

Docket: 2008-4121(IT)I

BETWEEN:

FRANÇOIS BÉLANGER

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
Gilles Bélanger (2008-4122(IT)I)
on April 16, 2009, at Sept-Îles, Quebec

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant: Charles-Henri Desrosiers

Counsel for the Respondent: Christina Ham

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2004 and 2005 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 19th day of May 2009.

"Paul Bédard"

Bédard J.

Translation certified true
on this 10th day of June 2009.

Brian McCordick, Translator

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Citation: 2009 TCC 238
Date: 20090519
Dockets: 2008-4121(IT)I,
2008-4122(IT)I

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FRANÇOIS BÉLANGER,
GILLES BÉLANGER,

Appellants,

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Respondent.

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REASONS FOR JUDGMENT

Bédard J.

[1] These two appeals were heard together under the Informal Procedure.

[2] Gilles Bélanger is appealing from reassessments made by the Minister of National Revenue ("the Minister") on March 31, 2008, in respect of the 2004 and 2005 taxation years. By these reassessments, the Minister added \$26,440 to Gilles Bélanger's employment income for the 2004 taxation year and \$5,335 to his employment income for the 2005 taxation year, and subjected those amounts to the penalty contemplated in subsection 163(2) of the *Income Tax Act* ("the Act").

[3] In addition, François Bélanger is appealing from a reassessment made by the Minister on March 31, 2008, in respect of the 2004 taxation year. By this reassessment, the Minister added \$24,078 to François Bélanger's employment income for the 2004 taxation year, and subjected that amount to the penalty contemplated in subsection 163(2) of the Act. I would note that François Bélanger also filed an appeal in respect of his 2005 taxation year, though no notice of assessment had been issued for that year. Consequently, it is my opinion that this Court could not entertain the Notice of Appeal in question.

[4] In making and confirming the reassessments of Gilles Bélanger for the 2004 and 2005 taxation years, the Minister relied on the same facts as those set out in paragraph 5 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (a) During the taxation years in issue, the Appellant worked for Mécanique P-O-G Inc., among others. **(admitted)**
- (b) Mécanique P-O-G Inc. is in the industrial piping and work site mechanics business. **(admitted)**
- (c) During the taxation years in issue – specifically, the period from January 2004 to April 2005 – the Appellant worked as a pipefitter-plumber on the Alouette plant site in Sept-Îles for Mécanique P-O-G Inc. **(admitted)**
- (d) The Appellant was a union representative for the Commission de la construction du Québec during the taxation years in issue. **(admitted)**
- (e) Following an audit of the records of Mécanique P-O-G Inc., the Minister discovered that, for the 2004 and 2005 taxation years, the Appellant had received compensation for, or an allowance in respect of, board and lodging, in the amounts of \$26,440 and \$5,335, respectively. **(admitted)**
- (f) The Appellant had given the employer his residential address as stated on his Commission de la construction du Québec competency card, namely 3114 Lac Genest in the municipality of Baie-Trinité. **(admitted)**
- (g) The distance between the Aluminerie Alouette work site in Sept-Îles and the Appellant's residential address as stated on his competency card is approximately 129 km. **(admitted)**
- (h) The daily allowances or compensation paid to the Appellant were not entered on the annual T4 slip that the said Appellant received from Mécanique P-O-G Inc. for the 2004 and 2005 taxation years. **(admitted)**
- (i) However, the Minister determined that the allowances or compensation received during the taxation years in issue on account of board and lodging, in the amounts of \$26,440 and \$5,335 respectively, were taxable, based on the following crosschecking:

