

Docket: 2008-711(IT)I

BETWEEN:

CHANTAL BOURDAGES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeal heard on common evidence with the appeal of  
*Jean-Marie Perreault* (2008-720(IT)I),  
On August 13, 2009, at New Carlisle, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the appellant:                      The appellant herself

Counsel for the respondent:        Michel Lamarre

---

**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 23 day of October 2009.

"Alain Tardif"

---

Tardif J.

Translation certified true  
on this 8th day of December 2009.  
Daniela Possamai, Translator

Docket: 2008-720(IT)I

BETWEEN:

JEAN-MARIE PERREAULT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeal heard on common evidence with the appeal of  
*Chantal Bourdages* (2008-711(IT)I),  
on August 13, 2009, at New Carlisle, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Michel Lamarre

---

**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 23 day of October 2009.

\_\_\_\_\_  
"Alain Tardif"

Tardif J.

Translation certified true  
on this 8th day of December 2009.  
Daniela Possamai, Translator

Citation: 2009 TCC 543  
Date: 20091023  
Dockets: 2008-711(IT)I  
2008-720(IT)I

BETWEEN:

CHANTAL BOURDAGES,  
JEAN-MARIE PERREAULT,

appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

**REASONS FOR JUDGMENT**

Tardif J.

[1] The parties agreed to proceed on common evidence, seeing as the facts that gave rise to the assessments were the same.

[2] These are appeals from assessments for the 2003 taxation year following the sale of a building, in Sutton, at 49 Maple Street, acquired in January 1995 for the amount of \$76,258.

[3] The issue to be determined is whether the Minister properly disallowed the rental losses reported by the appellants in respect of the 2003 taxation year.

[4] In making the assessment, the respondent relied on the following assumptions of fact:

[TRANSLATION]

- a) The appellant and her husband acquired a condominium unit situated at 49 Maple Street, Sutton, in January 1995 for the amount of \$76,258;
- b) Between 1995 and 2003, the gross income reported and the losses claimed by the appellant and her husband are as follows:

<b>Taxation year</b>	<b>Gross income</b>	<b>Appellant's net losses</b>	<b>Spouse's net losses</b>	<b>TOTAL</b>
1995	\$1,600	\$0	\$3,770	<b>\$7,540</b>
1996	\$1,625	\$0	\$2,643	<b>\$5,286</b>
1997	\$1,000	\$2,746	\$2,746	<b>\$5,492</b>
1998	\$791	\$2,982	\$2,982	<b>\$5,964</b>
1999	\$950	\$2,888	\$2,888	<b>\$5,776</b>
2000	\$0	\$0	\$0	<b>\$0</b>
2001	\$0	\$0	\$0	<b>\$0</b>
2002	\$925	\$2,209	\$2,209	<b>\$4,418</b>
2003	\$0	\$20,897	\$20,897	<b>\$41,794</b>
<b>TOTAL</b>	<b>\$6,891</b>	<b>\$31,722</b>	<b>\$38,135</b>	<b>\$69,857</b>

- c) The appellant and her family also used the property for personal purposes;
- d) The property was sold in 2003 for an amount of \$50,000;
- e) The appellant did not demonstrate that actual steps were taken to put the unit on the rental market during the periods the unit was not used for personal purposes by the appellant and her family.

[5] The appellants both testified. The appellant indicated that she also acted as agent for her husband. The respondent called Diane Tremblay, who was in charge of analyzing the case at the assessment stage.

[6] The appellant, Chantal Bourdages, an articulate individual, first expressed her deep disappointment, and her frustration, over the status of her tax matter and that of her husband.

[7] At the outset, she stated that she and her husband were honest, truthful and upstanding taxpayers who were not guilty of anything whatsoever.

[8] She maintained that they are individuals with a professional track record that is beyond reproach and with a range of business experience. Seeing as their professional conduct and careers are exemplary from all points of view, it was totally inappropriate to reassess them.

[9] Truly affronted by the situation, the appellants also asked that the Agency be sentenced to costs, to reimburse multiple expenses and pay compensation for the numerous inconveniences that resulted.

[10] Above all, the appellants expressed sadness, disappointment and surprise at the investigation and review of their tax matter.

[11] Ms. Bourdages explained at the time of the purchase of the condominium in Sutton in 1995, an ideal place for ski and nature lovers, the couple lived in Assomption, in the Lanaudière region.

[12] In August 1997, they decided to leave the area to go to Bonaventure, in Gaspésie, which was more than ten hours away by car.

[13] At the time, the couple owned a residence, a company and the condo involved in the present appeal. The three were put up for sale. Although the residence and the company sold quickly, the condo did not. It sold much later and resulted in a financial loss.

[14] At this stage, a first question is what was the purpose for purchasing the Sutton condo? The appellants claimed that it was a commercial venture whose purpose was to generate revenue.

