

Date: 20070612

Docket: A-441-06

Citation: 2007 FCA 228

**CORAM: RICHARD C.J.
LÉTOURNEAU J.A.
NADON J.A.**

BETWEEN:

YVON TREMBLAY

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Hearing held at Québec, Quebec, on June 12, 2007.

Judgment delivered from the bench at Québec, Quebec, on June 12, 2007.

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 Québec, Quebec, on June 12, 2007)

LÉTOURNEAU J.A.

[1] The Minister of National Revenue disallowed deductions for the taxation years 2000 and 2001 in the amounts of \$8,315 and \$10,699, respectively, which the appellant had claimed as other employment expenses.

[2] Mr. Justice Tardif of the Tax Court of Canada (judge) upheld the Minister's assessments.

The appellant claimed these deductions based on the fact that in addition to the salary he earned, he also received commissions and that the expenses claimed had been incurred to earn these commissions.

[3] The problem faced by the judge in this case was confusion surrounding the fact that the appellant's expenses incurred as part of his salaried work were, he claimed, reimbursed by his employer, but not those generated by his commission work.

[4] Deficient accounting for both sources of income and a lack of supporting documentation added to the confusion. According to the judge, the applicant's evidence did not distinguish between what had been reimbursed by the employer and what had not, thus, between what was deductible and what was not.

[5] Paragraphs 11 to 15 of the judge's reasons for decision reflect these concerns and the appellant's failure to meet the burden of rebutting the factual assertions underlying the assessment:

[11] Otherwise, the bulk of the Appellant's representations sought to show that a distinction should be drawn between his two sources of income: employment income; and income from commissioned self-employment.

[12] Even the evidence submitted with respect to this aspect was not decisive. Indeed, the fact that the Appellant signed a contract several years ago, setting out his conditions of employment and establishing that he was paid by commission, does not automatically have the effect of demonstrating the validity of his allegations, especially since the legal relationship described in the contract might well have been necessary in order for the Appellant to have employee status,

which enabled him occasionally to hold himself up as an example to the salespersons under his supervision.

[13] All assessments are presumed to have been made in accordance with the relevant facts and applicable legislation. An attack against the merits of an assessment requires more than mere criticism of the Minister's approach; it is absolutely essential to prove what the assessment should have been.

[14] Here, the Appellant essentially submitted that he had two different functions, and that this enabled him to claim expenses in excess of what his employer reimbursed. It would have been important, and perhaps even fundamental, for him to submit decisive evidence as to the details of the disallowed expenses that were associated exclusively with his self-employment..

[15] In the absence of such evidence, I must find that the Appellant has not met his burden of proof, and, consequently, the appeals are dismissed.

[6] On this appeal, the appellant is asking us to review and set aside the findings of fact made by the judge, but we cannot legally do so unless they are capricious or perverse. After reviewing the appeal book and the transcript, we are unable to conclude that they are.

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

“Gilles Létourneau”

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-441-06

STYLE OF CAUSE: YVON TREMBLAY v.
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PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: June 12, 2007

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LÉTOURNEAU J.A.
NADON J.A.

DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

APPEARANCES:

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