- (i) On March 31, 2003, the Minister was informed that the Appellant had allegedly moved to 3114 Lac Genest in the municipality of Baie-Trinité. **(no knowledge)**
- (ii) The Appellant has owned a building at 32 McCormick Street in the town of Port-Cartier since 1976. **(admitted)**
- (iii) The distance between the Aluminerie Alouette work site in Sept-Îles and the property at 32 McCormick Street in [Port-Cartier] is approximately 49 km. **(admitted)**
- (iv) Rollande Bérubé-Bélanger, the Appellant's wife, lived at 32 McCormick in Port-Cartier during the taxation years in issue. **(admitted)**
- (v) According to the employee information form used by the employer Mécanique P-O-G Inc. at the time of hiring, the Appellant tendered a sample cheque showing a bank account held jointly with his wife and identifying their residence as 32 McCormick Street in Port-Cartier. **(admitted)**
- (vi) On the slips issued by Desjardins Trust (RRSP) for the taxation years in issue, the Appellant's address is given as 32 McCormick Street, Port-Cartier. **(admitted)**
- (vii) The road to 3114 Lac Genest in Baie-Trinité is not maintained during the winter and is accessible only by snowmobile. **(admitted)**
- (viii) The principal place of residence is 32 McCormick Street in Port-Cartier because most of the Appellant's ties (family, economic and employment) are to that place. **(denied)**

[5] In addition, the Minister relied on the following factors, set out in paragraph 6 of the Reply to the Notice of Appeal, in imposing on Gilles Bélanger the penalty under subsection 163(2) of the Act in respect of the \$26,440 added to his 2004 employment income and the \$5,335 added to his 2005 employment income:

[TRANSLATION]

- (a) Based on the conclusion that the Minister drew from the facts set out in paragraph 5 above, the Appellant falsely used the address of the building in Baie-Trinité so that he could be considered eligible to receive tax-free allowances.

[6] In making and confirming the March 31, 2008, reassessment of François Bélanger for the 2004 taxation year, the Minister relied on the following facts, set out in paragraph 5 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (a) During the taxation year in issue, the Appellant was employed by Mécanique P-O-G Inc. **(admitted)**
- (b) Mécanique P-O-G Inc. is in the industrial piping and work site mechanics business. **(admitted)**
- (c) During the taxation year in issue – specifically, from January 2004 to December 2004 – the Appellant worked as a welder-pipefitter for Mécanique P-O-G Inc. on the Alouette plant site in Sept-Îles. **(admitted)**
- (d) Following an audit of the records of Mécanique P-O-G Inc., the Minister discovered that, for the 2004 taxation year, the Appellant had received compensation for, or an allowance in respect of, board and lodging, in the amount of \$24,078. **(admitted)**
- (e) The Appellant had given the employer his residential address as stated on his Commission de la construction du Québec competency card, namely 3114 Lac Genest, in the municipality of Baie-Trinité. **(admitted)**
- (f) The distance between the Aluminerie Alouette work site in Sept-Îles and the residential address on the Appellant's competency card is approximately 129 km. **(admitted)**
- (g) The daily allowances or compensation paid to the Appellant were not entered on the annual T4 slip that the said Appellant received from Mécanique P-O-G Inc. for the 2004 taxation year. **(admitted)**
- (h) However, the Minister determined that the \$24,078 in allowances or compensation received during the taxation year in issue on account of board and lodging was taxable, based on the following crosschecking.
 - (i) Prior to May 1, 2004, the Appellant lived with his parents at 32 McCormick Street in the town of Port-Cartier. **(denied)**
 - (ii) The distance between the Aluminerie Alouette work site in Sept-Îles and the property at 32 McCormick Street in [Port-Cartier] is approximately 49 km. **(admitted)**

- (iii) During the period from April 1, 2004, to March 31, 2005, the Appellant lived at 911 Giasson Street, Apt. 3, in the town of Sept-Îles. **(admitted)**
- (iv) The distance between the Aluminerie Alouette work site in Sept-Îles and the Appellant's apartment at 911 Giasson Street in Sept-Îles is approximately 31 km. **(admitted)**
- (v) On April 26, 2004, the Minister was informed that the Appellant had allegedly moved to 3114 Lac Genest in the municipality of Baie-Trinité. **(no knowledge)**
- (vi) The building at 3114 Lac Genest in the municipality of Baie-Trinité belongs to the Appellant's father, who happened to work as a pipefitter-plumber for the same employer during the same period, and was moreover a union representative. **(admitted)**
- (vii) The road to 3114 Lac Genest in Baie-Trinité is not maintained during the winter and is accessible only by snowmobile. **(admitted)**

