

Citation: 2007TCC670

Docket: 2006-1034(EI)

BETWEEN:

OLIVER BAJOR,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

CERTIFICATION OF TRANSCRIPT OF  
REASONS FOR JUDGMENT

Let the attached certified transcript of my Reasons for Judgment delivered orally from the Bench at Toronto, Ontario, on September 24, 2007, be filed.

“N. Weisman”

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Weisman D.J.

Signed in Toronto, Ontario, this 21st day of November, 2007.

**Citation: 2007TCC670**

**Court File No. 2006-1034(EI)**

**TAX COURT OF CANADA**

**IN RE: the Employment Insurance Act**

**BETWEEN:**

**OLIVER BAJOR**

**Appellant**

**- and -**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**\* \* \* \* \***

**REASONS FOR JUDGEMENT BY  
THE HONOURABLE MR. JUSTICE WEISMAN**

in the Courts Administration Service,  
Federal Judicial Centre, 180 Queen Street West,  
Toronto, Ontario

on Monday, September 24, 2007

**\* \* \* \* \***

**APPEARANCES:**

Mr. Oliver Bajor  
Mr. Brandon Siegel

for the Appellant  
for the Respondent

**Also Present:**

Ms. Roberta Colombo

Court Registrar

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1 Toronto, Ontario  
2 --- Upon commencing Reasons for Judgment on Monday,  
3 September 24, 2007.

4 JUSTICE WEISMAN: Over two Court  
5 sittings, I have entertained an appeal by  
6 Mr. Oliver Bajor against a determination by the  
7 Minister of National Revenue (the "Minister") that  
8 he was not in insurable employment within the  
9 meaning of the *Employment Insurance Act* by virtue  
10 of the fact that there was no contract of service  
11 between him and his alleged employer, ART UK  
12 Limited, during the period in question, which is  
13 April 4, 2004, to March 30, 2005.

14 The Minister's assumptions point  
15 to the allegation that there was no contract of  
16 service because there was no evidence that the  
17 employer, namely ART UK, operated in Canada and no  
18 evidence that the appellant performed any services  
19 for that company in Canada, and no evidence of any  
20 remuneration from the company to the appellant. In  
21 their view, all that is buttressed by the fact that  
22 the appellant did not file any income tax returns  
23 for the years under review, and actually did not  
24 file returns -- it says here from 1994 to 2004, but  
25 the period under review is 2004 and 2005. And

1 there was a return filed in 2005, but all that was  
2 declared by the appellant was \$3,266.00 in social  
3 assistance; and finally, they rely on the fact that  
4 no T4s were issued to the appellant by ART UK for  
5 the years under review, 2004, 2005.

6 The issue before the Court will  
7 revolve around whether any services were performed  
8 by the appellant for ART UK in Canada between the  
9 period April 4, 2004, and March 30, 2005 and,  
10 secondly, whether he was remunerated either in cash  
11 or in kind for those services.

12 There was a considerable question  
13 as to whether he did, in fact, perform services for  
14 the company during the period in question. Until  
15 the Minister's witness, Mrs. Bajor, on June 18,  
16 2003, on cross-examination by the appellant said:  
17 "Yes, in 2004, you tried really, really hard to  
18 generate business on the phone. You tried your  
19 best. Luck was not on our side". And then she  
20 added that: "Also, at the same time, on company  
21 time, you were writing your book. You felt badly  
22 and tried to pay me back. You were working very  
23 diligently", which is very clear evidence from the  
24 sole shareholder of the company, ART UK, that he,  
25 indeed, performed services. Whether or not they

1 resulted in generation of revenue for the company  
2 is not relevant. There was consideration passing  
3 from him to the company which leads to the second  
4 relevant determination as to whether or not the  
5 company remunerated him for those services.

6                   Now. Mr. Bajor, has testified that  
7 during the period under review, he was remunerated  
8 both in cash and in kind: Sometimes directly by  
9 the company, ART UK; sometimes by his use of  
10 corporate credit cards; sometimes by the use of  
11 Mrs. Bajor's personal Visa card; that he sometimes  
12 just used the card for purchases and other times he  
13 withdrew sums of cash on both cards to use both for  
14 corporate purposes and for his own.

15                   He was good enough to supply a  
16 list of expenditures or, as he calls it,  
17 remuneration as follows.

18                   The one fact that has not been  
19 disputed throughout these hearings is that ART UK  
20 in UK paid something called Bradshaw's for the  
21 storage of Mr. Bajor's goods until such time as  
22 they could be transported to Canada. Mrs. Bajor  
23 would have preferred that they just simply be  
24 transported to Canada because the cost of that  
25 would have been cheaper than the monthly charge of

1   \$255.30 on the average, Canadian, but acquiesced in  
2   ART UK directly paying Bradshaw's for the storage  
3   of Mr. Bajor's goods. And over the period in  
4   question, that amounted to \$3,063.60. He also says  
5   that he had his rent paid while he was living here  
6   in Toronto at 36 Doncrest (phon.) in Thornhill with  
7   his mother and that he attributes \$4,800.00 a month  
8   as remuneration in kind for that.

