

Docket: 2009-1899(EI)

BETWEEN:

ROSE LAURENCELLE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on September 1, 2010, at Baie-Comeau, Quebec.
Before: The Honourable Justice Alain Tardif

Appearances:

For the appellant: The appellant herself

Counsel for the respondent: Christina Ham

JUDGMENT

The appeal under subsection 103(1) of the *Employment Insurance Act* (the Act) is dismissed on the ground that the work performed by the appellant, Rose Laurencelle, when employed with 2165-3506 Québec Inc., during the periods from June 4, 2007, to November 2, 2007, and from June 9, 2008, to September 12, 2008, was not insurable employment within the meaning of the Act.

Signed at Ottawa, Canada, this 13th day of October 2010.

“Alain Tardif”

Tardif J.

Translation certified true
on this 6th day of December 2010.
Daniela Possamai, Translator

Citation: 2010 TCC 516
Date: 20101013
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BETWEEN:

ROSE LAURENCELLE,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal respecting the work performed by the appellant, Rose Laurencelle, on behalf and to the benefit of 2165-3506 Québec Inc. during the periods from June 4, 2007, to November 2, 2007, and from June 9, 2008, to September 12, 2008.

[2] After having been sworn, the appellant admitted the following facts: (Reply to the Notice of Appeal – admitted facts)

[Translation]

(a) the payor was incorporated on February 1, 1984; (**admitted**)

(b) Marie-Christine Perron is the Payor's only shareholder; (**admitted**)

(c) the appellant is registered as a director in the CIDREQ system of the Registre des entreprises; **(admitted)**

(d) the appellant is the mother of Marie-Christine Perron; **(admitted)**

(e) on May 27, 1999, Marie-Christine Perron registered a business as a sole proprietorship as Club Kergus Inc.; **(admitted)**

(f) Club Kergus provides outfitting services for hunting and fishing; **(admitted)**

(g) Marie-Christine Perron was 23 years old when she purchased the business worth \$260,000. She obtained the necessary funding as follows:

\$75,000 grant for young Aboriginal entrepreneurs

\$100,000 amount from the Caisse Populaire Sault au Mouton

\$70,000 mortgage taken out by the appellant on her residence and that of her husband, Donald Perron

\$15,000 Loan from Entreprise forestière Donald Perron, her father;

(admitted)

(h) on February 9, 2000, a notarized power of attorney between Marie-Christine Perron and the appellant granted full power to manage and deal with all property of Marie-Christine Perron, including her business operated as Club Kergus Inc. **(admitted)**

(i) on January 30, 2002, the payor continued to operate Club Kergus as Pourvoirie Club Kergus; **(admitted)**

(j) in fall 2004, Marie-Christine Perron obtained a grant from Canada Economic Development to build a lodge on the outfitting site; she completes the funding with a loan from *Fonds d'investissement pour l'entrepreneurship au féminin*; **(admitted)**

(k) the construction of the lodge was completed in summer 2006 and the first clients arrived for the 2007 season; **(admitted)**

(l) the payor offers hunting and fishing services (American plan, European plan, and family plan) on land that includes 21 lakes of which 16 are used for brook trout fishing purposes. Services include, upon request, American, European or family plan; **(admitted)**

(m) the payor must maintain 10 kilometres of forest service roads; **(admitted)**

- (n) the payor's property includes a lodging site with 14 rooms, 9 cottages, 2 garages, a number of hunting blinds, a pick-up truck, a Timberjack for the maintenance of forest service roads, 4 all-terrain vehicles, a ten-wheel truck, 40 chaloupes, a few kayaks and pedal boats; **(admitted)**
- (o) the payor's main activities take place from May to October; **(admitted)**
- (p) the appellant stated that her duties included welcoming customers, cooking, cleaning the cottages and the lodge, bookkeeping, reservations confirmations, billing, signing cheques, making bank deposits, collecting payable fees, weighing the fish and overseeing fuel activities; **(admitted)**
- (q) the appellant participates with her husband and Marie-Christine Perron, when she is available, in 4 hunting and fishing shows between December and April; **(admitted)**
- (r) all expenses related to the shows are overseen by the payor; **(admitted)**
- (s) the payor's advertising and Internet site refer to the appellant as the contact person throughout the year by providing her personal address as well as her telephone number; **(admitted)**
- (t) the appellant remained at the outfitter's lodge during the periods in issue 6 days a week and on the 7th day she would go to Longue Rive for errands, deposits and fuel; **(admitted)**
- (u) according to the payroll journal, the appellant was paid as follows:
 - 2007: \$416 per week for 50 hours
 - 2008: \$468 per week but the hours are not entered; **(admitted)**
- (v) the payor's business hours are from 6:30 a.m. to 10 a.m., that is, 15.5 hours per day or 108.5 per week, from Monday to Sunday during the main operating season; **(admitted)**
- (w) there were no entries for the appellant in the payroll journal when she would go to the various shows in which the payor participated; **(admitted)**
- (y) the notarized power of attorney signed on February 9, 2000, is still in force; **(admitted)**
- (z) the power of attorney gives the appellant total management and administrative control over all of the payor's operations, including the power to sell, acquire, trade, approve and use share funds and any other security the appellant deems appropriate; **(admitted)**

