

Docket: 2009-3573(IT)G

BETWEEN:

DANIEL BÉLANGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on December 8, 2011, at Montreal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Simon-Nicolas Crépin

JUDGMENT

The appeals from the reassessments dated September 27, 2007, made under the *Income Tax Act* for the 2004, 2005 and 2006 taxation years are dismissed with costs.

Signed at Ottawa, Canada, this 12th day of April 2012.

“Réal Favreau”

Favreau J.

Translation certified true
on this 31st day of July 2012.

Erich Klein, Revisor

Citation: 2012 TCC 93
Date: 20120412
Docket: 2009-3573(IT)G

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DANIEL BÉLANGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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REASONS FOR JUDGMENT

Favreau J.

[1] These are appeals under the general procedure from reassessments dated September 27, 2007, made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the Act) in respect of the 2004, 2005 and 2006 taxation years.

[2] The issue concerns only the reported capital gain of \$800,330 on the disposition in 2005 of the five properties making up Place Montrose in Granby and the capital cost allowance claimed in 2004 on the five properties.

[3] The appellant reported taxable capital gains on the disposition of real property and claimed capital cost allowance for the 2004, 2005 and 2006 taxation years, as shown hereunder:

Years	Capital gains	Capital cost allowance
2004	\$ 53,698.83	\$112,383
2005	\$873,909.59	\$ 2,073
2006	-	\$68,599

[4] By reassessments dated September 27, 2007, the Minister of National Revenue (hereinafter, the Minister), *inter alia*, (a) amended the tax treatment of the real property transactions made by the appellant; (b) disallowed the capital cost allowance claimed; and (c) removed the tax on the recapture claimed on the rented properties in inventory, the amounts involved being the following:

Years	Capital gains disallowed	Business income added	Capital cost allowance disallowed	Tax-free recapture allowed	Total
2004	\$ 53,698	\$ 53,698	\$112,383		\$139,232
2005	\$873,909	\$873,909	\$ 22,073	\$(109,713)	\$349,315
2006			\$ 68,599	\$ (8,766)	\$ 59,833

[5] In making his reassessments dated September 27, 2007, the Minister relied on the following assumptions of fact set out in paragraphs 14 to 53 of the Reply to the Notice of Appeal:

[TRANSLATION]

14. The appellant is the sole shareholder of Gestion Daniel Bélanger Inc. (Gestion DB). **(admitted)**
15. Gestion DB is the sole shareholder of Construction Horizon Inc. (Horizon). **(admitted)**
16. Gestion DB provides financing to the purchasers of properties built by Horizon. **(admitted)**
17. Horizon is in the construction business. **(admitted)**
18. Horizon specializes in the construction of semi-detached houses and apartment buildings. **(admitted with the addition of single family homes)**
19. Horizon has been operating since 1993. **(admitted)**
20. The appellant had Horizon build apartment buildings that he personally owned. **(admitted)**
21. From 2001 to 2007, the appellant sold 36 properties. **(admitted)**
22. In categorizing the income earned as either a capital gain or business income, the appellant mainly considered the amount of time the property was held. **(admitted)**
23. Thus, if the property was held for less than one year, the appellant considered that the income earned was business income, whereas when it was held for more than one year, the income earned was a capital gain. **(admitted)**
24. The appellant had Horizon build buildings to keep the company active and retain its experienced employees. **(admitted)**

25. The appellant only retains ownership of the properties while waiting to rent out the units, which facilitates the sale and financing for potential purchasers. **(admitted)**
26. Gestion DB offered purchasers second-mortgage financing to facilitate the sale of the appellant's properties. **(admitted)**
27. The appellant had no intention of holding the properties for the long term at the time they were being built. **(admitted except for the Place Montrose properties)**
28. The appellant's intentions did not change during the period he held those properties. **(admitted)**

Sale of properties in 2004

29. During the 2004 taxation year, the appellant disposed of the following 3 properties: **(admitted)**
 - 584-586 Iris, Granby
 - 505 Du Rubis, Granby
 - 601 Iris, Granby
30. The appellant held the property located at 601 Iris for a period of two and a half months and the profit on the sale of the property was reported as business income. **(admitted)**
31. Following the disposition of the properties located at 584-586 Iris and 505 Du Rubis, the appellant reported a capital gain of \$53,698.83. **(admitted)**
32. The appellant held the property located at 584-586 Iris for a period of 17 months. **(admitted)**
33. The appellant held the property located at 505 Du Rubis for a period of 42 months. **(admitted)**