9                   In perusing these four sources  
10   that I have previously alluded to, the company ART  
11   UK credit card, corporate cash, his mother's  
12   personal Visa card, and cash out of his mother's  
13   Visa card, he claims that he bought food in the  
14   amount of \$12,000.00, clothing in the amount of  
15   \$500.00, medication in the amount of \$1,200.00, eye  
16   care in the amount of \$1,200.00, cash of \$6,000.00,  
17   car expenses in the amount of \$3,600.00, travel  
18   expenses, \$3,600.00, and the miscellaneous expenses  
19   at \$2,400.00, totalling some \$27,287.10.

20                   Unfortunately, the actual amount  
21   is indeterminate on the evidence that I have heard  
22   because it was the evidence of Mrs. Bajor, the sole  
23   shareholder of ART UK and the owner of this  
24   personal Visa card that while Mr. Bajor was  
25   authorized to use these cards for business expenses

1 and for personal expenses, she has no idea of how  
2 much the card was used for what. She would simply  
3 get the Visa bills and had no idea of the breakdown  
4 and what part was corporate and what part was  
5 personal.

6 She did say that she would send  
7 money to Lloyd's in London to replenish monies that  
8 the corporation needed in order to pay its cards  
9 before they were ultimately recalled by the bank  
10 and the bank line of credit was cut off; that  
11 Mr. Bajor would contact her saying that he needed  
12 to use her Visa number for corporate expenses; that  
13 prior to that, she had withdrawn the card from him  
14 because the amounts that he was charging in her  
15 view were excessive; and that she authorized him to  
16 use the number for business expenses but was  
17 disappointed to find that he was using it for his  
18 own personal expenses as well.

19 So of this \$27,287.10, it is not  
20 possible to ascertain what part was remuneration  
21 and what part was expenditures on behalf of the  
22 corporation. I am quite clear that the amount  
23 claimed, the \$4,800.00 as rent, should not be  
24 included in the total because this was clearly a  
25 mother allowing her son to live in her home in





1 was consideration flowing from Mr. Bajor to ART UK  
2 in the effort that he expended in trying to arrange  
3 seminars in Canada, that he was remunerated at  
4 least in the amount of \$3,063.60 plus some  
5 unascertainable portion of the remaining odd  
6 \$22,000.00 after deducting the rent, I have to  
7 conclude that there was an insurable contract of  
8 service, an employer/employee relationship between  
9 ART UK and the appellant, Mr. Bajor.

10                   And therefore, looking at the  
11 Minister's assumptions in the Reply to the Notice  
12 of Appeal wherein there is a burden upon the  
13 appellant to rebut paragraph 5: a) says that at  
14 all material times, there is no evidence the  
15 employer operated in Canada. That has been  
16 demolished; b) at all material times there is no  
17 evidence to support the appellant performed any  
18 services for the employer in Canada. That has been  
19 demolished; c) at all material times, there is no  
20 evidence to support the appellant was paid any  
21 remuneration by the employer. That is demolished;  
22 d) the appellant did not report any employment  
23 income, nor did he file the income tax returns of  
24 Canada for the years 1994 to 2004. That has not  
25 been disputed; e) the only income reported by the

1 appellant on his 2005 income tax return is  
2 \$3,266.00 in social assistance has not been  
3 disputed; f) no T4s were issued to the appellant by  
4 the employer for the years 2004 and 2005. That has  
5 not been disputed.

6                               So with assumptions a, b, and c,  
7 being the material assumptions having been  
8 demolished, and the remaining assumptions, which  
9 are not really contested and not being sufficient  
10 to support the Minister's determination, and there  
11 being new facts heard at this trial, I conclude as  
12 well that the known facts were not correctly  
13 assessed by the Minister, and his decision was,  
14 therefore, objectively unreasonable. And in the  
15 result, the appeal will be allowed, and the  
16 decision will be vacated. I thank you both.  
17 --- Whereupon proceedings adjourned at 4:14 p.m.

I HEREBY CERTIFY THAT I have, to the best  
of my skill and ability, accurately recorded  
by shorthand and transcribed therefrom, the foregoing  
proceeding.

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Alex Walker

CITATION: 2007TCC670

COURT FILE NOS.: 2006-1034(EI)

STYLE OF CAUSE: Oliver Bajor  
and The Minister of National Revenue

PLACE OF HEARING Toronto, Ontario

DATE OF HEARING September 24, 2007

REASONS FOR JUDGMENT BY: The Honourable  
N. Weisman, Deputy Judge

DATE OF ORAL JUDGMENT September 24, 2007

APPEARANCES:

For the Appellant: The Appellant Himself

Counsel for the Respondent: Brandon Siegel

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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