

Dockets: 2018-2611(CPP) 2018-2612(EI)
2018-2613(CPP) 2018-2614(EI)
2018-2615(CPP) 2018-2616(EI)

BETWEEN:

CHRISTOPHER BOSVELD

and

KATELYN BOSVELD

and

LINDSAY BOSVELD,

Appellants,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on October 2, 2019, at Hamilton, Ontario

Before: The honourable Jean-Gilles Lebel, D.J.

Appearances:

Agents for the Appellants: John Calvin Bosveld

John VanderVelde

Counsel for the Respondent: Tokunbo Omisade

JUDGMENT

The appeals pursuant to subsection 103(1) of the *Employment Insurance Act* and section 27 of the *Canada Pension Plan* in respect of the decisions of the Minister of National Revenue (Minister) dated April 13, 2018, are allowed and the decisions by the Minister are varied on the basis that Christopher Bosveld, Katelyn Bosveld and Lindsay Bosveld were not employed in insurable employment or pensionable employment with Serve Media inc. during the period from

January 1, 2017 to October 11, 2017 (Christopher Bosveld) and during the period of January 1, 2017 to November 8, 2017 (Katelyn Bosveld and Lyndsay Bosveld).

Signed at North Bay, Canada, this 8th day of January 2020.

“Jean-Gilles Lebel”

J.G. Lebel, D.J.

Citation: 2020 TCC 2

Date: January 6, 2020

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REASONS FOR JUDGMENT

J.G. Lebel, D.J.

[1] At the outset, the parties agreed that all appeals be heard together. In addition, the Crown submitted that credibility with not an issue. I agree.

[2] The appellants called two witnesses: John Calvin Bosveld and the appellant Christopher Bosveld. The appellants Katelyn and Lindsay Bosveld did not appear nor were affidavits filed on their behalf.

[3] The only issue before the court is whether or not the appellants were employed in insurable employment and or pensionable employment with the payer during the periods in question.

[4] For the appellants Katelyn and Lindsay Bosveld, the period in question is from January 1, 2017 to November 8, 2017. For the appellant Christopher Bosveld, from January 1, 2017 to October 11, 2017

[5] The payer was Serve media Inc. (the “Company”) Its shareholders were Calvin and Kelly Bosveld, the appellants' parents. The Company was in the business of providing Internet-based marketing services by using Kijiji and Google and other marketing tools.

[6] The Company asserts that the appellants were self-employed persons bound by contracts for services as opposed to employees employed under contracts of service. The contracts in question were not reduced in writing.

[7] The appellant Christopher was employed as an independent contractor in 2012. At the time, he was 21 years of age and was attending Laurier University in Waterloo.

[8] The appellants Katelyn and Lindsay were employed as independent contractors in 2012. Katelyn was 15 years of age and Lindsay was 13 years of age. They both lived with their parents.

[9] The appellant Christopher was hired by the Company as an employee of service in 2015 and 2016. He was issued T4 slips by the Company during that period of time. In August 2016, he became a full-time firefighter for the city of Hamilton and ceased to be an employee of service with the Company.

[10] Between January 1, 2017 and October 11, 2017, he resided at home with his parents and was rehired as an independent contractor. He also negotiated contracts for service with other individuals during that period of time namely a snowplowing company and for a co-worker. In 2019, he also performed work in solar systems as an independent contractor. The facts with respect to those other entities or individuals other than the work performed by the Company are not disputed.

[11] Between January 7 and October 13, 2017, the appellant Christopher invoiced the Company \$12,032.50. The invoices in question were marked and entered as exhibit R-1 (A).

[12] Between January and November 2017, the appellant Katelyn invoiced the Company \$8,735.50. The invoices in question were marked and entered as exhibit R-1 (B)

[13] Between January and November 2017 the appellant Lindsay invoiced the Company \$16,350.50. The invoices in question were marked and entered as exhibit R-1 (C).

[14] The tasks assigned to the appellants during the period in question consisted of posting and reposting ads on Kijiji on behalf of the Company's clients. The appellants were compensated at the rate of one dollar per posting and 50 cents per reposting. As indicated above, the appellants invoiced the company for the work they completed.

[15] During the period in question, the Appellant Christopher expanded his services to the Company. He started to do more with email marketing. For example, a business such as Brian's Auctions sends an email in advance of every auction. His responsibility was to build all of those emails and send them on a schedule as he saw fit.