Sale of properties in 2005

34. During the 2005 taxation year, the appellant disposed of the following 9 properties: **(admitted)**
 - 501 Du Rubis, Granby
 - 498 Du Topaze, Granby
 - 200 Paré, Granby
 - 206 Paré, Granby
 - 212 Paré, Granby
 - 201 St-Antoine, Granby
 - 298 St-André, Granby
 - 596 De La Providence, Granby
 - 420 Du Nénuphar, Granby

35. The appellant held the properties located at 596 De La Providence and 420 Du Nénuphar for periods of one and a half months and four and a half months respectively and the profit on the sale of those properties was reported as business income. **(admitted)**
36. Following the disposition of the seven other properties, the appellant reported a capital gain of \$873,909.59. **(admitted)**
37. The appellant held the property located at 501 Du Rubis for a period of 4 years and 4 months. **(admitted)**
38. The appellant held the property located at 498 Du Topaze for a period of 2 years and 4 months. **(admitted)**
39. The appellant held the property located at 200 Paré for a period of 23 months. **(admitted)**
40. The appellant held the property located at 206 Paré for a period of 12 months. **(admitted)**
41. The appellant held the property located at 212 Paré for a period of 12 months. **(admitted)**
42. The appellant held the property located at 201 St-Antoine for a period of 23 months. **(admitted)**
43. The appellant held the property located at 298 St-André for a period of 23 months. **(admitted)**

Properties located at 200 Paré, 206 Paré, 212 Paré, 201 St-Antoine, 298 St-André, Granby

44. The 5 properties located at 200 Paré, 206 Paré, 212 Paré, 201 St-Antoine, and 298 St-André were all sold on the same date and to the same purchaser. **(admitted)**
45. The appellant indicated that he wanted to build and keep those properties as a pension fund. **(admitted)**
46. The appellant indicated that the said properties were suitable for an older clientele. **(admitted for persons over the age of 50 without children)**
47. None of the properties meets a specific standard for a building housing seniors, unlike other properties of the appellant's. **(admitted)**
48. The appellant indicated that he decided to sell the properties in question owing to his separation from his spouse, Lynda Roy. **(admitted)**
49. The properties were sold on June 6, 2005. **(admitted)**
50. In October 2005, the appellant and Ms. Roy went to Italy together for a convention of the APCHQ. **(admitted with the clarification that the tickets had been purchased two years prior)**
51. Ms. Roy continued to manage the appellant's apartment buildings until March 2006. **(admitted)**
52. The appellant and Ms. Roy moved into their new residence at 163 Du Diamant, Granby, together in December 2005. **(admitted)**
53. It was not until February 2006 that the appellant informed Ms. Roy that he wanted a separation. **(admitted)**

[6] At the beginning of the hearing, the appellant conceded the following:

- (a) the profit on the sale of the two properties located at 584–586 Iris and 505 Du Rubis in 2004 should have been reported as business income;
- (b) the profit on the sale of the two properties located at 501 Du Rubis and 498 Du Topaze in 2005 should have been reported as business income; and
- (c) the capital cost allowance claimed for the 2004, 2005 and 2006 taxation years was properly disallowed, except as regards the five properties making up Place Montrose.

[7] Daniel Bélanger testified at the hearing. He explained that the five Montrose Place properties were located on two adjacent lots and had a common exterior parking lot as well as an exterior garage with four 12 by 22 foot doors, which was rented out separately. Each property had twelve 1,200 square foot, two-bedroom apartments on three floors.

[8] Mr. Bélanger also explained that in 2002 he acquired the two lots and the abandoned textile plant that was already there. He had to demolish the plant and decontaminate the ground before undertaking the construction of the five buildings in 2003 and 2004. The site was ideal for tenants aged 50 years and over without children as it was located in close proximity to the hospital, the CLSC, a pharmacy, a supermarket, churches and restaurants.