- (aa) paragraph 2.2 of said power of attorney gives the appellant the power to attend and vote at all meetings as a shareholder or in any other capacity; **(admitted)**
- (bb) the power of attorney confirms that Marie-Christine Perron assigned all of her property rights, including the outfitter, as well as all of her rights as a shareholder without any obligation or restriction on the principal, Marie-Christine Perron; **(admitted)**
- (cc) all powers given to the appellant by the power of attorney of February 9, 2000, actually represent all property rights involving specifically Pourvoirie Club Kergus as well as property rights involving share funds or any other security held by Marie-Christine Perron. **(admitted)**

The only facts denied are as follows:

- (x) the hours paid do not correspond with the hours actually worked by the appellant; **(denied)**
- (dd) the appellant was the directing mind of the payor's corporation. **(denied)**

[3] The basis on which rests the determination under appeal is a notarized power of attorney, a copy of which was filed as Exhibit I-1.

[4] The content of the notarized power of attorney clearly demonstrates the breadth of the powers held by the appellant. In fact, the power of attorney conferred on the appellant all the rights and powers conferred by the shares issued by the company and held by her on behalf of the appellant's daughter.

[5] There is no doubt that the appellant had both *de jure* and *de facto* control over all the rights arising out of all of the shares held on behalf of her daughter, Marie-Christine Perron.

[6] The documentary evidence therefore established that the basis on which rests the determination, that is, that the appellant held control over more than 40% of the shares, is valid. Accordingly, the appeal must be dismissed, even though the appellant stated that her daughter was involved and actively participated in managing the company.

[7] She explained that her daughter had a professional career that often caused her to be physically absent. She also mentioned that the power of attorney had been signed prior to a trip to Europe.

[8] The evidence established that the content of the power of attorney had never been amended.

[9] The appellant would like the Court to accept explanations that are essentially verbal to contradict a valid written document that was duly drafted by a notary and signed in his presence and is, moreover, still in force. However, not only did the appellant contradict the content of the power of attorney, the person who assigned to the appellant her rights to manage the company was conspicuously absent from the hearing.

[10] Such evidence is simply not acceptable or satisfactory and does not make it possible to set aside the content of a document that is not only formal, but also very clear.

[11] It is crucial in such matters to attach prime importance to the content of a formal document signed in the presence of a disinterested notary rather than to accept verbal explanations provided by an interested party, particularly if such explanations contradict the written document.

[12] The power of attorney clearly stipulates that the appellant had the inherent right and power to hold 100% of the shares with holding rights. In other words, the appellant held all powers related to the shares, with an individual share ownership above 40%, that is, 100 %. Furthermore, all the assumed facts which prove or confirm the appellant's powers were recognized by the appellant.

[13] I note the content of the allegations admitted—paragraphs h, s and z, all of which confirm the appellant's powers.

[14] For these reasons, the appeal must be dismissed.

Signed at Ottawa, Canada, this 13th day of October 2010.

“Alain Tardif”

Tardif J.

CITATION: 2010 TCC 516
COURT FILE NO.: 2009-1899(EI)
STYLE OF CAUSE: Rose Laurencelle v. M.N.R.
PLACE OF HEARING: Baie-Comeau, Quebec
DATE OF HEARING: September 1, 2010
REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif
DATE OF JUDGMENT: October 13, 2010

APPEARANCES:

For the appellant: The appellant herself

Counsel for the respondent: Christina Ham

COUNSEL OF RECORD:

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