

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180528

Docket: A-271-17

Citation: 2018 FCA 99

[ENGLISH TRANSLATION]

**CORAM: PELLETIER J.A.
GAUTHIER J.A.
BOIVIN J.A.**

BETWEEN:

LES PRODUCTIONS DU GRAND BAMBOU INC.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Heard at Montréal, Quebec, on May 28, 2018.

Judgment delivered from the Bench at Montréal, Quebec, on May 28, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on May 28, 2018.)

GAUTHIER J.A.

[1] Les Productions du Grand Bambou Inc. is appealing a decision by Justice Favreau of the Tax Court of Canada (Tax Court) (2017 TCC 161). The Tax Court dismissed the appellant's appeal from the Minister of National Revenue's decisions to the effect that workers François Blouin, Mathieu Breton, Xavier Berthiaume, Michel Bacon and Benoit Bellehumeur held insurable employment within the meaning of paragraph 6(g) of the *Employment Insurance Regulations*, SOR/96-332 (EIR), with the appellant for the period from January 1, 2014, to

June 18, 2015, and that worker Auguste Peterson also held such employment for the period from May 23 to August 31, 2014. Since this involves insurable employment, the appellant had to withhold source deductions for the purposes of employment insurance premiums, which it did not do.

[2] We are not persuaded that it is the correctness standard that must apply to the questions before us, as the appellant suggests. As to the questions of mixed fact and law, the appellant had to demonstrate that the Tax Court made a palpable and overriding error, which it did not succeed in doing.

[3] As in *OLTCPI Inc. v. Canada (National Revenue)*, 2010 FCA 74, and *Canada (Procureur général) v. Agence de Mannequins Folio Inc.* (1993), 164 N.R. 74 (FCA), [1993] F.C.J. No. 910, the appellant is not challenging the validity of paragraph 6(g) of the EIR. The case law from our Court is clear that, in such a case, the relationship between the appellant and the people who provide their services to its clients is irrelevant under paragraph 6(g) of the EIR. The appellant has not persuaded us that the Tax Court committed any reviewable error in finding that the appellant, in the particular facts of the case, acted as a placement agency and that the individuals involved in this case worked under the direction and control of its clients during the relevant period (paragraphs 72 and 73 of the decision).

[4] We note that the judge made it very clear that each case is a specific case (paragraph 61 of the decision), and it is clear that his finding on the questions before him was based on the evidence in the record (paragraphs 64 and 65 of the decision).

[5] The appeal will be dismissed with costs.

“Johanne Gauthier”

J.A.

Certified true translation
Marie-Luc Simoneau, revisor

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-271-17

STYLE OF CAUSE: LES PRODUCTIONS DU GRAND
BAMBOU INC. v. THE MINISTER
OF NATIONAL REVENUE

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 28, 2018

REASONS FOR JUDGMENT OF THE COURT BY: PELLETIER J.A.
GAUTHIER J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

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