

Docket: 2005-2367(IT)G

BETWEEN

CARL JOBIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeals of
Métallurgie Syca Inc. (2005-2368(IT)G),
on December 5, 2006, at Montreal, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: François Montfils

Counsel for the Respondent: Suzanne Morin

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2000, 2001 and 2002 taxation years are dismissed, with costs to the respondent, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 16th day of January 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 27th day of June 2008.

Erich Klein, Revisor

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REASONS FOR JUDGMENT

Tardif J.

[1] These appeals pertain to the 2000, 2001 and 2002 taxation years.

[2] In the matter of Carl Jobin (2005-2367(IT)G), the Court must determine whether the Minister of National Revenue ("the Minister") properly

(a) added the amounts of \$29,815, \$33,174 and \$34,525 to the appellant Carl Jobin's income as taxable benefits for the 2000, 2001 and 2002 taxation years respectively; and

(b) assessed penalties of \$3,290, \$4,017 and \$4,180 against the appellant Carl Jobin in respect of the 2000, 2001 and 2002 taxation years, respectively.

[3] In the matter of Métallurgie Syca Inc. (2005-2368(IT)G), the Court must decide whether the Minister properly

(a) disallowed the travel allowance deduction claims, totalling \$23,629, \$14,506, \$33,174 and \$34,525, in computing the corporate appellant's income in respect of the taxation year ended July 31, 2000, the five-month taxation period ended December 31, 2000, and the 2001 and 2002 taxation years respectively; and

(b) assessed penalties of \$2,640, \$2,112, \$3,983 and \$4,359 in respect of the taxation year ended July 31, 2000, the five-month taxation period ended December 31, 2000, and the 2001 and 2002 taxation years respectively.

[4] Carl Jobin, the appellant in file No. 2005-2367(IT)G, was the sole shareholder and director of Métallurgie Syca Inc., the appellant in file No. 2005-2368(IT)G, during the periods in issue.

[5] Since the facts that gave rise to the assessments for the same taxation years were the same, the parties agreed that both matters would be heard on common evidence.

[6] The appellants called Luc Bélisle, Sylvie Beaurivage and the Appellant Carl Jobin himself as witnesses, and the parties agreed that Jean-Marie Beaudin would have testified that Carl Jobin visited him at his business on several occasions and that he had driven there in a red Volvo.

[7] Carl Jobin, for his part, described and explained at length the nature of his business's operations; he described himself as the conductor in charge of both product and client development, strongly emphasizing that he had to make a great many trips in his Volvo.

[8] It can be inferred from the mere observation that the number of employees increased in the course of the years 2000, 2001 and 2002 that the business did indeed experience considerable growth and that this occurred over a short period of time. The rapid development of the business, its dynamism, and the exceptional skills that its director, Carl Jobin, stated that he possessed, have no direct bearing on the question at issue.

[9] This growth did no doubt result from the expenditure of energy, from hard work and from personal involvement, but not necessarily from several hundreds of

hours behind the wheel of a motor vehicle; certainly, the connection between the two is not clear-cut, much less automatic, as Mr. Jobin seemed to be claiming.

[10] The assessments under appeal essentially raise the issue of the business use of the Volvo.

[11] The appellant Carl Jobin received very large amounts as allowances for the use of his vehicle for the years in question; he was paid \$0.34 per kilometre for long distances travelled, which are set out in subparagraph 19(c) of the Reply to the Notice of Appeal:

[TRANSLATION]

(c) According to the Appellant's accounting records, the total amounts paid to Carl Jobin as travel allowances, and the total corresponding mileage, are as follows:

Taxation periods ended	Total amounts paid	Total distances driven
July 31, 2000 (12 months)	\$23,628.98	69,497 km
December 31, 2000 (5 months)	\$14,506.10	42,665 km
December 31, 2001	\$33,174.48	97,572 km
December 31, 2002	\$34,524.96	101,544 km

[12] Mr. Jobin described himself as the key person in the business as far as sales and the development of new products and markets are concerned, and stated that he had to go to clients and return to see them for follow-ups, and that this justified the allowances that he was paid for distances driven. Since the amounts were allowances, Mr. Jobin declared that he kept no supporting documents.

[13] Mr. Jobin was asked to explain why an officer who had such onerous responsibilities, and whose time was so precious, had to spend hundreds of hours on the road, hours whose number may be determined by means of a basic calculation in which the kilometres driven are divided by an average speed of 90 km/h. This simple, basic calculation would lead to the conclusion that the appellant Carl Jobin spent an average of 30 hours of work per week driving. In order to justify this figure, the appellant Carl Jobin asserted:

- that he likes concrete and asphalt;

- that he hired extraordinarily competent people to operate the business while he was on the road; and
- that he did not always observe speed limits, and that this would skew the mathematical result obtained by dividing the kilometres driven by an average speed of 80 km/h.

[14] A person who drives such distances generally has to stop to eat and tank up, thereby creating a paper trail in the form of such things as meal bills, gasoline bills, long-distance call bills, and various statements. In this regard, Mr. Jobin stated that he had no vouchers in his possession. In addition, he said that, since his time was very precious, more often than not he would stop at a convenience store and buy a soft drink, a bag of chips and cheese, which he would eat while driving.

