

Date: 20081029

**Dockets: A-441-07
A-443-07**

Citation: 2008 FCA 334

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

BETWEEN:

CARE NURSING AGENCY LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Heard at Toronto, Ontario, on October 29, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on October 29, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 29, 2008)

RYER J.A.

[1] In the two appeals that are before us, the appellant challenges the decisions of the Tax Court of Canada that upheld assessments of the appellant for failing to make remittances of EI premiums and CPP contributions under the *Employment Insurance Act*, S.C. 1996, c. 23 (the “EI Act”) and the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the “Plan”). In particular, the appellant challenges the findings of the Tax Court Judge that 130 health care workers named in the assessments, who were

placed by the appellant in a number of health care facilities for short-term work and were remunerated for that work by the appellant, were engaged in insurable employment, within the meaning of paragraph 6(g) of the *Employment Insurance Regulations* (the “EI Regulations”) and subsection 34(1) of the *Canada Pension Plan Regulations* (the “Plan Regulations”).

[2] The appellant argues that it was under no obligation to make remittances of EI premiums or CPP contributions in respect of any of the workers, except Ms. Sunshine Smith, because no rulings as permitted by subsections 90(1) of the EI Act and 26.1(1) of the Plan were obtained in respect of any of the workers other than Ms. Smith. Despite the able arguments of counsel for the appellant, in our view, sections 94 of the EI Act and 27.3 of the Plan permit the Minister to make assessments under those acts in the absence of such rulings. Moreover, we are not persuaded that the consequences of this interpretation are either unreasonable or absurd. Accordingly, the Tax Court Judge correctly rejected this argument.

[3] The appellant disputes the existence of an agreement at the outset of the hearing in the Tax Court of Canada that one of the workers, Ms. Glennette London, could provide representative testimony in relation to all the workers who are referred to in the assessments. In our view, this submission is without merit. The existence of this agreement is apparent from the transcript. In addition, it is the appellant, and not the workers, that has been assessed. Accordingly, the contention that the appellant lacked authority to “speak on behalf of the nurses” is irrelevant.

[4] For the foregoing reasons, the appeals will be dismissed, with one set of costs. A copy of these reasons should be placed in each of Court files A-441-07 and A-443-07.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-441-07 A-443-07

A-441-07: AN APPEAL FROM THE ORDER OF WEISMAN, J., OF THE TAX COURT OF CANADA, DATED AUGUST 15, 2007, IN FILE NO. 2006-2546 (EI)

A-443-07: AN APPEAL FROM THE ORDER OF WEISMAN, J., OF THE TAX COURT OF CANADA DATED AUGUST 15, 2007, IN FILE NO. 2006-2547 (CPP)

STYLE OF CAUSE: *CARE NURSING AGENCY LTD. v. THE MINISTER OF NATIONAL REVENUE*

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 29, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (SHARLOW, EVANS, RYER J.J.A.)

DELIVERED FROM THE BENCH BY: RYER J.A.

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