

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20090310

Docket: A-338-07

Citation: 2009 FCA 70

**CORAM: EVANS J.A.
PELLETIER J.A.
RYER J.A.**

BETWEEN:

PETER V. ABRAMETZ

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Saskatoon, Saskatchewan, on March 3, 2009.

Judgment delivered at Ottawa, Ontario, on March 10, 2009.

REASONS FOR JUDGMENT BY:

RYER J.A.

CONCURRED IN BY:

**EVANS J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

RYER J.A.

[1] Mr. Peter Abrametz (the “appellant”) appeals the decision of Justice Sheridan (the “Tax Court Judge”) of the Tax Court of Canada (2007 TCC 316) dismissing his appeal against an assessment by the Minister of National Revenue (the “Minister”) under subsection 323(1) of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the “Act”). That assessment imposed a liability upon the appellant in his capacity as the sole director of Mada Construction Company Ltd. (the “Company”) for goods and services tax (“GST”) that it failed to remit to the Canada Revenue Agency during the period from May 1, 1991 to October 31, 1994, as well as interest and penalties.

[2] The Tax Court Judge found that the appellant had failed to discharge his onus of proving that the assessment against the Company was incorrect. In so doing, she considered the evidence of the appellant's witness, Mr. Reid McLeod, a chartered accountant who had been retained by the appellant to review the assessment, and found that his evidence did not establish that there were errors in the Minister's assessment of the GST liability of the Company.

[3] The issue in this appeal is the proper characterization, for the purposes of the Act, of six amounts, more particularly described on page 38 of the Appeal Book, that were deposited into bank accounts of the Company at the Prince Albert Credit Union and the Royal Bank in Prince Albert, Saskatchewan. The appellant contends that the uncontradicted evidence of Mr. McLeod establishes that these amounts, which totalled \$166,250, were loan proceeds and inter-account transfers. Accordingly, the appellant argues, none of these deposits were amounts that included GST or in respect of which GST should have been collected by the Company.

[4] The respondent, at the hearing, conceded that if the appellant's characterization of the amounts is correct, then none of those amounts should have been subject to GST. Nonetheless, the respondent urges this Court to uphold the decision of the Tax Court Judge that Mr. McLeod's evidence was insufficient to demonstrate that the assessment was incorrect.

[5] In paragraph 6 of her reasons, the Tax Court Judge found that Mr. McLeod "was not in a position to say whether the GST returns filed by the Company were correct." With respect, the issue before the Tax Court of Canada was not the correctness of the Company's GST returns but the

correctness of the assessment, which, in the circumstances, turns on the proper characterization of the six amounts in issue. Accordingly, in my view, Mr. McLeod's inability to comment on the correctness of the returns filed by the Company does not detract from his evidence as to the nature of the six amounts in issue.

[6] The evidence that was tendered by Mr. McLeod was aimed at demonstrating the nature of the six deposits in question. In concluding that those amounts were loan proceeds and inter-bank transfers, Mr. McLeod reviewed banking documents of the Company. At pages 9 and 10 of the transcript, Mr. McLeod testified as follows:

I was able to examine certain records of the corporation, namely bank statements of the – of the corporate account and also some loan statements from a different financial institution, Prince Albert Credit Union, and I was able to compare those documents. From my comparison it appeared to me that certain loans, advances or transfers between the two accounts were included in the revenue of the corporation for GST-taxable purposes, and in fact it appeared to me that GST was assessed on those transfers, which is an error.

[7] The Tax Court Judge found, at paragraph 6 of her reasons, that Mr. McLeod “was not given the Company's financial statements or other corporate records to compare to the bank statements.” With respect, I do not see how these items would have been of more assistance to Mr. McLeod than the bank records and loan statements that were provided to him. Those materials were sufficient to enable him to determine the nature of the six amounts in question. Based upon his review of those materials, Mr. McLeod concluded that the six amounts were loan proceeds and inter-account transfers.

[8] Having found Mr. McLeod to be a credible witness whose evidence was uncontradicted, the Tax Court Judge must have accepted his conclusion that the six amounts in question were loan proceeds and inter-bank transfers, none of which should have been subject to GST. In those circumstances, the only legal conclusion that she could draw was that the assessment should be reduced by the amount of GST attributable to those amounts. In failing to draw that conclusion, she erred in law, an error which justifies our intervention.

[9] For these reasons, I would allow the appeal, with costs in this Court and in the Tax Court of Canada, set aside the judgment of the Tax Court of Canada and refer the matter back to the Minister for reassessment in accordance with these reasons.

“C. Michael Ryer”

J.A.

“I agree
John M. Evans J.A.”

“I agree.
J.D. Denis Pelletier J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-338-07

(APPEAL FROM A JUDGMENT OF MADAM JUSTICE SHERIDAN OF THE TAX COURT OF CANADA, DATED JUNE 5, 2007, (2007 TCC 316))

STYLE OF CAUSE: PETER V. ABRAMETZ v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: SASKATOON

DATE OF HEARING: MARCH 3, 2009

REASONS FOR JUDGMENT BY: RYER J.A.

CONCURRED IN BY: EVANS J.A.
PELLETIER J.A.

DATED: MARCH 10, 2009

APPEARANCES:

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Lyle Bouvier FOR THE RESPONDENT

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