[15] As for his cellphone, undoubtedly an extremely important, if not indispensable, work tool the use of which could again be proven by means of a record of his calls, there was little if any mention of its use.

[16] Mr. Jobin claimed to have given one of his employees the Dodge vehicle early in 2000. However, in 2004, the vehicle was still registered in his name.

[17] In July, the vehicle in question was repaired, and the appellant corporation paid for the repairs in September. The explanation was that there must have been an error by the controller. The Court wondered whether that controller was one of those people of exemplary ability who held the fort while Mr. Jobin was driving his Volvo.

[18] The first explanation given to justify the number of kilometres for which he received reimbursement was that the auditor's odometer readings were misleading because the vehicle's odometer was defective and had to be replaced.

[19] In support of this assertion, Mr. Jobin tendered an invoice from the Garage Uni-pneus. Having found the description on the invoice insufficiently clear, he added his own handwritten annotation.

[20] Mr. Jobin's second explanation was that he would regularly disconnect the vehicle's odometer cable in order to produce a false reading with a view to extending the vehicle's warranty by concealing a significant part of the kilometres driven. In other words, the appellant claims to have driven more than 200,000 km without an odometer or speedometer.

[21] Mr. Jobin also produced a stack of weekly reports in support of his assertions concerning the distances that he drove. He stated that, every Thursday or Friday, he made a note of the kilometres that he had driven, having reset his odometer to zero the previous Monday morning.

[22] He also said that it was not essential that he do it this way, since he was perfectly familiar with all the distances between the various places; in fact, this knowledge was very helpful when the vehicle's odometer was defective or disconnected, which it was the vast majority of the time. Thus, he could rely on his knowledge of the distances in order to determine the exact number of kilometres driven.

[23] There is quite a chasm between the parties' respective submissions. The evidence that Mr. Jobin adduced in support of his claims was essentially circumstantial, and consisted chiefly of his own testimony.

[24] As for the respondent, to substantiate her conclusions she relied on the vehicle repair and maintenance bills, which clearly showed the odometer readings at the time that the vehicles were brought to the garages. Thus it was easy to do simple calculations using the readings from various visits to garages, and to draw conclusions regarding the average number of kilometres driven.

[25] In addition to the written information on the various maintenance and repair bills, the respondent attempted to obtain the vouchers for the fuel and other expenses relating to Carl Jobin's numerous business trips in order to try to validate his assertions. Only a few insignificant bills were submitted. The respondent also discovered that the insurance policy for the Volvo did not cover business travel.

[26] Confronted with the facts considered by the auditor, Carl Jobin submitted a whole series of explanations. First of all, with respect to the insurance, he stated that the broker no doubt made a mistake, that the person responsible for his account had never asked him whether the vehicle was being used for business purposes.

[27] Trained as an engineer and speaking several languages, Carl Jobin is a very imaginative businessman. He has an answer for everything; an unscrupulous person, he is capable of concocting explanations that could support his assertions.

[28] Upon cross-examining the auditor, the appellants' skilful counsel, having no doubt understood that he needed the auditor's cooperation to discharge the burden of proof which, at least as far as the main elements of the assessments are concerned, was on the appellants, pointed out a number of errors in various reports and conclusions that the auditor prepared following his audit work.

- One of the criticisms levelled against the auditor was that he did not take account of certain amounts listed on the credit card statement, thereby giving rise to an assumption that they were repair bills. The auditor admitted that he did not take account of these amounts because they were small.
- Another criticism was that some invoices that were clearly for gas purchases were considered to have been for restaurant expenses. The ten or so invoices in question were issued by a business located close to Mr. Jobin's home and were obviously for gas purchases. Were they accommodation invoices? The testimony of a representative of the business would have been the best evidence.
- The most significant criticism pertained to the auditor's finding that Mr. Jobin's odometer-tampering explanation was implausible. The auditor made this determination on the basis of two telephone conversations with two Volvo dealers: one in Sherbrooke and the other in Saint-Hyacinthe. Actually, the auditor only accepted the tenor of the conversation with the Saint-Hyacinthe dealer because his opinion was more clear-cut and was consistent with the auditor's own view that Mr. Jobin's explanations were falsehoods.

[29] Mr. Jobin maintained, and even repeated, that the auditor had told him that disconnecting the odometer is a very common practice with people who use their cars for business purposes. When asked to confirm or deny this assertion, the auditor totally and unequivocally denied it. He said that it was the first time he had heard an explanation like that given by Mr. Jobin, despite the fact that he had audited vehicle usage on a very regular basis.

[30] The appellants' evidence is essentially circumstantial. It is based mainly on the following premises:

- Carl Jobin is indispensable to the company's operations.

- He personally develops the numerous products and seeks out new clients.
- The business experienced considerable growth, which explains why 80,000 km did not show on the odometer over the course of each of three years and why the company's director, Carl Jobin, drove an average of roughly 100,000 km per year in a 1998 Volvo and was reimbursed \$0.34 per kilometre.
- In order to maximize the warranty on the vehicle, the appellant regularly disconnected the odometer.
- The odometer was defective and had to be replaced.