[7] In addition, the Minister relied on the following factors, set out in paragraph 6 of the Reply to the Notice of Appeal, in imposing on François Bélanger the penalty contemplated in subsection 163(2) of the Act in respect of the \$24,078 added to his employment income for the 2004 taxation year:

[TRANSLATION]

- (a) Based on the conclusion that the Minister drew from the facts set out in paragraph 5 above, the Appellant falsely used the address of the building in Baie-Trinité so that he could be considered eligible to receive tax-free allowances.

[8] François Bélanger and Gilles Bélanger testified in support of their position. Luc Villeneuve, the auditor from the Canada Customs and Revenue Agency ("the Agency") who audited the Appellant's returns for the taxation years in issue, was the only witness to testify in support of the Respondent's position.

Background

[9] Under subsection 6(6) of the Act, no tax is payable on the value of board, lodging or transportation provided by the employer, or on a reimbursement of, or allowance in respect of, reasonable board, lodging or transportation expenses, where the employee is carrying out temporary duties at a special work site or at a remote location to which the employee must travel. However, under subsection 6(6), the employee at the special work site must have maintained a self-contained domestic establishment as his or her principal place of residence, the residence must have been available for his occupancy (i.e. not rented out) throughout the period in which the employee was being reimbursed (or receiving an allowance) for board and lodging expenses, and, by reason of the distance, the employee could not reasonably have been expected to have returned to the residence daily from the work site. In the case at bar, the Appellants submit that

- (i) the self-contained domestic establishment serving as their principal residence during the period in which they worked at the Aluminerie Alouette work site in Sept-Îles ("the work site") was located at 3114 Lac Genest in the municipality of Baie-Trinité;
- (ii) the distance between 3114 Lac Genest in Baie-Trinité and the work site is approximately 129 km;
- (iii) by reason of distance, they could not reasonably have been expected to return to that self-contained domestic establishment daily; and
- (iv) consequently, the allowances that they received during the years in issue are exempt from taxation under subsection 6(6) of the Act.

[10] For his part, the Minister submits that

- (i) the self-contained domestic establishment serving as the Appellants' principal residence during the periods in which they worked at the work site was not located in the municipality of Baie-Trinité;

- (ii) the self-contained domestic establishment serving as the Appellants' principal residence during the periods in issue was located in a municipality or town that was not distant from the site and, by reason of this fact, they could reasonably have been expected to return to their domestic establishment daily; and
- (iii) consequently, the allowances that they received during the years in issue are not exempt from taxation under subsection 6(6) of the Act.

The testimony of Gilles Bélanger

[11] Gilles Bélanger testified as follows:

- (i) Prior to 1998, he lived in his residence at 32 McCormick Street in Port-Cartier ("the McCormick Street residence") with his wife and their three children.
- (ii) In 1998, Mr. Bélanger and his wife separated. He testified that the separation was amicable and that they remained on good terms. He explained that when they separated, they agreed that she would have custody of the three children, and that she would live free of charge in the McCormick Street residence for as long as she had custody of the children, provided she paid the heating, electrical and telephone bills associated with that residence. Mr. Bélanger explained that the part of his pay that was deposited into the bank account that he held jointly with his wife was used by her to cover some of the costs related to the custody of their three children. Mr. Bélanger also explained that in order to thank his wife for having sole custody of the three children after their separation, he designated his wife as the payee of his RRSPs and the beneficiary of the life insurance policies that he held as the insured.

