

Docket: 2002-4053(EI)

BETWEEN:

EGGSPECTATIONS INTERNATIONAL HOLDING CORP. INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on common evidence with the appeal of *Jimmy Skindilias*  
(2002-4077(EI)) on April 1, 2003 at Montreal, Québec,

Before: The Honourable Deputy Judge J.F. Somers

Appearances:

Agent for the Appellant: Pradeep Anand

Counsel for the Respondent: Annick Provencher

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JUDGMENT

The appeal is dismissed and the decision of the Minister is confirmed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of June 2003.

"J.F. Somers"

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D.J.T.C.C.

Citation: 2003TCC318  
Date: 20030604  
Docket: 2002-4053(EI)

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EGGSPECTATIONS INTERNATIONAL HOLDING CORP. INC.,  
Appellant,

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THE MINISTER OF NATIONAL REVENUE,  
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JIMMY SKINDILIAS,  
Appellant,

and

THE MINISTER OF NATIONAL REVENUE,  
Respondent.

### **REASONS FOR JUDGMENT**

#### **Somers, D.J.T.C.C.**

[1] These appeals were heard on common evidence in Montreal, Québec, on April 1st, 2003.

[2] The Appellants are appealing from a decision made by the Minister of National Revenue (the "Minister") that the employment of the Worker, Jimmy Skindilias, with the Payor, Eggspectations International Holding Corp. Inc.,

hereinafter referred to as the Appellant, during the period in question, from April 22 to June 7, 2002, was insurable employment because there existed a contract of service and therefore an employee/employer relationship between them.

[3] The burden of proof is on the Appellants. They must show on a balance of probabilities that the Minister erred in fact and in law in his decision. Each case stands on its own merits.

[4] In reaching his decision, the Minister relied on the following assumptions of fact which were admitted or denied:

- a) the Appellant was incorporated on April 20, 2000; (admitted)
- b) the shareholders of the Appellant during the disputed period were:  
(admitted)

9084-7997 Québec Inc.	72.4% of voting shares
2847-5390 Québec Inc.	22.5%
Groupimmo Inc.	5%
Eggspectation Inc.	0.1%
- c) the Worker and Castrenza Renda each held 50% of the voting shares of 9084-7997 Québec Inc; (admitted)
- d) the Worker held 70% of the voting shares of Eggspectation Inc.; (admitted)
- e) the Appellant owned the restaurant's trade mark, Eggspectation and sold by franchise the right to use it; (denied)
- f) the Appellant had 10 employees on its payroll; (admitted)
- g) the Worker was the President and the director of the operations of the Appellant; (admitted)
- h) the Worker's tasks were to find, to negotiate and to sell the franchises and to supervise the construction of the restaurants; (denied)
- i) the Worker had to make reports to the shareholders regularly; (denied)
- j) the Worker had no fixed working hours schedule; (admitted)

- k) the Worker worked over 30 hours per week for the Appellant; (denied)
- l) the Worker worked half of the time in the Appellant's office and half of the time on the road with clients; (denied)
- m) the Worker was paid every two weeks an amount of \$2,000.00 decided by the Appellant; (admitted)
- n) the Worker used the office equipment of the Appellant; (admitted)
- o) the Worker used his own car but he was reimbursed for his expenses by the Appellant; (denied)
- p) the Worker had no risk of losses or chance of profits; (denied)
- q) the Worker's tasks were integrated in the Appellant's business. (denied)

[5] The Appellant was incorporated on April 20, 2000.

[6] The shareholders of the Appellant during the period in question were: 9084-7997 Québec Inc. with 72.4% of voting shares, 2847-5390 Québec Inc. with 22.5%, Groupimmo Inc. with 5% and Eggspectation Inc. with 0.1%.

[7] The Worker and Castrenza Renda each held 50% of the voting shares of 9084-7997 Québec Inc.

[8] The Worker held 70% of the voting shares of Eggspectation Inc.

[9] The Worker testified that the Appellant owned the restaurant's trade mark.

[10] The Worker was in charge of the operations of the Appellant. He stated that he franchised out or managed the business for other individuals. The Appellant had four employees on the payroll.

[11] The restaurants had three operations being: beverage, floor and kitchen. There are 11 restaurants in the enterprise: 8 in Montreal, Québec, 1 in Ottawa, Ontario and 2 in USA.

[12] The Worker was the President and Director of the Appellant. He worked five to eight hours a day and visited the various restaurants. The Worker shared the offices at the head office with four permanent employees.

[13] The Worker was in charge of hiring and dismissing the employees. The Worker and Castrenza Renda consulted each other one to ten times a day.

[14] The Worker mentioned that he had to give a permanent warranty for loans up to \$1,000,000.

[15] Jimmy Bagiotas, the chartered accountant, testified that the Worker did not personally own shares in the Appellant but through the 50% shares he owns in 9084-7997 Québec Inc. as stated in subparagraph 5(b) of the Reply to the Notice of Appeal.

[16] Mireille Lapierre, Appeals Officer at Canada Customs and Revenue Agency, testified that she had a telephone conversation on September 26, 2002 with the Worker, Jimmy Skindilias and Pradeep Anand, the controller. She stated that the Appellant has been in operation since April 2000, that the Worker was the president of the enterprise and that the enterprise consisted in selling restaurant franchises.

[17] The Worker was the president and director of operations of the Appellant. His responsibility was to find new franchises and to negotiate such with clients and to supervise the installation of the restaurants. His duties required him to be out of the office most of the time.