[9] Mr. Bélanger stated that he did not build the five buildings with a view to reselling them. His intention was to keep them to generate income for his retirement and that of his spouse, Lynda Roy. The properties were well situated and easily rentable. The clientele was easy to manage and satisfy and they were always good payers. The properties had a very low vacancy rate and there was a waiting list for the apartments, which were rented at \$625 per month.

[10] Mr. Bélanger stated at the hearing that he changed his plans owing to his separation from Ms. Roy, which occurred in February 2006, that is, after the sale of the Montrose Place properties on June 6, 2005. According to Mr. Bélanger's testimony, his ex-wife managed the Place Montrose rental properties, which involved showing the apartments, having the leases signed, and depositing the monthly rental payments into Mr. Bélanger's personal bank account. As the separation resulted in the loss of the resource person who was managing the rental properties and since he himself did not have the time to take care of the day-to-day management of 60

dwelling units, he abandoned his first intention and decided to sell the Place Montrose properties.

[11] According to Mr. Bélanger, the five Place Montrose properties were sold to Adrien Gagné following an unsolicited offer from him. No mandate to sell the properties was given to a real estate agent by Mr. Bélanger and no sales commission was paid by him to any real estate agent. Mr. Gagné was at that time commercial accounts manager at the Caisse Populaire Desjardins de Granby. The appellant had known him for years and lived near him. At the hearing, Mr. Bélanger indicated that about one and a half months prior to the sale he had received a call from Mr. Gagné, who inquired whether the Place Montrose properties were for sale. He said that Mr. Gagné offered him \$4,475,000 and that the municipal assessment was about \$4,500,000. The sale en bloc of the five properties was finalized on June 6, 2005, for a purchase price of \$4,475,000, of which \$1,200,000 was paid in cash or with secured commercial paper, \$2,450,000 was financed by a mortgage loan from the Caisse Populaire Desjardins de Granby secured by a first mortgage on the properties, and the balance of about \$800,000 was financed by a mortgage loan from Gestion DB secured by a second mortgage on the properties.

[12] The five Place Montrose properties were built by Constructions Horizon Inc. on behalf of the appellant. The construction of three out of the five buildings was completed in 2003 and the construction of the other two was completed in 2004. The three buildings built in 2003 were held for 23 months and the two built in 2004 were held for 12 months. The appellant made a profit of \$800,330 on the sale of said properties.

[13] Daniel Morin, a real estate agent with the Sutton Group, and Sylvain Dupont, a carpenter and an employee of Constructions Horizon Inc., testified at the hearing on behalf of the appellant. The two men have in common the fact that they purchased properties from the appellant before and after the Place Montrose project and the fact that they both solicited the appellant with regard to the acquisition of the Place Montrose properties. The interest of each went back to the beginning of the construction of the Place Montrose properties. The two groups of potential purchasers were told by the appellant that the properties were not for sale and that he wanted to keep them for his retirement.

[14] Chantal Labbé, an auditor with the Canada Revenue Agency (the CRA), also testified at the hearing. Her audit report, dated September 4, 2007, was filed as Exhibit I-6 and appended thereto was a document entitled [TRANSLATION] "Report on capital gains vs. business income of Daniel Bélanger for 2004-2005-2006." The

document attached to the report relies heavily on the facts obtained from Lynda Roy during an interview conducted in August 2007.

[15] In particular, that document reveals that Lynda Roy lost her father to cancer on February 19, 2006. The first time she heard anything about a separation was a few days prior to her father's death, that is, early in February 2006. She confirmed that there had never been any talk of separation in 2005 and that everything was fine between them. After her father's death, everything happened quickly. A little more than two months later, the divorce agreement was signed before Mr. Poitras in Granby on April 27, 2006. The divorce was granted on May 3, 2006, and registered on June 6 before the Honourable Justice Pierre Boily.

[16] Lynda Roy confirmed that the separation from Mr. Bélanger had nothing to do with the sale of the Place Montrose properties as, at the time, separation was not being discussed.

[17] Lynda Roy also said that Mr. Bélanger did not keep her informed of all his property purchases and sales. Much of the time, she would find out once the transaction was completed. Concerning the properties at issue in this case, Mr. Bélanger told her that he had sold them owing to the looming recession, that he needed money to purchase other land and that he wanted her to take it easy as she was the one managing the properties, that is, meeting tenants with regard to the leases and collecting the rent. She said she was surprised that Mr. Bélanger had sold the properties as she loved the Place Montrose clientele.

