Federal Court of Appeal



Cour d'appel fédérale

Date: 20090908

Docket: A-241-09

Citation: 2009 FCA 257

CORAM: NOËL J.A.

PELLETIER J.A. TRUDEL J.A.

BETWEEN:

FIDUCIE DAUPHIN, 9125-9622 QUÉBEC INC., CHANTAL FRÉGAULT, STÉPHANE DESCOTEAUX, SOPHIE LEBEL, NORMAND DESCOTEAUX

Applicants

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 8, 2009.

REASONS FOR ORDER BY:

TRUDEL J.A.

CONCURRED IN BY:

NOËL J.A. PELLETIER J.A.

Federal Court of Appeal



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REASONS FOR ORDER

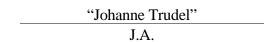
TRUDEL J.A.

- [1] The Federal Court dismissed the applicants' applications by which they sought, among other things, to set aside the *ex-parte* collection order made against them under subsections 225.2(2) and (3) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (*ITA*).
- [2] The applicants filed an application for judicial review before this Court to reverse the judgment of the Federal Court (2009 FC 346).

[3]	The respondent requests that the application be struck out and dismissed. The applicants did
not file	e a record in reply and are out of time to do so.
[4]	It is clear that the Federal Court made its decision pursuant to subsections 225.2(8) and (11)
of the ITA, which provide as follows:	
	(8) Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.
	(11) On an application under subsection 225.2(8), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make such other order as the judge considers appropriate.
[5]	Moreover, under subsection 225.2(13) of the <i>ITA</i> , the review order made in accordance with
the above subsections is not subject to appeal:	
	(13) No appeal lies from an order of a judge made pursuant to subsection 225.2(11).
[6]	In applying for judicial review of a decision of the Federal Court, the applicants are trying to
do indirectly what they cannot do directly.	

[7] Subsection 225.2(13) would be of no effect if it could be circumvented by the mere choice of another procedural vehicle, provided that this other proceeding is even available to the applicants. However, for the purposes of the application at issue, it is not necessary to discuss the merits of the applicants' approach any further.

[8] Accordingly, I would dismiss the applicants' application for judicial review with costs.



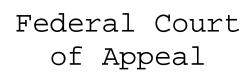
"I agree.

Marc Noël J.A."

"I agree.

J.D. Denis Pelletier J.A."

Certified true translation Sarah Burns





Cour d'appel fédérale

Canada

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-241-09

STYLE OF CAUSE: Fiducie Dauphin et al. v. Her Majesty

the Queen

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: TRUDEL J.A.

CONCURRED IN BY: NOËL J.A.

PELLETIER J.A.

DATED: 20090908

WRITTEN REPRESENTATIONS BY:

Sébastien Sénéchal FOR THE APPLICANTS

Martin Lamoureux FOR THE RESPONDENT

SOLICITORS OF RECORD:

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