- (iii) During the period in which he worked at the work site, he rented a room from Marie Alors (who allegedly died recently) in her residence at 21 Lemaire Street in Sept-Îles. Mr. Bélanger explained that the \$100 weekly rent for the room was always paid in cash. Lastly, in connection with this rental, Mr. Bélanger said that he lived in the room on weekdays during the period when he worked at the site. I would immediately note that this part of Mr. Bélanger's testimony was contradicted by the witness Mr. Villeneuve, and there was no reason to question Mr. Villeneuve's credibility in the case at bar. Specifically, Mr. Villeneuve testified that Mr. Bélanger told him in a telephone conversation (while the audit was under way) that he lived at his son François's residence on Giasson Street in Sept-Îles on weekdays while working at the work site.

[12] The evidence regarding Gilles Bélanger further showed the following:

- (i) On December 17, 1998, Gilles Bélanger notified the Société de l'assurance-automobile du Québec (SAAQ) (Exhibit A-1) that, effective that date, the self-contained domestic establishment which served as his residence was located on Lac Genest in Baie-Trinité.
- (ii) On the same date, Gilles Bélanger notified Regional Office #93 (North Shore) of the Commission de la construction du Québec (Exhibit A-1) that, effective that date, the self-contained domestic establishment which served as his residence was located at Lac Genest in Baie-Trinité.
- (iii) In his 2005, 2006 and 2007 tax returns (Exhibits I-1, I-2 and I-3), Mr. Bélanger reported that he was married, even though he had been living apart from his wife since 1998. In this regard, Gilles Bélanger said that he did not personally fill out his tax returns for the years in issue and that he thought that the family status information on the returns was accurate when he signed them because he was neither divorced nor legally separated from his wife. In other words, he thought that the box next to "separated" was only to be checked in the event of a legal separation.
- (iv) It was only on March 31, 2003, that the Minister was informed that Gilles Bélanger had apparently moved to 3114 Lac Genest in Baie-Trinité.

The testimony of François Bélanger

[13] François Bélanger testified as follows:

- (i) He resided with his mother at the McCormick Street residence until he completed his studies (June 2001).
- (ii) He left that residence in June 2001, mainly because his relationship with his mother was very tense at the time.
- (iii) As of June 2008, the self-contained domestic establishment that served as his residence was at 3114 Lac Genest in Baie-Trinité. As we have seen, this was also the self-contained domestic establishment that served as the residence of his father Gilles Bélanger.
- (iv) On the weekdays when he was working at the work site, he lived in the following places:
 - (a) at his friend Stéphane Harrison's place in Sept-Îles from January through March 2004;
 - (b) with Kim Martine St-Julien, a friend, from April 1, 2004, to March 31, 2005, in an apartment at 911 Giasson Street in Sept-Îles, which they rented for 12 months (Exhibit A-7); and
 - (c) at his friend Simon-Pierre Thibault's place in Sept-Îles after March 31, 2005.
- (v) On April 25, 2003 (Exhibit A-8), he notified Regional Office #93 (North Shore) of the Commission de la construction du Québec that, effective that date, the self-contained domestic establishment which served as his residence was located on Lac Genest in Baie-Trinité.
- (vi) Upon purchasing his car in July 2002, he notified the SAAQ of his new address. I would note that Mr. Villeneuve testified that he checked with the SAAQ and found out that the address change was made in 2003, not 2002.

Analysis and determination

[14] The Appellants bore the burden of proof. They had to adduce evidence that showed, on a balance of probabilities, that the self-contained domestic establishment that served as their residence was located at 3114 Lac Genest in the municipality of Baie-Trinité during the period when they were working on the work site.

