

Docket: 2007-1251(IT)I

BETWEEN:

CLAUDE BOUCHARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeal heard on July 31, 2007, at Québec, Quebec  
Before: The Honourable Justice Alain Tardif

Appearances:

Agent for the Appellant: Jean-Jacques Truchon

Counsel for the Respondent: Marie-Claude Landry

---

**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2001 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of September 2007.

\_\_\_\_\_  
"AlainTardif"

Tardif J.

Translation certified true  
on this 8th day of November 2007.

Brian McCordick, Translator

Citation: 2007TCC471  
Date: 20070925  
Docket: 2007-1251(IT)I

BETWEEN:

CLAUDE BOUCHARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REASONS FOR JUDGMENT**

Tardif J.

[1] This is an appeal from an assessment under the *Income Tax Act*. The assessment resulted from a benefit that was conferred on a shareholder in a 2001 transaction involving an automobile.

[2] In making and confirming the assessment concerning the 2001 taxation year, the Minister of National Revenue ("the Minister") relied on several assumptions of fact. Those assumptions are as follows:

[TRANSLATION]

- (a) The Appellant is a shareholder and director of Soprema Inc. ("the Corporation") as well as its Vice-President.
- (b) During the taxation year, the Corporation acquired a Cadillac automobile from a dealership called B. Dupont Auto Inc.
- (c) In his capacity as an officer of the Corporation, the Appellant negotiated the terms of the transaction.

- (d) The Corporation traded in a 1996 Cadillac having a fair market value of \$24,400 upon purchasing this vehicle.
- (e) In the transaction, the Appellant personally purchased the vehicle traded in by the Corporation. He did this by means of a sale of convenience in which the car dealership sold him the vehicle for \$10,000.
- (f) The Appellant paid Québec sales tax on a value of \$24,400.

[3] The Appellant is the representative of Soprema S.A. in Canada. In the course of his employment, and on behalf of Soprema S.A., he purchased a vehicle described in the contract that was produced as Exhibit I-1.

[4] The effect of the transaction was to dispose of a 1996 Cadillac STS, which the corporation owned until the new vehicle was purchased.

[5] The Appellant expressed his interest in purchasing the used vehicle, which had a fair market value of approximately \$24,400, and was traded in upon the purchase of the new vehicle.

[6] The fair market value (FMV) was simply determined based on the guide that the Société de l'assurance automobile du Québec uses to determine the value of a car for sales tax purposes.

[7] This amount can be reduced if the true FMV is not the value used in computing the tax. In such cases, the overpaid tax can be recovered through an administrative process that is subject to certain conditions.

[8] The Appellant made no request for such recovery. He explained that the assessment made based on the guide used by the Société de l'assurance automobile is final and without appeal, an assertion that I consider baseless.

[9] After entering into the contract, the Appellant undertook no effort to recover the tax that he overpaid due to the fact that it was based on an amount greater than the fair market value of the vehicle. His excuse for this lack of effort was that the expenses incurred would have cancelled out any amount recovered.

[10] In support of his allegations, the Appellant filed a copy of the guide entitled [TRANSLATION] *Used Car Valuations*, May 1, 2007, edition, where he highlighted the following at page 48:

[TRANSLATION]

<b>Year</b>	<b>Model</b>	<b>Extra Clean</b>	<b>Clean</b>	<b>Average</b>	<b>Rough</b>
2000	Cadillac Seville	\$10,300	\$8,600	\$6,100	\$4,100

However, he did not mention the note at the back of the cover page, which states: [TRANSLATION] "Canadian Black Book is published semi-monthly. Please discard this issue upon receipt of the most current edition." The note that follows this reads: [TRANSLATION] "IMPORTANT – Classification determines price to offer."

[11] It should be understood that the "Black Book" is a tool for mechanics who purchase used cars. The prices indicated are intended as a guide only. Users must take the costs of repairing a car before it is resold, and the seller's profit, into consideration, and the FMV of an automobile is, in fact, the selling price, not the price that a dealer will pay.

[12] In addition, the fact that the Appellant used the May 1, 2007, edition, as opposed to the issue published for the month in 2001 in which the transaction took place, shows how little concern the Appellant had about the quality of the evidence that he needed to submit.

[13] I have no doubt that the guide that was current at the time that the 2001 transaction took place would have stated a completely different value from the Appellant's estimate.

[14] In fact, these guides are not completely reliable as references. Moreover, the "Black Book" guides are published for mechanics to serve as guidance with respect to prices to offer a seller.

[15] Other guides on the subject are much more useful and, above all, more realistic in determining the FMV of an automobile. They are guides that consumers can use, because the amounts listed in them correspond to the price that a consumer should pay, including the cost of overhauling the car and the seller's profit.

[16] The Appellant, who bore the burden of proof, chose to submit completely inadequate evidence. In fact, his inability to provide real evidence in support of his

allegations was undoubtedly behind his failure to object to the tax overpayment that occurred in the transaction.

[17] His explanation that it would have cost him as much money in legal fees is simply preposterous: the process is straightforward and easy. The real explanation is undoubtedly that such efforts would have resulted in his having to provide embarrassing explanations to the owner of the new car, since the partial tax refund would have been followed by a claim for an equal amount from the new vehicle's purchaser.

[18] In his judgment dated September 12, 2006, the Honourable Justice G.-André Gobeil of the Court of Québec showed a very firm grasp of the Appellant's scheme, and I not only agree with his assessment unreservedly, but would actually adopt the passage in which he states:

[TRANSLATION]

14. Soprema S.A. holds the vast majority of the shares of its subsidiary Soprema Inc., which was founded and then managed by Mr. Bouchard, its Vice-President and Chief Executive Officer.
15. The relationship of subordination between Mr. Bouchard and Soprema Inc. and/or Soprema S.A. is well-established, and, in fact, is not denied.
16. It was Mr. Bouchard who, on behalf of his employer, orchestrated the purchase of a new vehicle and the trade-in of the used vehicle in 2001. It was he who negotiated the loan on behalf of his employer, and it was through him that a trade-in price of \$10,000 for the old vehicle was arrived at.
17. Mr. Bouchard is unlikely to have been unaware that he would be buying back the traded-in vehicle for a price well below fair market value.
18. The vehicle trade-in and buyback were done on the same day and for the same price, so it seems clear that there was planning on the part of Mr. Bouchard and his employer, and collusion on the part of an accommodating dealer.
19. Based on the evidence as a whole, the Court must draw the logical conclusion that it was because of the employer-employee relationship that the vehicle could be purchased for such a low price.

[19] For these reasons, the appeal is dismissed and the assessment is confirmed on its merits.

Signed at Ottawa, Canada, this 25th day of September 2007.

"Alain Tardif"

---

Tardif J.

Translation certified true  
on this 8th day of November 2007.

Brian McCordick, Translator

CITATION: 2007TCC471  
COURT FILE NO.: 2007-1251(IT)I  
STYLE OF CAUSE: Claude Bouchard v. Her Majesty the Queen  
PLACE OF HEARING: Québec, Quebec  
DATE OF HEARING: July 31, 2007  
REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif  
DATE OF JUDGMENT: September 25, 2007

APPEARANCES:

Agent for the Appellant: Jean-Jacques Truchon

Counsel for the Respondent: Marie-Claude Landry

COUNSEL OF RECORD:

For the Appellant:

Name:

City:

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada