

Cour d'appel
fédérale



Federal Court of
Appeal

Date : 20091130

Docket: A-131-09

Citation: 2009 FCA 349

**CORAM: LÉTOURNEAU J.A.
NADON J.A.
PELLETIER J.A.**

BETWEEN:

LES CONSTRUCTIONS ROSSI & FILS 2000 INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held at Montréal, Quebec, on November 30, 2009.

Judgment delivered from the Bench at Montréal, Quebec, on November 30, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Montréal, Quebec, on November 30, 2009.)

LÉTOURNEAU J.A.

[1] The findings made by Justice Bédard (judge) of the Tax Court of Canada, which are contested by the appellant, are essentially findings of fact, or at best mixed fact and law. They are supported by the evidence and by a reasoned assessment of the witnesses' credibility.

[2] Counsel for the appellant submits that the judge ignored the fact that the appellant was a victim of its supplier, whom the judge found not to be credible. If the judge had taken this into consideration, argues the appellant, he would have concluded that the appellant had adduced sufficient *prima facie* evidence to rebut the presumptions on which the Minister of National Revenue based his assessment.

[3] In our view, the judge did not ignore the appellant's testimony. However, in the absence of any objective evidence that the alleged services were rendered by the supplier, evidence that should have been easy for the appellant to produce, the judge did not believe the testimony of the appellant's representative. Therefore, he concluded that the invoices were shams.

[4] In the absence of a palpable and overriding error, as required by the case law of this Court, the judge's findings are beyond the reach of our powers of review.

[5] For these reasons, the appeal will be dismissed with costs.

“Gilles Létourneau”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-131-09

(APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE PAUL BÉDARD, OF THE TAX COURT OF CANADA, DATED FEBRUARY 13, 2009, DOCKET NO. 2006- 2584(GST)G.)

STYLE OF CAUSE: LES CONSTRUCTIONS ROSSI
& FILS 2000 INC. v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 30, 2009

REASONS FOR JUDGMENT OF THE COURT BY: LÉTOURNEAU J.A.
NADON J.A.
PELLETIER J.A.

DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

APPEARANCES:

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