

Docket: 2002-3982(EI)

BETWEEN:

MARTIN GOUPIL,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on July 28, 2003, at Sherbrooke, Quebec

Before: The Honourable Judge J. F. Somers, Deputy Judge

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Emmanuelle Faulkner

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### JUDGMENT

The appeal is dismissed and the Minister's decision is upheld in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 11th day of September 2003.

"J. F. Somers"  
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Somers, D.J.T.C.C.

Translation certified true  
on this 22<sup>nd</sup> day of March 2004.

Sharon Moren, Translator

Citation: 2003TCC654  
Date: 20030911  
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MARTIN GOUPIL,

Appellant,

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THE MINISTER OF NATIONAL REVENUE,

Respondent.

### **REASONS FOR JUDGMENT**

**Somers, D.J.**

[1] This appeal was heard at Sherbrooke, Quebec, on July 28, 2003.

[2] The Appellant is appealing from the decision of the Minister of National Revenue (the "Minister"), that the employment held over the course of the periods at issue, June 1 to September 1, 2000, and from October 23, 2000, to January 11, 2002, when in the service of Martin Coutu, Pierrette L'Heureux and Martin Goupil operating *Les Installations M.P. Coutu Enr.*, the Payor, was not insurable because it did not meet the requirements of a contract of service.

[3] Subsection 5(1) of the *Act* reads in part as follows:

Subject to subsection (2), insurable employment is

(a) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;

...

[4] The burden of proof is on the Appellant, who must establish by the preponderance of evidence that the Minister's decision is unfounded in fact and in law. Each case must be examined on its own merit.

[5] In making his ruling, the Minister drew upon the following assumptions of fact that were either admitted or denied by the Appellant:

[TRANSLATION]

- (a) Martin Coutu and Pierrette L'Heureux were partners. (denied)
- (b) They were the owners of a resilient flooring installation company. (denied)
- (c) They did business under the company name *Les Installations M.P. Coutu Enr.* (denied)
- (d) The Appellant began working for the business in 1994 as a flooring installer. (denied)
- (e) On June 1, 2000, the Appellant formed a partnership with Martin Coutu and Pierrette L'Heureux. (admitted)
- (f) The three partners continued to operate the soft flooring installation business under the same company name. (denied)
- (g) During the periods at issue, the Appellant rendered services to the business as a flooring installer. (denied)

[6] In his testimony, the Appellant declared that he was a flooring installer and that he started working for Martin Coutu and Pierrette L'Heureux's company in 1994.

[7] According to this witness, Martin Coutu and Pierrette L'Heureux were the owners of the business operating as *Les Installations M.P. Coutu Enr.* He denied having worked for this company before the start of the periods at issue, June 1, 2000. He claimed that the Payor was never in operation and reiterated that he worked for *Installations M.P. Coutu.*

[8] He acknowledged that he went into partnership with Martin Coutu and Pierrette L'Heureux, as evidenced by the partnership agreement document entitled

"*Convention entre associé*" dated June 2000 (Exhibit I-1). This agreement, signed by Martin Coutu, Pierrette L'Heureux and the Appellant, reads as follows:

[TRANSLATION]

For and on behalf of -

Installation M.P. Coutu Enr.  
406 Principale Street  
Box 42  
Stoke, Quebec  
JOB 3G0  
TEL 819 878-3955

The following is agreed between the partners -

- Martin Coutu is the director, manager and operations coordinator.
- Pierrette L'Heureux, clerical, administrator.
- Martin Goupil salaried employee, resource person, advertising.
- Share of profits and losses:
  - 50% Martin Coutu
  - 50% Pierrette L'Heureux
  - value added Martin Goupil, salary,
- Martin Coutu and Pierrette L'Heureux continue to benefit from the current and future assets and debts of the company.
- The partnership is of a professional nature.
- In the event of death, Mr. Martin Goupil is excluded from all rights to the business and the testamentary dispositions between Martin Coutu and Pierrette L'Heureux take priority.
- This agreement may be modified at any time.
- Additional agreements:

[9] The Appellant also acknowledged that on June 1, 2000, he signed a partnership declaration with Martin Coutu and Pierrette L'Heureux (Exhibit I-2). This document stipulates, among other things, that the company *Les Installations M.P. Coutu Enr* [TRANSLATION] "from this point forward will be composed of the following partners: Martin Coutu, Pierrette L'Heureux and Martin Goupil". At the end of this document, beside their signatures, the following percentages appear: 45% Martin Coutu, 45% Pierrette L'Heureux and 10% Martin Goupil.

[10] The Appellant declared that the only distinction between the partnership agreement (Exhibit I-1) and the partnership declaration (Exhibit I-2) is the word "Les" added to the company name on the latter document. He contended that his role in this company was purely symbolic.

[11] In his notice of appeal filed as Exhibit I-3, the Appellant specifies that during the periods at issue he worked for the company *M.P. Coutu Enr.*

[12] As for his working conditions, the Appellant declared that he worked for this company 40 hours per week and was paid every two weeks at an hourly rate of \$23.00.

