

Docket: 2012-4137(IT)I

BETWEEN:

ALVIN BURLANDO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 13, 2014, at Vancouver, British Columbia

Before: The Honourable Justice Valerie Miller

Appearances:

Counsel for the Appellant: George Douvelos

Counsel for the Respondent: Holly Popenia

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the Appellant's 2008 and 2009 taxation years is dismissed.

Signed at Ottawa, Canada, this 25th day of March 2014.

“V.A. Miller”

V.A. Miller J.

Citation: 2014TCC92
Date: 20140325
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BETWEEN:

ALVIN BURLANDO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] Mr. Burlando appeals the reassessment of his 2008 and 2009 taxation years. The issue is whether he incurred employment expenses of \$19,500 and \$20,000, which the Appellant states were wages he paid to his spouse in 2008 and 2009 respectively.

[2] The Appellant is employed as a sales manager with an automobile dealership in Coquitlam, British Columbia. In 2008 and 2009, he reported that he earned commission income of \$135,355 and \$115,113 respectively with total earnings of \$141,409 and \$121,615.

[3] In his income tax returns for 2008 and 2009, the Appellant reported that he had incurred total employment expenses of \$39,333 and \$40,104 respectively. According to his returns, the employment expenses included referral fees of \$23,340 and \$22,280 in 2008 and 2009.

[4] At the audit stage of this case, the Appellant wrote that, in 2008 and 2009, he had “misreported” the amounts of \$19,500 and \$20,000 as referral fees. He wrote that these amounts were assistant fees which he had paid to his spouse, Bonita.

[5] Both the Appellant and his spouse, Bonita, testified at the hearing of this appeal. They stated that Bonita worked from home for the Appellant. Her hours were

four to four and one half hours a day, five days a week. Her hourly wage was \$18 and she was paid by cash or set off. The Appellant explained that he and his spouse had only one bank account and it was a joint account. He didn't see the sense of paying her by cheque which she would deposit in their joint account. Instead, any amounts which Bonita withdrew from the bank account or purchased with the debit card or the Appellant's credit card were set off against the wages she earned.

[6] The Appellant submitted the bank statements for their joint account for 2008 and 2009. He also submitted a chart for each year which showed the amounts purportedly paid to Bonita by way of set off. These amounts totalled \$21,407.60 and \$17,204.72 in 2008 and 2009.

[7] The Appellant and Bonita both described her duties as networking for the Appellant. She telephoned people who had recently immigrated from South Africa to ascertain if they were looking for a vehicle. She also checked Craigslist to see if there was someone who was looking for a vehicle. If there was someone who was interested in buying a vehicle, she would refer them to the dealership where the Appellant worked. Bonita estimated she would make 4 to 6 telephone calls some days and other days she would make no calls. She also sent birthday cards to the Appellant's customers.

[8] It is my view that neither the Appellant nor Bonita gave credible evidence. Their testimony was inconsistent within itself and with the documentary evidence. Those inconsistencies were as follows.

[9] During cross examination, Bonita stated that she stopped working for the Appellant in June 2013 and she had worked for him for three years. When she was reminded by counsel that the years under appeal were 2008 and 2009, Bonita nevertheless insisted that she worked for her spouse for three years. According to Bonita's evidence she did not work for the Appellant in 2008 and 2009 because she only started to work for him in 2010.

[10] Both witnesses testified that Bonita worked four to four and one half hours for five days each week making telephone calls and checking Craigslist. I found this testimony to be self serving and unbelievable.

[11] At the objection stage of this case, the Appellant wrote to the Canada Revenue Agency ("CRA") that Bonita was his assistant and that he has misreported her wages on his income tax return as referral fees. He described the duties she performed as his assistant as follows:

The assistant's duties included the greeting of customers, demonstration of the targeted vehicles, followed up calls from customers, communicated with stores for accessories requested by customers, delivered sold vehicles to customers, handled after sale services to include the pick up (*sic*) the vehicles for routine services which was inherent to the sales.

The assistant was usually around or available on call to the taxpayer and paid once a month depending on the work done.

These duties bear no resemblance to those which the Appellant and Bonita described at the hearing.

[12] There was no documentary evidence to support that the Appellant paid Bonita any wages. His testimony that he paid her by setting off her wages against the amount she charged on his credit card was not supported by any receipts. It is my opinion that he randomly chose amounts from his bank statements and stated these amounts were Bonita's wages. For instance, some months he included his daughter's gym membership as part of Bonita's wages and other months the gym membership was not included as part of her wages. In 2008, the items he chose as Bonita's wages totalled \$21,407.60 and in 2009, the items totalled \$17,204.72. There were no documents to support that the credit card charges, the debit card payments or the cash withdrawals were made by Bonita.

[13] Counsel for the Appellant stated that the circumstances of this appeal were similar to those in *Noel v The Queen*, 2011 TCC 27. I disagree. In *Noel*, Hogan J of this court found that Ms. Noel had the skills to perform the duties for which she was responsible and that she was paid by cheque for her services to her spouse's law firm. It was never an issue whether Ms. Noel actually worked in her spouse's business.

[14] Counsel for the Appellant submitted that neither witnesses' testimony was contradicted by other testimony or documentary evidence and that I should accept their testimony as true. I note that Courts are not required to believe witnesses, even if they are not contradicted. Their evidence may be implausible as a result of circumstances revealed by documents, or simply on the basis of common sense: *Lacroix v R*, 2007 TCC 376 at paragraph 12.

[15] In the circumstances of this appeal, I have concluded that the Appellant's evidence was implausible. In addition, his evidence with respect to Bonita's duties and wages was not in accord with prior statements he made to the CRA.

[16] In conclusion, it is my view that the Appellant has not satisfied the onus on him of showing that the reassessment was incorrect. He has not shown that Bonita actually worked for him or that he paid her any wages. In a situation such as existed

in this appeal, where there is an alleged working relationship between non-arm's length parties, there should have been some documentation or independent evidence to support that working relationship. In this case, neither was given.

[17] The appeal is dismissed.

Signed at Ottawa, Canada, this 25th day of March 2014.

“V.A. Miller”

V.A. Miller J.

CITATION: 2014TCC92

COURT FILE NO.: 2012-4137(IT)I

STYLE OF CAUSE: ALVIN BURLANDO AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 13, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: March 25, 2014

APPEARANCES:

Counsel for the Appellant: George Douvelos
Counsel for the Respondent: Holly Popenia

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