

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230620

Docket: A-184-22

Citation: 2023 FCA 143

**CORAM: WOODS J.A.
LOCKE J.A.
LEBLANC J.A.**

BETWEEN:

**TRISKELION PROJECTS INTERNATIONAL
INC.**

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on June 20, 2023.
Judgment delivered from the Bench at Toronto, Ontario, on June 20, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

WOODS J.A.

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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 20, 2023).**

WOODS J.A.

[1] Triskelion Projects International Inc. appeals from a decision of the Tax Court of Canada written by Justice Spiro and reported as 2022 TCC 63.

[2] The appellant is a corporation resident in the United States. Its business is to provide project management services to the construction industry. Some of these services are performed

in Canada. The appellant earned income in Canada during the period from March 2015 to March 2016.

[3] This appeal concerns an assessment for the 2016 taxation year in which the appellant was taxed on income in the amount of \$181,740. This income was earned in Canada in the first three months of 2016.

[4] The Minister of National Revenue assessed the appellant on the basis that this income was taxable under the *Income Tax Act* because the income was earned through a deemed permanent establishment in Canada. The Minister applied a provision in the *Canada-United States Income Tax Convention* which deems an enterprise of one state to have a permanent establishment in the other state in specified circumstances. The relevant treaty provision is Article V, s. 9(b), which reads:

9. Subject to paragraph 3, where an enterprise of a Contracting State provides services in the other Contracting State, if that enterprise is found not to have a permanent establishment in that other State by virtue of the preceding paragraphs of this Article, that enterprise shall be deemed to provide those services through a permanent establishment in that other State if and only if:

...

(b) the services are provided in that other State for an aggregate of 183 days or more in any twelve-month

9. Sous réserve du paragraphe 3, lorsqu'une entreprise d'un État contractant fournit des services dans l'autre État contractant, s'il est déterminé qu'elle n'a pas d'établissement stable dans cet autre État en vertu des paragraphes précédents du présent article, cette entreprise est réputée fournir ces services par l'intermédiaire d'un établissement stable dans cet autre État dans les seuls cas où:

...

b) les services sont fournis dans cet autre État pendant une période totale de 183 jours ou plus au cours d'une

period with respect to the same or connected project for customers who are either residents of that other State or who maintain a permanent establishment in that other State and the services are provided in respect of that permanent establishment.

période quelconque de douze mois relativement au même projet ou à un projet connexe pour des clients qui soit sont des résidents de cet autre État, soit y maintiennent un établissement stable, et les services sont fournis relativement à cet établissement stable.

[5] The main issue before the Tax Court related to one of the conditions in this provision which requires that services be provided in Canada for an aggregate of 183 days or more in any twelve-month period. The Minister determined that this condition was satisfied during the period from March 19, 2015 to March 18, 2016.

[6] In the Tax Court, the appellant submitted that the Minister had interpreted s. 9(b) incorrectly because that interpretation results in an improper double counting of days in 2015 and 2016. Put another way, the appellant submitted that the same months were used by the Minister to determine that there was a permanent establishment in 2015 and 2016.

[7] The Tax Court rejected this argument on the basis that there was no evidence that the Minister “used” the months in the sense of assessing tax in 2015.

[8] In this Court, the appellant submits that its right to procedural fairness was breached in the Tax Court.

[9] We disagree that there was a breach of procedural fairness. In the Tax Court, the appellant had the right to be heard on its appeal of the 2016 assessment. The Tax Court judge

respected that right. First, the judge ensured that he understood the arguments that the appellant was making. These arguments were not clearly set out in the appellant's pleading, as they should have been, and the Tax Court judge requested that written submissions be received before the hearing. These submissions were not in the appeal book filed by the appellant in this Court. This is unfortunate. It is not clear that anything turns on this, but if it does the fault lies with the appellant.

[10] At the hearing, the judge sought clarification on the main issue to make sure he understood the appellant's argument. Based on the transcript, after this discussion there was no doubt what the main issue was.

[11] As for the merits, on some issues the judge pre-empted the appellant's argument by indicating why he thought that the arguments were doomed to fail. At every turn, counsel for the appellant did not indicate that he disagreed with the judge.

[12] Also, during the hearing the appellant sought to have new evidence admitted. The judge ruled against the appellant on this. Again, counsel for the appellant did not express any disagreement with the rulings.

[13] Other issues have been raised by the appellant in this Court, but there is no need to discuss them as they clearly have no merit.

[14] Before concluding, we would mention that in this Court the appellant argued that the Tax Court judge failed to address its main issue. However, the appellant clearly confirmed what the issue was in the Tax Court and now appears to resile from this confirmation. There is no basis to conclude that the Tax Court judge failed to address the main issue.

[15] In the result, in our view the judge did not err, either on procedural matters or in the decision on the merits. The appeal will be dismissed with costs.

“Judith Woods”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-184-22

STYLE OF CAUSE: TRISKELION PROJECTS
INTERNATIONAL INC. v. HIS
MAJESTY THE KING

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 20, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** WOODS J.A.
LOCKE J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: WOODS J.A.

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