[13] The only other witness at the hearing of this appeal was Martin Coutu. This witness stated that he made the employer's payment of the deductions and dues to *Revenu Québec* for the periods from January 1 to March 31, 2003, and from June 1 to June 30, 2003, (Exhibits A-1 and A-2). On these documents the name and address of the employer are recorded; for the period from January 1 to March 31, 2003, it is Talbot Réal Compt (Martin Coutu) and for the period from June 1 to June 30, 2003, *Les Installations M.P. Enr.* is indicated while the address is the same for both.

[14] This witness explained that the company Martin Coutu has been in existence since 1987 and that, in 1999, the company was operated under the name "*Installations M.P. Coutu Enr.*" He stated that during the periods at issue, the Appellant worked for the company *Installations M.P. Coutu Enr.*

[15] According to this witness, the Appellant went into partnership with the company *Les Installations M.P. Coutu Enr.*, of which he and Pierrette L'Heureux were owners, which was never in operation. He claims that this arrangement was only to satisfy the requirements of another provincial law.

[16] A decision must be made as to whether the Appellant is a partner in the business originally formed by Martin Coutu and Pierrette L'Heureux.

[17] Martin Coutu and the Appellant have acknowledged that the latter became a partner of the company *Les Installations M.P. Coutu Enr.* on June 1, 2000 (Exhibit I-2).

[18] In *Parent v. Canada (Minister of National Revenue - M.N.R.)*, [1999] T.C.J. No. 83, Archambault, J.T.C.C., reviewed the jurisprudence and the *Act* with regard to the material aspects and legal responsibilities of a partner in a business in these terms:

The fact that Mr. Parent did not participate in the partnership's decisions does not necessarily mean that he was not a partner.

Article 2216 of the C.C.Q. provides that every partner is entitled to participate in collective decisions and may not be prevented from exercising that right by the contract of partnership. There is nothing in the evidence to show that François Parent could not participate in the partnership's decisions. The fact that he did not does not necessarily mean that he was not entitled to do so. A distinction must be drawn between the right to participate in decisions and the failure to exercise that right. Moreover, a partner may delegate management of the partnership to one of the other partners. . .

...

Given the conclusion that François Parent was a member of the DN partnership when he provided services during the relevant period, could he have been an employee of that partnership at the same time? In other words, can a contract of employment exist between a partner and his or her partnership? The Civil Code of Québec defines "contract of employment" as follows:

ART. 2085. A contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.

...

In addition, he did not work according to the instructions and under the direction or control of "another person". Unlike a joint-stock company, a partnership is not considered to be a person separate from its partners. The partnership's business is that of the partners. The partnership's assets belong to the partners. François Parent was thus working for himself. His work was therefore not done according to the instructions and under the direction or control of another person as required by article 2085 of the C.C.Q. Accordingly, there was no contract of employment between Mr. Parent and the DN partnership.

[19] In *Carpentier v. Canada (Minister of National Revenue - M.N.R.)*, [1996] T.C.J. No. 502, the findings of Lamarre J. were similar:

In view of the features associated with a contract of partnership both under the C.C.L.C. and under the C.C.Q. and the tests used by the courts to determine whether a contract of service exists, it seems clear to me that a partner cannot be an employee in his own

partnership. Since as partner he participates in the decision-making of the partnership in pursuit of the common goal of the partnership and shares in profits and losses, he is automatically in control and therefore cannot at the same time act as a subordinate to himself, even if there are several partners.

[20] Martin Coutu and the Appellant have stated that the only purpose of this company under the name *Les Installations M.P. Coutu Enr.* was to satisfy the requirements of a provincial law, namely, that a partner must be on the job site.

[21] The last paragraph of the partnership declaration (Exhibit I-2) reads as follows:

[TRANSLATION]

Moreover, the partners agree to sign shortly a detailed partnership agreement stating the terms and conditions of their partnership in the company "*Les Installations M.P. Coutu Enr.*".

[22] No document was entered in evidence regarding the terms and conditions of this partnership; it must therefore be concluded that the Appellant was a partner in the business.

[23] The evidence has shown that the Appellant worked for the company formed by Martin Coutu and Pierrette L'Heureux by whatever name it is called. Moreover, there is only one company in which the Appellant held 10% of the shares. The fact that the Appellant did not participate in the management of the business changes nothing in his role as a partner.

[24] Jurisprudence has established that a partner cannot be an employee of his own company, whatever the percentage of shares he holds.

[25] Consequently, the Appellant did not have insurable employment in accordance with the Act during the periods at issue since he was operating his own company.



[26] The appeal is dismissed.

Signed at Ottawa, Canada, this 11<sup>th</sup> day of September 2003.

"J. F. Somers"  
\_\_\_\_\_  
Somers, D.J.T.C.C.

Translation certified true  
on this 22<sup>nd</sup> day of March 2004.

Sharon Moren, Translator