[18] Lynda Roy confirmed that she had continued managing Mr. Bélanger's properties until early March 2006, filling out and signing all the deposit slips. On March 9, 2006, Lynda Roy ceased altogether managing Mr. Bélanger's properties.

[19] Following the sale of the Place Montrose properties on June 6, 2005, Lynda Roy and Mr. Bélanger went on a trip together to Italy for a convention of the APCHQ, which was held from October 6 to 17, 2005, and Lynda Roy continued to sign cheques for payments made to the subcontractors working on the new residence at 163 Du Diamant, Granby, into which Lynda Roy and her spouse moved around December 2005.

[20] Lynda Roy did not testify at the hearing, but Mr. Bélanger did not contest her version of the facts.

Applicable statutory provisions

[21] The relevant provisions of the Act are reproduced below:

3. Income for taxation year

The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules:

(a) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable capital gain from the disposition of a property) from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property,

(b) determine the amount, if any, by which

(i) the total of

(A) all of the taxpayer's taxable capital gains for the year from dispositions of property other than listed personal property, and

(B) the taxpayer's taxable net gain for the year from dispositions of listed personal property,

exceeds

(ii) the amount, if any, by which the taxpayer's allowable capital losses for the year from dispositions of property other than listed personal property exceed the taxpayer's allowable business investment losses for the year,

...

9. Income

(1) Income – Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.

(2) Loss – Subject to section 31, a taxpayer's loss for a taxation year from a business or property is the amount of the taxpayer's loss, if any, for the taxation year from that source computed by applying the provisions of this Act respecting computation of income from that source with such modifications as the circumstances require.

(3) Gains and losses not included – In this Act, “income from a property” does not include any capital gain from the disposition of that property and “loss from a property” does not include any capital loss from the disposition of that property.

Proposed Amendment – 9(3)

(3) Gains and losses not included – In this Act, income or loss from a business or property does not include any capital gain or capital loss.

Application:

The October 31, 2003 draft legislation (REOP), s. 3, will amend sub-sec. 9(3) to read as above, applicable to taxation years that begin after 2004

...

39. Meaning of capital gain and capital loss

(1) For the purposes of this Act,

(a) a taxpayer’s capital gain for a taxation year from the disposition of any property is the taxpayer’s gain for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read without reference to the expression “other than a taxable capital gain from the disposition of a property” in paragraph 3(a) and without reference to paragraph 3(b), be included in computing the taxpayer’s income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

(i) eligible capital property,

(i.1) an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act* and that has been disposed of,

- (A) in the case of a gift to which subsection 118.1(5) applies, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer’s legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, and,
- (B) in any other case, at any time,

to an institution or a public authority in Canada that was, at the time of the disposition, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object,

...

248(1) In this Act,

...

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever and, except for the purposes of paragraph 18(2)(c), section 54.2, subsection 95(1) and paragraph 110.6(14)(f), an adventure or concern in the nature of trade but does not include an office or employment;

...

Analysis

[22] Since the Act contains no provision clarifying the circumstances in which gains from the sale of real property are to be considered as business income or as a capital gain, the courts have developed a number of factors to take into account all particular fact situations. A non-exhaustive list of those factors is provided in paragraph 3 of Interpretation Bulletin IT-218R dated September 16, 1986:

- (a) the taxpayer's intention with respect to the real estate at the time of its purchase;
- (b) feasibility of the taxpayer's intention;
- (c) geographical location and zoned use of the real estate acquired;
- (d) extent to which intention carried out by the taxpayer;
- (e) evidence that the taxpayer's intention changed after purchase of the real estate;
- (f) the nature of the business, profession, calling or trade of the taxpayer and associates;
- (g) the extent to which borrowed money was used to finance the real estate acquisition and the terms of the financing, if any, arranged;
- (h) the length of time throughout which the real estate was held by the taxpayer;
- (i) the existence of persons other than the taxpayer who share interests in the real estate;

- (j) the nature of the occupation of the other persons referred to in (i) above as well as their stated intentions and courses of conduct;
- (k) factors which motivated the sale of the real estate;
- (l) evidence that the taxpayer and/or associates had dealt extensively in real estate.

