

Docket: 2008-4086(GST)I

BETWEEN:

GINETTE BISAILLON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on December 17, 2009, at Montréal, Quebec.

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the appellant: Caroline Briand
Counsel for the respondent: Martine Bergeron

JUDGMENT

The appeal from the assessment made in respect of the appellant under subsection 323(1) of the *Excise Tax Act*, the notice of which is dated September 26, 2007, and bears the number BR071320, is allowed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 25th day of January 2010.

"Paul Bédard"

Bédard J.

Translation certified true
on this 18th day of May 2010
Margarita Gorbounova, Translator

Citation: 2010 TCC 44
Date: 20100125
Docket: 2008-4086(GST)I

BETWEEN:

GINETTE BISAILLON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Bédard J.

[1] This is an appeal from an assessment, notice of which is dated September 26, 2007, and bears the number BR071320, made in respect of the appellant under subsection 323(1) of the *Excise Tax Act* (ETA). At issue is whether, as a director of the corporation Installation M. Vallières Inc. (the corporation), the appellant is solidarily liable, together with the corporation, to pay \$14,454.62, which is the amount of net tax the corporation failed to remit, and interest and penalties.

Appellant's position

[2] Although the appellant has been listed as a director and secretary of the corporation in the records of the Inspecteur général des institutions financières since February 4, 1997, the date on which the corporation's annual report for 1996 (Exhibit A-1) was produced, the appellant maintains that she was never elected as a director of the corporation and that she was declared the corporation's director by the Registraire des entreprises (formerly the Inspecteur général des institutions financières) by mistake, since she was declared secretary when the annual return for 1996 was filed. In fact, the appellant claims that her name was entered in section 6 rather than section 7 of the return. The appellant alleges that she never acted as the corporation's director and that she never engaged in acts normally reserved for directors.

Respondent's position

[3] The respondent maintains that, for the period covered by the assessment at issue, namely, from January 1, 2004, to June 30, 2005, the appellant was a *de jure* director of the corporation, and that she has been one since at least February 4, 1997, the date on which the corporation's annual report for 1996 was produced. In fact, the Minister claims that the information contained in the Registre des entreprises is proof of its contents in favour of third persons in good faith from the date on which it was entered, in accordance with section 62 of the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*. The respondent alleges that the Registre des entreprises clearly indicated that the appellant was the corporation's director in several consecutive annual reports, which, in her opinion, renders improbable the appellant's argument that there had been an error.

The dispute

[4] The only issue in this case is whether or not the appellant was a *de jure* director of the corporation since at least February 4, 1997, the date on which the corporation's annual report for 1996 was produced.

[5] The evidence shows that

- (i) When deciding on the corporation's legal structure on May 30, 1994, the board of directors set the number of directors that would make up the board of directors at one, in accordance with the corporation's general statutes and regulations (see Exhibit A-5), and that number was never changed;
- (ii) On May 30, 1994, the sole shareholder of the corporation, Marc Vallières, who is also the appellant's spouse, elected himself as the corporation's director (see Exhibit A-5). After that, no valid election of a director took place. In fact, after May 30, 1994, there were no minutes of any shareholders meetings or written resolutions in place of such meetings mentioning the election of a director. However, there are three resolutions, similar in their content, dated September 3, 1996, March 5, 1997, and June 5, 1998 (see Exhibit A-5), that could lead us to believe that the appellant was the corporation's director. For example, the resolution of June 5, 1998, reads as follows:

[TRANSLATION]

RESOLUTIONS OF THE BOARD OF DIRECTORS
(SOLE SHAREHOLDER AND DIRECTORS)
OF THE COMPANY

-----INSTALLATIONS M. VALLIÈRES INC.-----

ADOPTED ON JUNE 5, 1998.

ADOPTED THE FOLLOWING FINANCIAL STATEMENTS AND RESOLUTIONS:

RESOLVED

1. To adopt the annual financial statements of the company including the balance sheet and the income statement ending on December 31, 1997, as viewed and approved by the directors and the sole shareholder;
2. To accept the approval of the contracts, agreements, loans and all other decisions or transactions made by them since the start of operations for and on behalf of the company.
3. To waive the appointment of an auditor for the company as permitted in section 157 of the *Companies Act*.
4. To appoint MARC VALLIÈRES as president and GINETTE BISAILLON as secretary, as they are the directors of the Company, until further resolutions are adopted.
5. To appoint PIERRE DOUVILLE & ASSOCIÉS as accountant for the Company until a resolution to the contrary is adopted.
6. To insert a signed copy of the above resolutions into the Company's minutes book, in accordance with the Act.

VALIDITY

We, the undersigned, declare that we are the directors and the sole shareholder entitled to vote on the above resolutions of INSTALLATION M. VALLIÈRES INC. As a result, said resolutions have the same value as they would were they adopted at a Board of Directors meeting, in accordance with the *Companies Act*.

ADOPTED AND SIGNED AT Carignan, Que., this 5th day of June 1998.

[Signed]

[Signed]

President

Secretary

In addition, the minutes book (see [TRANSLATION] "Directors" section of Exhibit A-5) indicates that the appellant has been a director since December 22, 1994, even though there are no minutes of a shareholders'

meeting (or a shareholders' resolution adopted at such a meeting) stating that the appellant was elected as a director of the corporation.

