

Citation: 2009 TCC 199

Dockets: 2008-1828(IT)I;
2007-4486(IT)I

BETWEEN:

DONALD GRANT BAUDAIS,
SHARLENE JUNE BAUDAIS,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

CERTIFICATION OF TRANSCRIPT OF
REASONS FOR JUDGMENT

Let the attached certified transcript of my Reasons for Judgment delivered orally from the Bench at Kelowna, British Columbia on March 13, 2009, be filed.

“Diane Campbell”

Campbell J.

Signed in Ottawa, Canada, this 27th day of April 2009.

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IN THE TAX COURT

2008-1828 (IT) I

2007-4486 (IT) I

BETWEEN:

DONALD GRANT BAUDAIS
SHARLENE JUNE BAUDAIS

Appellants;

- and -

HER MAJESTY THE QUEEN,

Respondent.

Held before Madam Justice Campbell in Courtroom No. 350,
1355 Water Street, Kelowna, B.C., on Friday, March 13, 2009.

APPEARANCES:

Mr. D.G. Baudais, On Their Own Behalf;
Ms. S. Currie, For the Respondent.

THE REGISTRAR: C. DeSantos

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Per: S. Leeburn

REASONS FOR JUDGMENT

1
2 (Delivered Orally in Kelowna, B.C. on March 13, 2009)

3 JUSTICE: Let the record show that I am
4 delivering oral reasons in the appeals of
5 Donald Grant Baudais and Sharlene June Baudais, which I
6 heard earlier today. These appeals were heard together and
7 are in respect to the 2004 and 2005 taxation years for
8 both Appellants.

9 On April 4, 2008 the Minister of National
10 Revenue confirmed the reassessments of
11 Donald Grant Baudais and included unreported income of
12 \$38,636 in 2004 and \$29,547 in 2005. In computing income
13 for these years, the second Appellant, Sharlene Baudais,
14 claimed married status tax credits of \$6,803 in 2004 and
15 \$7,344 in 2005 in respect of her spouse,
16 Donald Grant Baudais. The Minister denied the claim for
17 these tax credits because the spouse's net income exceeded
18 the threshold amounts for these taxation years.
19 Mrs. Baudais' claim for these tax credits is dependent on
20 my conclusions in Mr. Baudais' appeal. The issue in his
21 appeal is whether the Minister properly included these
22 amounts of \$38,636 and \$29,547 in his income for the
23 taxation years.

24 I heard evidence from both Appellants who
25 basically denied that Mr. Baudais did any work for

1 Hovey Ventures Limited or received any income in 2004 and
2 2005. Mrs. Baudais was employed at Zellers and testified
3 that her husband remained at home and was unemployed. In
4 addition, Mr. Baudais denied that he is one and the same
5 individual as the Grant Baudais that was issued cheques
6 from Hovey Ventures in these years.

7 I also heard evidence from
8 Louise Marischuk, the auditor, who was involved in the
9 trust examination audit of Hovey Ventures. The audit
10 confirmed that Hovey deducted 7 percent of its gross
11 payments to many of its workers and she concluded that
12 Hovey paid amounts to Mr. Baudais for education seminar
13 activities he provided to Hovey employees in these years.
14 As a result she issued T4-A forms based on her conclusion
15 that they were commission-type payments.

16 Although not pleaded in the Notices of
17 Appeal most, if not all, of the Appellant's evidence
18 focussed on the position taken that he was not the same
19 Grant Baudais named in all of the documentary exhibits.
20 In fact, he cross-examined the auditor in that same vein
21 as to how she had concluded that he was in fact the same
22 Grant Baudais as named in the documentation. However, in
23 his submissions, Mr. Baudais argued that the Respondent
24 had failed to prove or establish that Grant Baudais was
25 carrying on a business with an expectation of profit.

1 Therefore he was not required to include these amounts in
2 income as there was no source of income and no services
3 performed for Hovey.

4 In addition, he argued that there was no
5 proof introduced by the Minister that there was a GST
6 number or a SIN number belonging to the Appellant in the
7 Hovey books and records and no evidence of a written
8 contract between Hovey and the Appellant.

9 First, with respect to any argument that
10 the Appellant was acting in a different capacity as
11 Grant Baudais, there is ample case law, which not only am
12 I bound to follow, but I also believe is correct, that
13 there is no merit in arguing the distinction between the
14 Appellant's capacity as a natural person and his capacity
15 to act in some other way. I agree with the Federal Court's
16 remarks in the case of *M.N.R. v. Stanchfield*,
17 [2009] F.C.J. No. 61, at paragraph 27, that states that if
18 an appellant were successful in such an argument:

19 "... he would be unilaterally choosing in what
20 capacity he acts; this is obviously an
21 untenable proposition, and one that runs afoul
22 of any tenable interpretation of the Act."

