

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200121

Docket: A-72-19

Citation: 2020 FCA 15

[ENGLISH TRANSLATION]

**CORAM: GAUTHIER J.A.
RENNIE J.A.
LOCKE J.A.**

BETWEEN:

9178-3472 QUÉBEC INC.

Appellant

and

**MINISTER OF NATIONAL REVENUE
MARTIN DEMERS
CLAUDE-RICHARD CARBONNEAU
CLAUDE LAROSE
GEORGES FLAHIFF
JACQUES LOUIS**

Respondents

Heard at Montreal, Quebec, on January 21, 2020.

Judgment delivered from the bench at Montreal, Quebec, on January 21, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montreal, Quebec, on January 21, 2020.)**

LOCKE J.A.

[1] This is an appeal from a decision of the Tax Court of Canada (Associate Chief Justice Lamarre, hereinafter the judge) that determined that the respondents Martin Demers,

Claude-Richard Carbonneau, Claude Larose, Georges Flahiff and Jacques Louis (collectively, the newspaper distributors), who were hired by the appellant to distribute the *24 HEURES* newspaper in subway stations in the Montreal area, were employees of the appellant and not self-employed persons.

[2] The standards of review that apply in this case are those set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235: the standard of review for questions of law is correctness. Absent an extricable legal error, questions of fact and questions of mixed fact and law are subject to the standard of palpable and overriding error. Extricable legal errors are subject to the same standard as other legal errors.

[3] The appellant submits that the judge made an extricable legal error in applying this Court's decision in *Le Livreur Plus Inc. v. Canada (Minister of National Revenue)*, 2004 FCA 68, [2004] F.C.J. No. 267 (*Livreur Plus*). Specifically, the appellant submits that the judge, even though she correctly described the applicable test at paragraphs 172 to 177 of her reasons, erred in applying it by not requiring unambiguous evidence contrary to the common intention of the parties.

[4] The appellant submits that the judge erred in applying the threshold of a mere balance of probabilities when there was a need for much more convincing evidence, that is, for establishing a near certainty.

[5] It should be noted that the judge did not indicate which degree of proof she required. She did not have to. The word “more” at paragraph 202 of the judge’s decision, cited by the appellant, is insufficient to indicate that she erred in this regard.

[6] The appellant submits that all of the factors considered by the Court, mainly control and integration, were neutral indicators that could not correspond to unambiguous evidence as outlined in paragraph 17 of *Livreur Plus*. We disagree.

[7] As the judge noted, she did not accept that the evidence established a clear common intention in all of the cases. We have not been persuaded that she made a palpable and overriding error in this regard.

[8] The judge wrote a 203-paragraph decision that describes the evidence in detail and explains her findings clearly. There is no error warranting our intervention.

[9] Lastly, in its memorandum, the appellant also argues that the judge erred in not accepting the respondents’ admissions of fact. We cannot accept this argument. The judge was not required to accept those admissions (*Hammill v. Canada*, 2005 FCA 252, [2005] F.C.J. No. 1197, at paragraph 31), especially in the presence of contradictory evidence.

[10] The appeal will be dismissed without costs.

“George R. Locke”
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-72-19
STYLE OF CAUSE:	9178-3472 QUÉBEC INC. v. MINISTER OF NATIONAL REVENUE, MARTIN DEMERS, CLAUDE-RICHARD CARBONNEAU, CLAUDE LAROSE, GEORGES FLAHIFF, JACQUES LOUIS
PLACE OF HEARING:	MONTREAL, QUEBEC
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REASONS FOR JUDGMENT OF THE COURT BY:	GAUTHIER J.A. RENNIE J.A. LOCKE J.A.
DELIVERED FROM THE BENCH BY:	LOCKE J.A.

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