOULOS,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on common evidence with the appeal of *Peter Stavropoulos*  
(2002-3038(EI)) on July 15, 2003 at Toronto, Ontario

Before: The Honourable W.E. MacLatchy, Deputy Judge

Appearances:

Agent for the Appellant: Angela Stavropoulos

Counsel for the Respondent: Michael Appavoo  
Fozia Chaudary (Student-at-law)

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JUDGMENT

The appeal is dismissed and the decision of the Minister is confirmed in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 19th day of August 2003.

"W.E. MacLatchy"  
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MacLatchy, D.J.

Citation:2003TCC529  
Date:20030819  
Docket: 2002-3037(EI)

BETWEEN:

MARIA STAVROPOULOS,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent,

AND

Docket: 2002-3038(EI)

PETER STAVROPOULOS,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

#### **MacLatchy, D.J.**

[1] These appeals were heard on common evidence on consent of the parties, on July 15, 2003, at Toronto, Ontario.

[2] The Appellant, Peter Stavropoulos, appealed a ruling to the Minister of National Revenue (the "Minister") for the determination of the question of whether or not he was employed in insurable employment, while engaged by 1166207 Ontario Limited, operating as Saxony Restaurant, the Payor, for the periods from March 4, 1996 to January 6, 1997, October 28, 1997 to September 14, 1998 and August 3, 1999 to August 7, 2000, within the meaning of the *Employment Insurance Act* (the "Act").

[3] The Appellant, Maria Stavropoulos, appealed a ruling to the Minister for the determination of the question of whether or not she was employed in insurable employment, while engaged by the Payor for the periods from March 4, 1996 to October 27, 1997, September 15, 1998 to August 2, 1999 and August 8, 2000 to September 3, 2001, within the meaning of the *Act*.

[4] By letters dated May 9, 2002, the Minister informed the Appellants that it had been determined their engagement with the Payor, during the periods in question, was not insurable employment for the reason that they and the Payor were not dealing with each other at arm's length, within the meaning of paragraph 5(2)(i) of the *Act*.

[5] The Appellants called their son to give evidence and provided their own testimony. It was accepted by the Appellants that the Minister in making his decisions, relied on certain assumptions, as follows:

- a) The Payor operates a restaurant;
- b) William Stavropoulos ("William") is the sole shareholder of the Payor;
- c) William is the Appellant's son;
- d) The Appellant was hired by the Payor to do cooking, cleaning, to serve customers and to perform other general duties at the restaurant;
- e) The Payor also hired Peter Stavropoulos ("Peter") [Maria Stavropoulos ("Maria")] to perform similar duties as the Appellant;
- f) The Appellant [Maria] and Peter are married to each other;
- g) The Appellant [Maria] and Peter were laid off and re-hired by the Payor, on a frequent basis, due to an alleged shortage of work;
- h) Sales reported by the Payor do not reflect any dramatic sales' fluctuations which would support the Appellant [Maria] and Peter being dismissed for a shortage of work;
- i) The Appellant [Maria] and Peter have been dismissed by the Appellant and re-hired on a regular basis, after collecting the maximum employment insurance benefits they were entitled;

- j) From January 6, 1997 to September 3, 2001, the Appellant [Maria] and Peter were hired alternately and then dismissed based on alleged shortages of work;
- k) The Appellant [Maria] and Peter were each paid a bi-weekly salary of \$1,000.00, yet other workers dealing at arm's length with the Payor were mainly paid based on the actual hours they worked;
- l) On their applications for employment insurance benefits, both the Appellant [Maria] and Peter denied being related to the Payor's sole shareholder;
- m) the Appellants [Maria and Peter] are not dealing with the Payor at arm's length.

[6] Section 5 of the *Act* reads in part as follows:

5. (1) Subject to subsection (2), insurable employment is

(a) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;

...

(2) Insurable employment does not include:

...

(i) employment if the employer and employee are not dealing with each other at arm's length.

(3) For the purposes of paragraph (2)(i),

(a) the question of whether persons are not dealing with each other at arm's length shall be determined in accordance with the *Income Tax Act*; and

(b) if the employer is, within the meaning of that *Act*, related to the employee, they are deemed to deal with each other at arm's length if the Minister of National Revenue is satisfied that,

having regard to all the circumstances of the employment, including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed, it is reasonable to conclude that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length.

[7] The Appellants are in insurable employment but are excluded by the fact that they are related to the Payor within the meaning of the Income Tax Act and are not to be dealing with the Payor at arm's length. However, the Minister may deem that relationship to be at arm's length provided the provisions in paragraph 5(3)(b) are satisfied. In an attempt to exercise his discretion in this regard the Minister closely examined all the circumstances of the relationship and came to the conclusion that the parties were not dealing with each other at arm's length.

[8] Representatives of Canada Customs and Revenue Agency and Human Resources Development Canada attended at the restaurant of the Payor and interviewed the Appellants and the Payor concerning their working relationship. It was indicated to them that the Appellant, Maria Stavropoulos was Linda Poulos; this Appellant feels she misunderstood who the representatives were by reason of her lack of clear understanding of the English language, but as well, both Appellants used a shortened version of their family name of "Poulos" and yet they also made application for benefits under the *Act* in the names of "Poulos". No clear explanation was presented to this Court as to why the change of name was used. This raised questions in the minds of the representatives because both Appellants stated they were not related to the Payor when in fact the Payor was solely owned by their son William Stavropoulos. The only explanation for this error was that they did not understand that they could be related to a limited company.

[9] A pattern appeared concerning the hiring and firing of both Appellants so that as each acquired sufficient hours of employment to claim full compensation under the *Act*, their job ended by reason of shortage of work. Yet one Appellant was terminated just days before the other Appellant was rehired by the Payor. There was no clear explanation for such actions of the Payor and no financial records could support the lack of business or shortage of work as stated in the Records of Employment filed by the Payor. The fact that Maria Stavropoulos was subject to danger because of her hours was given as a partial explanation.

[10] Each Appellant, when employed, was paid the same starting at \$250 to \$300 per week and then rising quickly to \$500 per week. Each was salaried and not paid

by the hour as one would expect from their job description. Other employees of the Payor were paid by the hour. The explanation was that each Appellant, when working, did much more quantity of work and worked longer hours than other employees. There was no record kept of the hours that either Appellant worked.

[11] The Minister considered the circumstances of the employment of the Appellants including the remuneration paid, the terms and conditions, the duration and the nature and importance of the work performed and he could not reasonably conclude that they would have entered into a substantially similar contract of employment if they had been dealing with each other at arm's length. Thus his decisions are hereby confirmed based on the evidence heard by this Court.

[12] The appeals are dismissed and the decisions of the Minister are hereby confirmed.

Signed at Toronto, Ontario, this 19th day of August 2003.

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"W.E. MacLatchy"  
MacLatchy, D.J.

CITATION: 2003TCC529

COURT FILE NO.: 2002-3037(EI) and 2002-3038(EI)

STYLE OF CAUSE: Maria Stavropoulos and M.N.R. and  
Peter Stavropoulos and M.N.R.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 15, 2003

REASONS FOR JUDGMENT BY: The Honourable W.E. MacLatchy  
Deputy Judge

DATE OF JUDGMENT: August 19, 2003

APPEARANCES:

Agent for the Appellant: Angela Stavropoulos

Counsel for the Respondent: Michael Appavoo  
Fozia Chaudary (Student-at-law)

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg  
Deputy Attorney General of Canada  
Ottawa, Canada