23 In addition to the case law, I can find
24 nothing in the Act that would give Mr. Baudais any basis
25 to successfully advance this argument. The Federal Court

1 has also concluded that none of the relevant provisions in
2 the Act conflict with the *Bill of Rights*, nor with the
3 taxpayer's rights of objection and appeal and of due
4 process of law.

5 I pointed out to the Appellants at the
6 outset of the hearing and again during submissions that
7 the burden of proof in appeals such as these rested with
8 the Appellants. It is not the Respondent's responsibility
9 to bring evidence, documentary or otherwise to prove, as
10 the Appellants suggest, that Mr. Grant Baudais was
11 carrying on a business for profit or that there was no
12 source of income or that services were performed for
13 Hovey. The Minister is permitted in this Court to make
14 certain assumptions of fact and they will be presumed to
15 be correct and true in fact unless the Appellants can
16 provide evidence that can convince me on a balance of
17 probabilities that they are not to be assumed to be
18 correct. On this basis alone the Appellants cannot be
19 successful. I was simply provided nothing more in respect
20 to addressing the assumptions than their mere refuting the
21 veracity of the statements in the Replies. This will never
22 be sufficient.

23 Although I was less than impressed with the
24 Respondent counsel's preparation in the auditor's
25 testimony, on a balance of probabilities I remain

1 unconvinced that the Appellant, Donald Grant Baudais, is
2 not one and the same person as Grant Baudais named in the
3 documentary exhibits. The auditor could not provide the
4 nexus between the Appellant and Grant Baudais in the
5 documents and although she referenced the cheques at
6 Exhibit R-5 as being negotiated through the bank
7 statements, she did not have those documents to reference.
8 However, her evidence was that she believed at the time
9 she issued the T4-A forms that the Appellant was the
10 Grant Baudais referenced in the documents based on the
11 name, on the various cross-checks she performed and the
12 links used by CRA.

13 In addition, Exhibit R-3, a product invoice
14 from Paradigm Education to Grant Baudais, references a
15 contacting e-mail address, which includes the names of
16 Grant and Sharlene. The Appellant's response was that this
17 was mere coincidence. However, I believe that on a balance
18 of probabilities this points to a further identification
19 of the Appellant as one and the same as Grant Baudais
20 named in the documents.

21 The identity issue, I would think, is one
22 that a taxpayer would immediately bring to CRA's attention
23 if a T4-A were incorrectly issued. Yet this issue was
24 never raised until this morning's hearing. In addition, in
25 cross-examination of the auditor, Mr. Baudais alluded to

1 the fact that his son, Bradley Grant Baudais could have
2 been the individual that received those amounts from Hovey
3 and not the Appellant. I must draw an adverse inference
4 from this, because if in fact it was the Appellant's son,
5 then Mr. Baudais did not produce his son as a witness.
6 This had the potential of clarifying the identity issue
7 for me and entitles me to draw an inference that the son's
8 evidence would have been unfavourable to the Appellant's
9 appeals.

10 For these reasons the appeals of
11 Donald Grant Baudais are dismissed, without costs, on the
12 basis that the Minister correctly included in income
13 \$38,636 in 2004 and \$29,547 in the 2005 taxation year.

14 As a result of this finding, the appeal of
15 Sharlene June Baudais is also dismissed on the basis that
16 her spouse's net income was in excess of the threshold
17 amounts permitted in the 2004 and 2005 taxation years.

18 And that concludes the reasons in the
19 judgment and concludes the work for the Tax Court for this
20 week in Kelowna. Thank you.

21 I HEREBY CERTIFY THAT THE FOREGOING
22 is a true and accurate transcript of
23 the proceedings herein to the best
24 of my skill and ability.

25 _____
S. Leeburn Court Reporter

CITATION: 2009 TCC 199

COURT FILE NO.'S: 2008-1828(IT)I
2007-4486(IT)I

STYLE OF CAUSE: Donald Grant Baudais,
Sharlene June Baudais and
Her Majesty the Queen

PLACE OF HEARING: Kelowna, British Columbia

DATE OF HEARING: March 13, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF ORAL JUDGMENT: March 13, 2009

APPEARANCES:

For the Appellants: Donald Grant Baudais

Counsel for the Respondent: Shannon Currie

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
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