[15] The appellants' explanations in support of their claims were essentially oral and brief. They also questioned the testimony of auditor Tremblay, specifically with regard to a telephone conversation during which the appellant stated that it was a mixed project, in part private and in part commercial.

[16] To refute the auditor's testimony, the appellant claimed that her husband did not even know what that could mean, thus insinuating that the auditor had obviously made that up.

[17] As for her husband, he stated that the conversation was long ago and that he did not recall using those exact words.

[18] Over the course of 1995, 1996 and 1997, the appellants claimed to have used the condo only twice for them and their immediate family. The evidence also established that relatives used it as well.

[19] As for the appellant Mr. Perreault, he confirmed the words of his wife; he explained the rarity and the absence of useful documents in support of their claims as to the use of the condo at the time of purchase which resulted from the fact that he was more intuitive than rational in his business decisions.

[20] After they left for Gaspésie, the appellants stated that they never returned to Sutton, considering the great distance between the two regions, that is, more than 10 by car.

[21] During that period, that is, from 1995 to 2003, the date on which the condo was sold. They submitted that they did everything they could to rent it. During that period of nearly nine years, the rental income would have totalled \$6,891 and the total expenses would have been \$69,857.

[22] As documentary evidence to demonstrate rental tenure, they filed in evidence very few documents, namely, a few brochures. They also mentioned having entrusted a task to a third party and having taken out ads in the paper; they were unable to provide documentary evidence concerning the advertisement contracts.

[23] The auditor's various attempts to obtain more facts, evidence or documents aimed at validating the hypothesis that it was a business were interpreted as being harassment, abuse or as questioning their honesty.

[24] Moreover, I witnessed the same attitude during their cross-examination. Since the appellants concluded that they operated a commercial business whose aim was to rent out the condo acquired, and which according to them was its sole purpose, they became indignant at any question pertaining to facts about the real use of the condo.

[25] Any question, any request for information was seen as an attack on their integrity, as a reprimand, as overzealous, and they did not take kindly to anyone questioning their interpretation that their business was a commercial venture.



[26] Quite surprisingly for individuals who are not guilty of anything, the appellants were never able to explain the total absence of income for 2000 and 2001, and also and especially why there were no expenses for those very years.

[27] Although no income is a possible circumstance, it is completely impossible that there were no expenses. One need only think of insurance, heating charges and school and municipal taxes, etc.

[28] The cross-examination revealed that the condo had been rented out for several weeks without generating any revenue. The explanation provided? it was an error.

[29] All real businesses have to report all of their income and expenses; it is not a discretionary matter for managers.

[30] Despite the discrepancies (absence of expenses), (absence of income), (marginal revenue), the appellants still considered any question and request for information superfluous, vexing and insulting.

[31] At first, it seemed useful to repeat part of the comments made during the hearing, that is, that generally the appeal of an assessment has nothing to do with the reputation, honesty and career of the individual being assessed. An assessment is made based on the facts and objection also involves the same facts. Credibility obviously had a significant impact but its value is relative to the situation that gave rise to the assessment.

[32] It is not a matter of analyzing the conduct of a person over the course of his or her life; it is a matter of analyzing the specific facts in the context of the transaction

that resulted in the reassessments and deciding whether the assessment was founded or not, in accordance with the provisions of the Act.

[33] When an analysis must take into account will, intention, interpretation, those elements are not a mathematical absolute that preferably need to be confirmed and validated by facts and by documents.

[34] Such an analysis or search for pertinent facts to be considered need not take account of the entire life of the person assessed on the basis of aspects that have nothing to do with the assessment that is the subject of an objection.

[35] The appeal of an assessment essentially aims to take into consideration all the pertinent facts of a case, to analyze them in the appropriate context so as to be able to conclude whether or not the assessment was in accordance with provisions of the Act.

[36] The most important argument in support of the Appellant's submissions is undoubtedly the distance between their new residence and the condo in Sutton.

[37] That is certainly a possibly very pertinent but not determining factor as it is common knowledge that thousands of Canadians have condos far from their residence which they use privately for a variety of reasons, from sports to seasons to health.

[38] In taxation, there are numerous situations where facts could allow for various treatments. The most common example is undoubtedly a personal expense as opposed to an expense incurred with a view to earning income. An expense can

sometimes be personal and sometimes related to the operation of a company and the line separating the two is often very thin. That is the case for a vast number of goods: cars, boats, trailers, condos, etc.

[39] Considering the possible difference in fiscal treatment, it is even more useful, if not fundamental, to have in one's possession the necessary documents to expand and validate the tax treatment claimed.

[40] When a person becomes involved in a business activity that could sow confusion, that person must be prudent and vigilant and keep as many materials and documents as possible to be able to explain his or her actions, particularly if the determination resulted in a significant tax benefit.

