

Docket: 2002-3840(EI)

BETWEEN:

MEDITERRANEAN HAULAGE INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

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Appeal heard on July 15, 2003 at Toronto, Ontario

Before: The Honourable W.E. MacLatchy, Deputy Judge

Appearances:

Agent for the Appellant: Valia Eliopoulos

Counsel for the Respondent: Michael Appavoo

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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 Toronto, Ontario, this 19th day of August 2003.

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"W.E. MacLatchy"  
MacLatchy, D.J.

Citation:2003TCC528  
Date: 20030819  
Docket: 2002-3840(EI)

BETWEEN:

MEDITERRANEAN HAULAGE INC.,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

#### **MacLatchy, D.J.**

[1] The appeal was heard on July 15, 2003 at Toronto, Ontario.

[2] The Appellant appealed a ruling to the Minister of National Revenue (the "Minister") for the determination of the question of whether or not Constantine Eliopoulos (the "Worker") was employed in insurable employment, while engaged by the Appellant during the period of July 17, 2000 to December 8, 2001, within the meaning of the *Employment Insurance Act* (the "Act").

[3] By letter dated July 11, 2002, the Minister informed the Worker and the Appellant that it had been determined that the Worker was not employed in insurable employment, for the period referred to herein, for the reason that the Worker and the Appellant were not dealing with each other at arm's length, pursuant to paragraph 5(2)(i) of the *Act*.

[4] The Minister exercised his discretion under paragraph 5(2)(i) of the *Act* and decided that the contract of employment would not be deemed to be at arm's length.

[5] The assumptions made by the Minister upon which he based his decision were those set forth in paragraphs 8(a) to (n) of the Reply to the Notice of Appeal. The Appellant's evidence was given through Valia Eliopoulos, the sole shareholder of the Payor. The witness agreed that assumptions (a) to (i) were correct. She hired her son, the Worker, to drive her truck because he had the proper qualifications, was a careful driver and reliable and would work in accordance with her wishes relative to job conditions and payment of remuneration. The fact that the truck was originally leased by her son was because he had the required operator's license to operate the truck, as that was a qualification requirement for the lease. The truck was placed in the name of the Appellant only after the lease was bought out by it.

[6] The Worker was paid during the early years of the business if there was money remaining after the payment of the lease, operating expenses and repairs. Otherwise, the Worker received no remuneration. The Worker was not paid by the hour or by the load but was paid a salary of \$745 per week whether he worked or not. The owner of the Appellant said she wished to keep her son as the driver of her truck because he was a careful and reliable operator who kept the vehicle in good repair. Apparently such operators were difficult to engage.

[7] Pursuant to paragraph 5(2)(i) of the *Act* whether parties are related is to be determined by reference to sections 251 and 252 of the *Income Tax Act*. The result of these sections, as applied to the facts in this matter, indicated that the parties were related and would be considered as not dealing with each other at arm's length. The Minister, however, has the discretion, by statute, to deem the relationship between the parties as one of arm's length provided he is satisfied that it was reasonable to assume that the parties would have entered into a substantially similar contract of employment had they been dealing with each other at arm's length.

[8] By reason of the evidence heard by this Court it was decided that the conclusion reached by the Minister was reasonable in the circumstances. Paragraph 4 in the matter of *Légaré v. Canada (Minister of National Revenue – M.N.R.)*, [1999] F.C.J. No. 878 states the methodology of "satisfaction" to be used by the Minister:

The Act Requires the Minister to make a determination based on his own conviction drawn from a review of the file. The wording used introduces a form of subjective element, and while this has been called a discretionary power of the Minister, this characterization should not obscure the fact that the exercise of this power must clearly be completely and exclusively based on an

objective appreciation of known or inferred facts. And the Minister's determination is subject to review. In fact, the Act confers the power of review on the Tax Court of Canada on the basis of what is discovered in an inquiry carried out in the presence of all interested parties. The Court is not mandated to make the same kind of determination as the Minister and thus cannot purely and simply substitute its assessment for that of the Minister: that falls under the Minister's so-called discretionary power. However, the Court must verify whether the facts inferred or relied on by the Minister are real and were correctly assessed having regard to the context in which they occurred, and after doing so, it must decide whether the conclusion with which the Minister was "satisfied" still seems reasonable.

[9] The Minister was not satisfied in these circumstances that the parties would have entered into a substantially similar contract of employment had they been dealing with each other at arm's length. This Court has not been convinced that it was not an unreasonable use of the Minister's discretion.

[10] The appeal is dismissed and the decision of the Minister is hereby confirmed.

Signed at Toronto, Ontario, this 19th day of August 2003.

"W.E. MacLatchy"

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MacLatchy, D.J.

CITATION: 2003TCC528

COURT FILE NO.: 2002-3840(EI)

STYLE OF CAUSE: Mediterranean Haulage Inc. and  
M.N.R.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 15, 2003

REASONS FOR JUDGMENT BY: The Honourable W.E. MacLatchy,  
Deputy Judge

DATE OF JUDGMENT: August 19, 2003

APPEARANCES:

Agent for the Appellant: Valia Eliopoulos

Counsel for the Respondent: Michael Appavoo

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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