[16] The evidence tendered during the trial by the appellants is credible, trustworthy and reliable. As indicated earlier, there is no issue as to the credibility of the witnesses. That evidence has not been contradicted, except for some assumptions of fact in the respondent's replies to the notices of appeal.

[17] Having reviewed the transcript of the evidence, I make the following findings of fact:

[18] Apart from assigning the tasks, the Company did not provide any instruction or teach the appellants how to perform their tasks. All three appellants were very knowledgeable on how to access Kijiji.

[19] Christopher learned how to use Google and emails as marketing tools. He educated himself on those tools on his own and at his expense without any input from the Company.

[20] Calvin Bosveld controlled the Company's day-to-day operations including obtaining clients, hiring and firing workers and independent contractors and deciding the direction of the business.

[21] The appellants were engaged by the Company under a verbal contract.

[22] The appellants' duties included creating Internet advertisements and editing, and maintaining website content.

[23] The appellants' engagement with the Company was not continuous in nature as it fluctuated depending on the number of clients.

[24] The Company also engaged other unrelated independent contractors who performed the same or similar duties as the appellants.

[25] The Company did not supervise the appellants.

[26] The Company did not give the appellants any instructions for new, difficult or unusual assignments. The Company never trained the appellants.

[27] The Company did establish the appellants' priorities and deadlines as one would do when hiring any independent contractors.

[28] The Company did not review the appellants' work.

[29] The appellants were not required to report to the Company by phone or in person.

[30] The appellants were not required to obtain the Company's approval before completing certain tasks.

[31] The appellants established their own work schedule and recorded their own work hours.

[32] The Company did not pay the appellants an hourly rate or a flat rate.

[33] If the appellants made a mistake, it was their obligation to rectify it at their expense and not at the expense of the Company.

[34] The appellants were paid by cheques in their names.

[35] The Company did not provide the appellants with desks or chairs to perform their duties. They used their school computers or laptops and when performing their tasks at home. They used the Internet services when at home which were paid for by the appellants' parents.

[36] The appellants were not required to personally perform their services for the Company. The Company was responsible for engaging and paying for replacement workers when the appellants could not or refused tasks.

[37] The appellants may have incurred minimal expenses in order to perform their services for the Company

[38] The Company did not provide guarantees for the appellants' work, nor did the Company for the cost of the appellants' errors.

[39] The Company was responsible for addressing client complaints.

[40] The appellants did not have trade names, business bank accounts or advertising.

[41] The appellants were not issued T4 slips for the periods in question

[42] From the beginning, the Company and the appellants intended to be bound by a contract for services. Given my findings of facts, I am of the view that the objective reality herein sustains the subjective intent of the parties.

[43] The Company did not exercise control over the timing and manner of performance of the work by the appellants. The fact that the computers and/or laptops were given to the appellants as students is of little consequence on the issue to be determined.

[44] The appellants, if they so wished, could have hired their own helpers. However, given the volume of work, it would not have been practical to do so. Although there was little or no financial risk to the appellants, there certainly was an opportunity of profiting from sound management in the performance of their tasks.

[45] Having reviewed the cases that were submitted to me by the Crown and having applied the facts to the law stated in *Wiebe Door Services Ltd v MNR.*, 87 DTC 5025 (TCC) and in *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85, the appellants have satisfied me that they were bound by a contract for services by the company.

[46] The appeals are allowed. The appellants do not have pensionable employment or insurable employment in the result.

Signed at North Bay, Ontario, this 8th day of January 2020.

“Jean-Gilles Lebel”

J.G. Lebel, D.J.

CITATION: 2020 TCC 2

COURT FILE NO.: 2018-2611(CPP) 2018-2612(EI) 2018(CPP)
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STYLE OF CAUSE: CHRISTOPHER BOSVELD and
KATELYN BOSVELD and
LINDSAY BOSVELD
and
THE MINISTER OF NATIONAL
REVENUE

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: October 2, 2019

REASONS FOR JUDGMENT BY: Honourable J.G. Lebel, D.J.

DATE OF JUDGMENT: January 8, 2020

APPEARANCES:

Agents for the Appellants: John Calvin Bosveld
John VanderVelde
Counsel for the Respondent: Tokunbo Omisade

COUNSEL OF RECORD:

For the Appellants:

Name:

Firm:

For the Respondent:

Nathalie G. Drouin
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