

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130221

Docket: A-106-12

Citation: 2013 FCA 49

**CORAM: TRUDEL J.A.
STRATAS J.A.
WEBB J.A.**

BETWEEN:

MINISTER OF NATIONAL REVENUE

Appellant

and

LORDCO PARTS LTD.

Respondent

Heard at Ottawa, Ontario, on February 12, 2013.

Judgment delivered at Ottawa, Ontario, on February 21, 2013.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

**TRUDEL J.A.
WEBB J.A.**

Federal Court of Appeal



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REASONS FOR JUDGMENT

STRATAS J.A.

[1] The Minister appeals from the judgment, dated March 2, 2012, of the Federal Court (*per* Justice Hansen). The Federal Court cancelled an authorization previously obtained by the Minister under subsection 231.2(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp). The authorization required the respondent Lordco Parts Ltd. to produce information relating to the employees of its corporate customers who had participated in a promotional cruise organized by Lordco.

[2] The Federal Court cancelled the authorization because, among other things, the Minister failed to disclose alternative sources of the information it was seeking under the authorization. As well, the Minister had provided an inaccurate and misleading description of the circumstances justifying the authorization.

[3] This appeal was heard on the same day as the appeal in *Minister of National Revenue v. RBC Life Insurance Co. et al.*, file no. A-447-11.

[4] The Minister's submissions in this appeal mirror her submissions in *RBC Life Insurance Co.* For the reasons set out in *RBC Life Insurance Co.*, released concurrently with these reasons, I conclude that:

- The Minister had an obligation to make full and frank disclosure in the *ex parte* application under subsection 231.2(3) of the Act;
- In its review under subsection 231.2(6) of the Act, the Federal Court had the power to cancel the authorization it granted on the basis that full and frank disclosure in a number of respects had not been made; and
- The Federal Court's exercise of discretion to cancel the authorization in this case, based as it was on the evidence in the record before it, cannot be set aside on the basis of palpable and overriding error.

[5] A couple of additional observations specific to this appeal are in order.

[6] Key to the Federal Court's decision was the failure of the Minister to disclose in the *ex parte* application that there was an alternative source by which the information it desired could be obtained. As the Federal Court noted in its reasons, this Court has held that the existence of an alternative source is a material fact that should be disclosed in the *ex parte* application and "[a] judge must not be left in the dark on such an important point": *M.N.R. v. Derakhshani*, 2009 FCA 190 at paragraph 29.

[7] In conducting its review of the authorization under subsection 231.2(6), the Federal Court considered whether, despite the non-disclosure, it should nevertheless uphold it in the interests of verifying compliance with the Act. Considering the relevance of the non-disclosure to the court's discretion to issue the authorization, the reasons behind the disclosure requirement, the extent of the culpability associated with the non-disclosure, and the importance and significance of the matters not disclosed, the Federal Court exercised its discretion to cancel the authorization. The Minister has not persuaded me that there is any error in principle or palpable and overriding error vitiating the Federal Court's exercise of discretion.

[8] I would direct the Registry to deliver a copy of our reasons in *RBC Life Insurance Co.* to the parties to this appeal, concurrently with the release of these reasons.

[9] I would dismiss the appeal with costs.

"David Stratas"

J.A.

"I agree
Johanne Trudel J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-106-12

**APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE HANSEN
DATED MARCH 3, 2012, DOCKET NO. T-248-11**

STYLE OF CAUSE: Minister of National Revenue v.
Lordco Parts Ltd.

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: February 12, 2013

REASONS FOR JUDGMENT BY: Stratas J.A.

CONCURRED IN BY: Trudel and Webb JJ.A.

DATED: February 21, 2013

APPEARANCES:

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