- (iii) The corporation's annual return for 1996 (see section 6 of Exhibit I-7) indicates that the appellant has been the corporation's director since 1996. That annual return is signed by Mr. Vallières. The corporation's annual returns for subsequent years (see Exhibit A-1) indicate that Mr. Vallières and the appellant are the corporation's directors. All subsequent annual returns for the corporation (see Exhibit A-1), except the one for 1998 (Exhibit I-1), are signed by Mr. Vallières. The corporation's annual return for 1998 is signed by the appellant.
- (iv) Several cheques (see Exhibit I-2) drawn on the corporation's bank account were signed by the appellant.
- (v) The appellant has never stated to third parties that she was a director the corporation and never engaged in acts normally reserved for directors

Mr. Vallières's testimony

[6] Mr. Vallières, who, at the start of his professional career, had been employed as a welder and then a heating technician, testified that, in 1994, he had decided to create his own business specializing in the sale, installation, and repair of heating systems. That was why he formed the corporation. Mr. Vallières explained that he had retained the services of an accountant to help incorporate and organize the corporation and to prepare the shareholders' resolutions, directors' resolutions, annual returns, financial statements, and tax returns for the corporation, since he had no legal knowledge, and most importantly, no business experience. Mr. Vallières explained that his understanding of the legal documents (which were prepared by his accountant and which he signed without really reading and understanding them) was that he was the only director and shareholder of the corporation, thus having sole control of it, his spouse being only the secretary of the corporation. Mr. Vallières stated categorically that the appellant had no decision-making power in the corporation. Mr. Vallières added that he had realized only in 2005 that the corporation's annual returns had indicated since 1996 that his spouse was a director of the corporation and that since then, he had asked his accountant to correct that error. Mr. Vallières also explained that he had not insisted that his accountant testify about this, since his accountant could hardly remember anything about these facts.

The appellant's testimony

[7] The appellant, a hairdresser by training, who had completed her Secondary V, testified that, before working for the corporation, she had no business experience, being content until then to raise her three young children at home. The appellant also explained that

- (i) her role as the secretary essentially consisted of acting as a receptionist, doing the bookkeeping on the instructions of the corporation's accountant, occasionally signing the corporation's cheques on Mr. Vallières's instructions and making bank deposits. The appellant added that those activities took about three hours of work per day and were mostly done at the family home, which served as the corporation's headquarters;
- (ii) Based on her understanding of the corporation's legal documents (such as the minutes and annual returns), she was not a director of the corporation, since the accountant had assured her that she was only the corporation's secretary. In sum, the appellant explained that she had no decision-making power in the corporation and that, accordingly, she only carried out the orders of her spouse, who had sole control of the corporation.

Analysis and conclusion

[8] The Registre des entreprises indicates that the appellant was the corporation's director starting in 1996. It is true that the information in the Registre is proof of its contents in favour of third persons in good faith from the date on which it is entered, in accordance with section 62 of the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*. However, I am of the opinion that the presumption created by section 62 of the Act is rebuttable and that in this case the appellant has rebutted the presumption by submitting satisfactory evidence proving that she was not elected as a director of the corporation and did not act as a director of the corporation. The appellant's and her spouse's testimony to that effect was simply very credible and plausible, given their low level of education, limited legal knowledge and their lack of business experience. In fact, Mr. Vallières simply satisfied me that he had never wanted his spouse to be elected a director of the corporation. In addition, the appellant satisfied me that she had never consented to being elected as a director of the corporation and that her role as secretary consisted in carrying out her spouse's instructions. They also satisfied me that they had not

really known and most importantly had not understood until 2005 that the annual returns indicated that the appellant had been a director of the corporation since 1996. They satisfied me that the accountant had made an error in preparing the annual returns. My review of the corporation's minutes prepared by the accountant supports the argument of the accountant's error. The minutes prepared by the accountant clearly show how little he knew about the Quebec *Companies Act*. In fact, the minutes clearly indicate that the accountant did not really understand that some decisions, including the election of directors, in a corporation can only be made by shareholders. In addition, the accountant did not seem to differentiate between the role of a director and that of an officer. Of course, it would have been preferable for the accountant to testify about this. Though preferable, the accountant's testimony does not seem indispensable given the very clear and credible testimony of the appellant and her spouse.

[9] For these reasons, the appeal is allowed.

Signed at Ottawa, Canada, this 25th day of January 2010.

"Paul Bédard"

Bédard J.

Translation certified true
on this 18th day of May 2010
Margarita Gorbounova, Translator

CITATION: 2010 TCC 44

COURT FILE NO.: 2008-4086(GST)I

STYLE OF CAUSE: GINETTE BISAILLON AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 17, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: January 25, 2010

APPEARANCES:

Counsel for the appellant: Caroline Briand
Counsel for the respondent: Martine Bergeron

COUNSEL OF RECORD:

For the appellant:

Name: Caroline Briand
Firm: Cain Lamarre Casgrain Wells LLP
Montréal, Quebec

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