[31] The probative value of circumstantial evidence obviously depends on the quantity and the quality of its content. In the case at bar, I find the quality to be at best highly debatable, even dubious. As far as quantity is concerned, the appellants chose to limit the evidence that they would submit even though there were clearly a number of ways to validate certain elements.

[32] The somewhat outlandish explanation that Carl Jobin regularly disconnected the odometer cable because that would enable him to benefit longer from the extended warranty that he had purchased for \$2,536 is not credible. In fact, it is implausible for various reasons.

[33] To begin with, all warranties, whether original or extended, are subject to very strict rules, and failure to comply therewith automatically voids the warranty.

[34] The duration of the extended warranty was seven years or 160,000 km. At the time of purchase, the vehicle had been driven 11,400 km, which means that there remained approximately 148,000 km until the warranty expired. Over six years it would thus have been possible to drive an average of 25,000 km per year. Why then would Mr. Jobin not have allowed more kilometres to be displayed on the odometer in order to reduce the risk that the company would discover his scheme?

[35] Would an engineer of his intelligence, who has an answer for everything, have been clumsy in handling matters relating to his car, especially if the continuation of his warranty was such a major concern?

[36] To think that a mechanic would be unable to see the difference between a vehicle that has been driven about 30,000 km and one that has been driven more than 250,000 km is a real insult to the intelligence of those who work in that field.

[37] The question of the number of kilometres driven in the Volvo was absolutely fundamental. This was a very important issue and the parties' positions were diametrically opposed.

[38] According to the appellants, the vehicle was driven approximately 300,000 km during the periods in question, whereas the Canada Revenue Agency was of the opinion that the odometer reading of about 30,000 km was essentially correct.

[39] In support of his claims, Mr. Jobin referred essentially to: an odometer failure; his having disconnected the odometer several times; a few repair bills; an invoice for the purchase of two sets of tires, one for the winter and the other for the summer; and the testimony of two customers who said that Carl Jobin went to see them a few times, and that he was driving a red Volvo.

- Why did the appellants not call as a witness a competent mechanic having expertise in Volvo automotive mechanics to show the feasibility of the odometer disconnection scheme?
- Why did they not call as a witness a specialist in automotive mechanics who could certify that the overall mechanical wear and tear confirmed that the vehicle had been driven more than 300,000 km?
- Why did they not call as witnesses employees of the business who could have given a relatively accurate account of the frequency of Carl Jobin's absences?
- Why did they not produce statements attesting to cellphone use in order to confirm the numerous alleged trips?
- Why did they not retain vouchers in support of their claims, considering that this was a very unusual element that had a major impact both on the appellant Carl Jobin and on the corporation he controlled?

[40] I was able to observe Carl Jobin and found him to be an intelligent and very imaginative person who is not easily flustered. I therefore conclude that it would clearly not have been particularly helpful to his case to obtain the testimony of certain people well-qualified to answer certain questions.

[41] I do not believe any of Carl Jobin's explanations. They are outlandish, bizarre and utterly implausible for the most part. I am entirely convinced that the set of reports entitled [TRANSLATION] "Meeting Report" for the years 2000, 2001 and 2002 are complete fabrications produced either during or after the audit (Exhibit A-2, Tabs 9, 10 and 11).

The penalties

[42] In light of the evidence, I find, without hesitation, that the penalties were entirely justified: what we have here are definitely not run-of-the-mill errors, involuntary omissions or trifling offences; on the contrary, a veritable system was put in place, the clear object of which was to enable the appellants to have it both ways.

[43] From the company's perspective, the amounts in question were expenses that it deducted from its income. From the appellant Carl Jobin's perspective, since these amounts were an allowance, there was no need to retain supporting documents and he could thus benefit from tax-free income.

[44] The tax savings realized would have warranted a somewhat more refined and credible scheme.

[45] The conditions which, under the *Income Tax Act*, must be fulfilled in order to justify the assessment of penalties were clearly met, and thus, the penalties are fully justified.

[46] Carl Jobin deliberately hatched and implemented a scheme to avoid paying large amounts of income tax. He thought up a seemingly clever plan, but went so far overboard that everything fell apart.

[47] Despite certain self-evident facts, and the fact that some of his explanations — such as the number of tires on which a distance of roughly 300,000 km was driven, sometimes at speeds which, according to Mr. Jobin himself, were above the speed limit — were utterly outlandish and implausible, Mr. Jobin persisted in trying to prove that his claims were well-founded.

[48] The assessments are based on reasonable and plausible information and are entirely proper. As for the penalties, they are fully justified. Consequently, the appeals are dismissed and costs in each matter are awarded to the respondent.

Signed at Ottawa, Canada, this 16th day of January 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 27th day of June 2008.

Erich Klein, Revisor

CITATION: 2007TCC11

COURT FILE NOS.: 2005-2367(IT)G and 2005-2368(IT)G

STYLE OF CAUSE: Carl Jobin and Métallurgie Syca Inc.
v. The Queen

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: December 5, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

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APPEARANCES:

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 Counsel for the Respondent: Suzanne Morin

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