[41] In the case at bar, seeing as the appellants, who were veterans of the business world, could count on and trust the advice of specialists at their disposal, the evidence should have been much more detailed and convincing. The reality, however, was completely different; the evidence was deficient and certainly not enough to validate the appellants' arguments.

[42] Anyone can legitimately organize their affairs so as to reduce the tax burden to the maximum extent possible. However, such a decision or strategy requires, on the part of the person concerned, the obligation to have in his or her possession all documents validating or corroborating his or her choices.

[43] In the case at bar, it appears reasonable to me to think that the appellants' family viewed the acquisition of the condo as a positive thing for the family, even more so since the setting was appealing, that it gave them a better quality of life and

the possibility to broaden the family's range of recreational activities, thus proving a good investment.

[44] Family and friends took advantage somewhat of the condo, which constitutes private or personal use; after deciding to leave the Assomption area to go and live in another area that was very far from where the Sutton condo is situated, the appellants chose to sell it, just like the principal residence and business. The principal residence and business sold quickly but the condo did not.

[45] The appellants had hoped to sell the condo for a profit. The market deteriorated and no serious buyer turned up for years.

[46] In 2003, the appellants came to terms with the fact that they would have to incur a significant loss and sell the condo.

[47] Faced with this sad reality, the appellants apparently concluded that the condo had been acquired for a commercial purpose, thus reducing the amount of the loss incurred through a more advantageous tax treatment. Although they certainly provided verbal explanations, the numbers speak for themselves and, unfortunately, they do not support the hypothesis submitted by the appellants.

[48] In fact, the appellants claimed that they did not earn any income during certain years; that is very surprising, if not impossible. They do not report any income for those years, which, this time, is totally impossible.

[49] I highly doubt that the appellants were generous toward taxation authorities to the point where they paid more taxes than they were required to pay, as it is impossible that there were no expenses.

[50] All the facts revealed by the evidence must be assessed in the context in which the appellants defined themselves as being alert and aware in business, including professional services.

[51] While I do not doubt the appellants' honesty, I do doubt that they made all the necessary efforts to ensure a profitable occupancy rate more frequently. The rental dimension was clearly not the primary objective of the acquisition.

[52] I do not believe that the condo project in Sutton was a commercial business; I believe rather that it was a private venture that could possibly generate a capital gain, while allowing for a better quality of life during the years of its use.

[53] The move led to a change of plans and faced with the difficulty of finding a buyer, the appellants undoubtedly sought to mitigate expenses by taking certain unconvincing initiatives to find one or more tenants, their preference obviously being to sell.

[54] The deterioration of the real estate market made it so that a buyer was needed. Faced with the reality forced upon them, the appellants wanted to retroactively change their first intention, that is to say, the one they had at the time of the acquisition.

[55] The appellants were seasoned business people, they should have been able to demonstrate a minimum of discipline, organization and produce the supporting documentation to validate their claims.

[56] Discharging the burden of proof is not limited to proving one's knowledge, experience, notoriety and integrity; discharging the onus of proof means the ability, in this case, to show, on a balance of probabilities, that a commercial business was operated through convincing, objective and determining elements.

[57] Was there a business plan? Did the acquisition involve a loan? Did the request for a loan indicate the purpose sought, the treatment of interest, the mandate assigned to a specialized rental agency or a recognized agency? A business plan, an agenda, a detailed description of activities, these are but some of the common elements one would have expected to see the appellants submit in support of their claims.

[58] Since none of those elements were submitted, the appellants mainly relied on verbal explanations about which they did not wish to be questioned.

[59] The burden of proof rested with the appellants. They failed to discharge that burden simply because the required copious, convincing and determining elements simply did not exist.

[60] I believe the appellants' tax choice essentially resulted from the difficult times, the deterioration of the real estate market and the rarity of potential buyers. This discussion would have never taken place had the condo sold quickly at a fair price.

[61] For all these reasons, the appeals must be dismissed and the reassessments that gave rise to the appeals are therefore confirmed as being well-founded in fact and law.

Signed at Ottawa, Canada, this 23 day of October 2009.

"Alain Tardif"

---

Tardif J.

Translation certified true  
on this 8th day of December 2009.  
Daniela Possamai, Translator

CITATION: 2009 TCC 543

COURT FILE NO.: 2008-711(IT)I

STYLE OF CAUSE: CHANTAL BOURDAGES v. HER  
MAJESTY THE QUEEN

PLACE OF HEARING: New Carlisle, Quebec

DATE OF HEARING: August 13, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: October 23, 2009

APPEARANCES:

For the appellant:	The appellant herself
Counsel for the respondent:	Michel Lamarre

COUNSEL OF RECORD:

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