[23] None of those factors is conclusive in itself for the purpose of determining whether a gain from the sale of real estate constitutes business income or a capital gain. However, the most important factor is the taxpayer's subjective intention with respect to the property at the time the taxpayer acquired it ("primary intention").

[24] To those factors must be added the "secondary intention" criterion, which was developed by the courts to take into account circumstances in which the taxpayer's "primary intention" to own the property as an investment was thwarted and in which the taxpayer had the possibility of selling the property for a profit in the event that the taxpayer's investment project did not come to fruition.

[25] The analysis of the taxpayer's "primary intention" and "secondary intention" is a question of fact. In this regard, the circumstances surrounding the holding and disposition of a property must be analyzed by the courts, in addition to the taxpayer's statements of intention.

The context

[26] The appellant is a building contractor who has been operating since at least 1993. His business is based on a well-structured and well-established business plan. Gestion DB purchased the lots and the appellant had Horizon build the apartment buildings. Once the construction of a building was completed, Horizon sold the property to the appellant in his personal capacity at a price equal to its fair market value, as determined by the report of an accredited appraiser. Once acquired by the appellant, the property was put up for rent until 75% occupancy was reached, which is the minimum required for banks to be able to provide mortgage funds. To facilitate the sale of the properties, Gestion DB provided the purchasers with second mortgage financing to cover the portion of the purchase price representing the down payment required by the banks. The context in which the Place Montrose properties were built was indeed a business context.

[27] According to the appellant, the purpose for which the apartment buildings were built was to keep his construction business going and provide work for his men so as not to lose them. For him, it was very important to retain his qualified workers

and provide work for his dependable men, with whom he had worked for over ten years. The properties are offered for rent prior to being sold because they sell more easily once they are rented than when they are empty.

[28] From 2001 to 2007, the appellant personally had his construction company build 36 apartment buildings and he only kept one of these for a period of more than two years. An analysis of the 36 transactions revealed that the criterion used by the appellant in determining the tax treatment of the income from the sale of a property was the amount of time the property was held. If it was for a period of less than one year, the income was considered to be business income, whereas if the property was held for more than one year, the income was considered to be a capital gain. In many cases, the holding period exceeded one year owing to the time required to rent the property (leasing delay).

The appellant's intention at the time of acquiring the Montrose plant

[29] According to the appellant, his intention at the time he purchased the Montrose plant and the subjacent land was to put up the five buildings with a view to keeping them long-term as a pension fund for himself. Among the reasons cited by the appellant for retaining ownership of those properties longer than he did with the others are the following:

- the geographical location of the five properties, that is, near the hospital, a CLSC, a shopping mall, a restaurant and a supermarket; the area was ideal for seniors;
- the target clientele was mainly composed of retirees, who are good payers and are easy to manage and not hard to please.

The plausibility of the taxpayer's primary intention

[30] According to the appraisal reports for the five properties of Place Montrose, those properties did not meet the specific standards for housing seniors, such as an elevator, handrails in the hallways, wider hallways and air conditioning.

[31] Even if the Place Montrose properties were not designed more for seniors, the auditor did not deny that the appellant's primary intention may have been to keep those properties long-term to ensure a pension income for himself.

[32] The appellant's assertions in that regard were confirmed by the testimony of Daniel Morin and Sylvain Dupont, and by Ms. Roy during her interview with the auditor.

The appellant's secondary intention

[33] Given his experience in construction and his knowledge of the Granby real estate market, the appellant was very well aware, when he acquired the Montrose plant, that it would be easy to find a buyer for his buildings if he should want to dispose of them. The geographical location of Place Montrose and the clientele sought made the project very attractive for prospective buyers. Indeed, the appellant received numerous calls from potential buyers, including Daniel Morin and Sylvain Dupont, while the buildings were under construction.

[34] The circumstances surrounding the acquisition of the Montrose plant and the construction of Place Montrose suggest that there was little likelihood that the properties would be held long-term by the appellant not because of a lack of financial resources on his part but rather because it was out of line with his usual business plan. It should be noted that, since 2001, the appellant has sold 36 properties and has only kept one property for over two years.