[15] Gilles Bélanger's evidence consisted essentially of his testimony and of some documentary evidence (Exhibits A-1 and A-4) that was contradicted by the Minister's documentary evidence (Exhibits I-1 to I-4). I should emphasize from the outset that I accorded very little weight to Gilles Bélanger's testimony owing to his assertions regarding the place where he lived on weekdays when working on the work site; those assertions were completely contrary to his prior statements to Mr. Villeneuve in this regard. Thus, it is very difficult to lend credence to his other assertions, which are not supported by serious documentary evidence or by credible independent testimony. Moreover, Gilles Bélanger could have substantiated his assertions (particularly with regard to his very special relationship with his spouse, which, as I stated, served as his explanation for just about all the disputed points raised by the Minister) by means of credible independent testimony. Indeed, it would have been very interesting to hear his wife or any other credible independent witness corroborate Gilles Bélanger's testimony regarding his very unusual relationship with his spouse, from whom he had allegedly been separated *de facto* since 1998. Gilles Bélanger could have adduced such evidence. He did not do so, and the inference that I draw from this is that the evidence would have been unfavourable to him. I therefore find that Gilles Bélanger did not prove, on a balance of probabilities, that the self-contained domestic establishment that served as his residence was located at 3114 Lac Genest in Baie-Trinité. I conclude that Gilles Bélanger knowingly and falsely used the Baie-Trinité building address in order to qualify for tax-free compensation, and thus, that the Minister was entitled to impose the penalties contemplated in subsection 163(2) of the Act.

[16] François Bélanger's evidence consisted essentially of his testimony and some documentary evidence (Exhibits A-7 and A-8). I should emphasize from the outset that I accorded little weight to François Bélanger's testimony for several reasons. First, he testified that he left the McCormick Street residence in 2001 to live with his father in Baie-Trinité. In the course of his testimony, he added that he only notified the SAAQ of his new address in July 2002 (upon purchasing a new vehicle). However, the documentary evidence (Exhibit I-5) shows that he only notified the SAAQ of the address change on April 17, 2003. At the very least, François Bélanger's testimony in this regard created a serious doubt in my mind as to his credibility. Moreover, Gilles Bélanger could have substantiated his assertions (particularly with respect to his very difficult relationship with his mother and the three places where he allegedly lived on weekdays while working on the work site) by means of credible independent testimony. Indeed, it would have been very interesting to hear his mother or any other credible independent witness corroborate François Bélanger's testimony about his very difficult dealings with his mother, which supposedly prompted his departure from the McCormick Street residence in Port-Cartier in 2001. It would also have been very interesting to hear Kim Martine St-Julien's testimony to the effect that the Giasson Street apartment in Sept-Îles, which they rented, was not the self-contained domestic establishment serving as François Bélanger's residence for the period from April 1, 2004, to March 31, 2005. It would have been very interesting to hear Stéphane Harrison and Simon-Pierre Thibault's testimony about the period in which François Bélanger was allegedly their roommate. Lastly, it would have been very interesting to hear the testimony of Baie-Trinité residents who could have confirmed that François Bélanger was indeed a permanent resident of Baie-Trinité. François Bélanger could have provided such evidence. He did not do so, and my inference from this omission is that the evidence would have been unfavourable to him. Based on this, I find that François Bélanger has not proven, on a balance of probabilities, that the self-contained domestic establishment that served as his residence was located at 3114 Lac Genest in the municipality of Baie-Trinité, during the period when he was working at the work site. I deduce from this that François Bélanger knowingly and falsely used the Baie-Trinité building address in order to qualify for tax-free compensation, and that the Minister was therefore entitled to impose the penalty contemplated in subsection 163(2) of the Act.

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

Signed at Ottawa, Canada, this 19th day of May 2009.

"Paul Bédard"

Bédard J.

Translation certified true
on this 10th day of June 2009.

Brian McCordick, Translator

CITATION: 2009 TCC 238

COURT FILE NOS.: 2008-4121(IT)I, 2008-4122(IT)I

STYLE OF CAUSE: FRANÇOIS BÉLANGER, GILLES
BÉLANGER and HER MAJESTY THE
QUEEN

PLACE OF HEARING: Sept-Îles, Quebec

DATE OF HEARING: April 16, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT May 19, 2009

APPEARANCES:

 Counsel for the Appellants: Charles-Henri Desrosiers

 Counsel for the Respondent: Christina Ham

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