[18] The Worker's salary was established at \$2,000 per two weeks paid regularly by cheque. The Worker's car expenses were reimbursed by the Appellant.

[19] The Worker's hours of work were irregular; he was working depending on the type of work to be performed from 30 to 100 hours per week.

[20] Control by the Appellant over the Worker's duties was not constant but the Appellant had the right to exercise that control.

[21] The Appellant owned all the equipment necessary for its operations. The Worker was reimbursed for the use and expenses incurred with his vehicle.

[22] The Worker, according to the Appeals Officer, did not suffer any financial risks of loss nor any possible financial gain except his salary paid on a regular basis.

[23] The Worker was integrated in the Appellant's business.

[24] In determining whether the parties have established an employer-employee relationship the total relationship of the parties must be considered.

[25] In the case *Wiebe Door Services Ltd. v. M.N.R.*, 87 DTC 5025, the Federal Court of Appeal concluded that the four-in-one test should be taken into consideration: (1) control; (2) ownership of tools; (3) chance of profit and risk of loss; and (4) integration.

[26] In the case of *Gallant v. Canada (Department of National Revenue) (F.C.A.)*, [1986] F.C.J. No. 330, the Federal Court of Appeal expressed itself as follows:

...In the Court's view, the first ground is based on the mistaken idea that there cannot be a contract of service unless the employer actually exercises close control over the way the employee does his work. The distinguishing feature of a contract of service is not the control actually exercised by the employer over his employee but the power the employer has to control the way the employee performs his duties. If this rule is applied to the circumstances of the case at bar, it is quite clear that the applicant was an employee and not a contractor.

[27] In the case at hand, the Appellant, which had a distinct legal personality, controlled the Worker's performance in his duties. The two main shareholders, including the Worker, consulted each other daily concerning vital decisions. It is reasonable to conclude that the Appellant had control over the Worker's performance.

[28] The Appellant fully owned the equipment used by the Worker who executed his tasks partly at the Appellant's office. The Worker was paid for the use of his vehicle. Under this item the Worker was an employee.

[29] The Worker's expenses were reimbursed and he was remunerated on a regular basis. The Worker signed a warranty for loans of considerable amounts but

these undertakings were made as a shareholder and not as an employee. Considering these facts the Worker was an employee.

[30] The Worker was working exclusively for the Appellant. He was integrated in the operations of the company. His work was essential to the success of the company's performance.

[31] Considering all the facts as related, the Worker was working under a contract of service.

[32] The Appeals Officer concluded that the worker owned effectively 36.2% of the shares in the Appellant, through the division of shares as stated in subparagraph 5(b) of the Reply to the Notice of Appeal.

[33] Paragraph 5(2)(b) of the *Employment Insurance Act* does not apply in this case as the Worker does not control more than 40% of the voting shares of the corporation.

[34] In summary, the Worker was the president and director of the operations of the Appellant, a position of strength in the company. He was dedicated and the success of the company depended on his work performance. The fact of working long irregular hours does not prevent him from being employed under a contract of service. It appears from the evidence that due to devotion to his work the company is flourishing and on the road to being a successful international company.

[35] Considering all the evidence in this case, the Worker was engaged during the period in question in insurable employment with the Appellant pursuant to paragraph 5(1)(a) of the *Employment Insurance Act* because he was working under a contract of service.

[36] The appeals are dismissed.

Signed at Ottawa, Canada, this 4th day of June 2003.

"J.F. Somers"

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Jurisprudence consulted

*Wiebe Door Services Ltd. v. Minister of National Revenue*, [1986] 3 C.F. 553  
(F.C.A.)

*Acier Inoxydable Fafard Inc. v. Canada (Minister of National Revenue - M.N.R.)*,  
[2002] F.C.J. no 794

*Gallant v. Canada (Department of National Revenue) (F.C.A.)*, [1986] F.C.J. no 330

*Gervais v. Canada (Minister of National Revenue - M.N.R.)*, [1996] T.C.J. no 611

*Roxboro Excavation Inc. v. Canada (Minister of National Revenue - M.N.R.)*, [1999]  
T.C.J. no 32

*Roxboro Excavation Inc. v. Canada (Minister of National Revenue - M.N.R.)*, [2000]  
F.C.J. no 799

*Brochu v. Canada (Minister of National Revenue - M.N.R.)*, [1996] T.C.J. no 118

*Massé et Plante Auto (1997) Ltée v. Canada (Minister of National Revenue -  
M.N.R.)*, [2001] A.C.I. no 423

*Industries J.S.P. Inc. v. Canada (Minister of National Revenue - M.N.R.)*, [1999]  
T.C.J. no 32



CITATION: 2003TCC318

COURT FILE NO.: 2002-4053(EI) and 2002-4077(EI)

STYLE OF CAUSE: Eggspectations International  
Holding Corp. Inc. and M.N.R. and  
Jimmy Skindilias and M.N.R.

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: April 1st, 2003

REASONS FOR JUDGMENT BY: Honourable Deputy Judge J.F. Somers

DATE OF JUDGMENT: June 4, 2003

APPEARANCES:

Agent for the Appellant Eggspectations International Holding Corp. Inc.:	Pradeep Anand
For the Appellant Jimmy Skindilias	The Appellant himself

Counsel for the Respondent: Annick Provencher

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg  
Deputy Attorney General of Canada  
Ottawa, Canada