Motivating factors in selling the properties

[35] The appellant maintained that he changed his plans only because of his separation from Ms. Roy, yet she knew nothing of a separation. She only found out that Mr. Bélanger wanted to separate in early February 2006, a few days before her father's death.

[36] According to the appellant, his sole reason for selling was his separation from Ms. Roy, which meant the loss of the resource person who looked after all aspects of the management of the five properties. As the appellant had to devote 80 hours per week to his construction company, he had no time for the management of the five Place Montrose properties.

[37] The explanation provided by the appellant seems to me to be implausible given the time lag between the appellant's deciding to sell the five properties en bloc in April 2005 (approximately 1½ months before the date of the sale) and his informing his wife that he wanted to separate, in early February 2006, and considering what happened in the interval, namely, the couple's move in December 2005 into their new residence at 163 Rue Du Diamant in Granby, the couple's trip to Italy in October 2005 and the fact that Ms. Roy continued to pay the new residence's

suppliers and continued as well to manage Mr. Bélanger's properties until March 9, 2006.

[38] The appellant did not provide any evidence to demonstrate that he took any actions or steps to retain ownership of the Place Montrose properties or to find another person or company to take care of the management of those properties. The CRA auditor noted in the document attached to the audit report the appellant's response to the question as to why he did not think of hiring someone to replace Ms. Roy.

[TRANSLATION]

He replied that he was overwhelmed at the time and had to find a solution quickly, that he was spent, that his mind was elsewhere with everything that was happening in his personal life and that he could not see how he would get through it all.

[39] In fact, the person who replaced Ms. Roy as of March 9, 2006, was Mr. Bélanger's sister, Christine Bélanger. She officially commenced her duties as an employee of Horizon in March 2006. She had previously provided her services to Horizon as a subcontractor, handling the bookkeeping and government remittances. When the appellant decided to sell the Place Montrose properties, he knew or ought to have known that he could count on his sister to replace Ms. Roy as she was already familiar with her brother's business operations.

[40] The facts introduced in evidence show that the couple separated in March 2006. It is difficult to believe that in April or June 2005 the sole reason for the sale of the Place Montrose properties was the eventual separation from Ms. Roy when there is nothing in the facts to suggest there were any signs of a separation and the other person concerned, Ms. Roy, did not have any knowledge at all of a potential separation.

[41] The appellant did not disclose to his ex-wife the real reasons for selling the Place Montrose properties. He told her that a recession was imminent and that he needed money for other transactions and to purchase other land. Therefore, he kept the truth from her.

[42] It is important to emphasize here that the appellant changed his primary intention as a result of his own decision and not because he was unable to carry out his project for any reason. He even facilitated the sale by granting the purchaser a loan in the amount of \$800,000 secured by a second mortgage on the Place Montrose

properties. In my view, this shows that the sale of the Place Montrose properties was consistent with the appellant's business plan and his modus operandi. The transaction took place in a business context.

[43] On the basis of the facts introduced in evidence, I can only conclude that the appellant had an unspoken secondary intention which was to sell for a profit at the first opportunity. The Place Montrose project was not any different from the appellant's other development projects. The amount of time the properties were held was only 23 months for the three buildings built in 2003 and just 12 months for the other two, which were built in 2004.

[44] For these reasons, the Minister was justified in recharacterizing the capital gain reported of \$800,330 as business income for the 2005 taxation year and in disallowing the capital cost allowance claimed by the appellant in respect of the Place Montrose properties for the 2004 taxation year.

[45] Accordingly, the appeals are dismissed with costs.

Signed at Ottawa, Canada, this 12th day of April 2012.

“Réal Favreau”

Favreau J.

Translation certified true
on this 31st day of July 2012.

Erich Klein, Revisor

CITATION: 2012 TCC 93
COURT FILE NO.: 2009-3573(IT)G
STYLE OF CAUSE: Daniel Bélanger v. Her Majesty the Queen
PLACE OF HEARING: Montreal, Quebec
DATE OF HEARING: December 8, 2011
REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau
DATE OF JUDGMENT: April 12, 2012

APPEARANCES:

For the appellant: The appellant himself
Counsel for the respondent: Simon-Nicolas Crépin

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: Myles J. Kirvan
Deputy Attorney General of Canada
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