

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200908

Docket: A-335-19

Citation: 2020 FCA 139

**CORAM: NADON J.A.
WOODS J.A.
RIVOALEN J.A.**

BETWEEN:

**GEORGESON SHAREHOLDER
COMMUNICATIONS CANADA INC.**

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by online video conference hosted by the registry on August 20, 2020.

Judgment delivered at Ottawa, Ontario, on September 8, 2020.

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

**NADON J.A.
RIVOALEN J.A.**

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REASONS FOR JUDGMENT

WOODS J.A.

[1] Before the Court is an appeal from an interlocutory order of the Tax Court (2019 TCC 148) with respect to a goods and services tax (GST) appeal under the *Excise Tax Act*, R.S.C. 1985, c. E-15.

[2] The background to this matter is not complex. Georgeson Shareholder Communications Canada Inc. instituted an appeal in the Tax Court from assessments that imposed GST on fees for services rendered by Georgeson. The fees were earned in the course of Georgeson's business of assisting in the recovery of unclaimed shareholder entitlements such as shares or dividends. In making the assessments, the Minister of National Revenue disagreed with Georgeson that the relevant supplies were exempt "financial services" as that term is defined in the Act.

[3] During pre-trial proceedings, Georgeson took the view that there was no serious controversy between the parties as a result of admissions made by the Crown. Accordingly, Georgeson sought to have the Tax Court issue a judgment in its favour without a trial.

[4] For this purpose, Georgeson made an application to the Tax Court for judgment based on the Crown's admissions pursuant to section 170.1 of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a. It provides:

170.1 A party may, at any stage of a proceeding, apply for judgment in respect of any matter

(a) upon any admission in the pleadings or other documents filed in the Court, or in the examination of another party, or

(b) in respect of which the only evidence consists of documents and such affidavits as are necessary to prove the execution or identity

170.1 Une partie peut, à tout stade d'une procédure, et ce, sans attendre qu'il soit statué sur tout autre point litigieux entre les parties, demander :

a) qu'il soit rendu jugement sur toute question, par suite d'un aveu fait dans les actes de procédure ou d'autres documents déposés à la Cour, ou fait au cours de l'interrogatoire d'une autre partie;

b) qu'il soit rendu jugement sur toute question à l'égard de laquelle la preuve n'a été faite qu'au moyen de documents et des déclarations sous serment qui sont nécessaires

of the documents,

pour prouver la signature ou
l'authenticité de ces documents.

without waiting for the determination
of any other question between the
parties.

[5] The Tax Court dismissed the application on the ground that there was a fairly arguable controversy between the parties. In this Court, Georgeson submits that the Tax Court erred in dismissing the application on this basis.

[6] As discussed below, I have concluded that the Tax Court made no reviewable error in dismissing Georgeson's application under section 170.1, regardless of the standard of review that is applied.

[7] The essence of the dispute between the parties is the identification of the relevant services provided by Georgeson for purposes of determining whether Georgeson supplied exempt financial services. Georgeson submits that the only relevant services are those made under its agreements with shareholders who paid the fees on which the GST was imposed. The Crown takes a broader view and submits that it is also relevant to consider services provided under related agreements between Georgeson and the corresponding corporations. Under these agreements, the corporations provided Georgeson with lists of shareholders who had unclaimed entitlements and Georgeson undertook to attempt to notify such shareholders of their entitlements. The Crown indicated that it wished to provide *viva voce* evidence concerning these agreements at trial.

[8] The Tax Court commented (at paragraph 95) that, to its knowledge, the courts have not yet determined a central issue in the case which is whether “the constituent elements (services) of a supply made under a contract between a supplier of a service and a recipient could be considered as part of a single supply made to another recipient.” Accordingly, the Court concluded that there was an argument to be made by the parties on this legal issue. The Court also concluded that as a result of this uncertainty it was not possible to identify the relevant facts in order to determine whether Georgeson provided a financial service.

[9] In my view, the Court did not err in declining to issue a judgment based on admissions. The Tax Court relied on jurisprudence from this Court concerning a provision similar to section 170.1 in section 341 of the former *Federal Court Rules*, SOR/71-68 (*R. v. Gary Bowl Ltd.*, [1974] 2 F.C. 146 (CA), 74 D.T.C. 6401). The Court concluded (at paragraph 8) that section 341 should only apply if there is nothing in controversy, either regarding the facts or a fairly arguable legal issue.

[10] Georgeson submits that the principle stated in *Gary Bowl Ltd.* should no longer be applied as a result of the more recent decision of the Supreme Court in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87. I disagree with this submission.

[11] For completeness, I would observe that neither party referred the Tax Court to the decision of that Court in *SLFI Group – Invesco Canada Ltd. v. The Queen*, 2017 TCC 78, [2017] G.S.T.C. 37. This decision is relevant because the Court had to consider the same legal issue that arises in this case (see paragraph 84 of *SLFI Group*). In light of my conclusion that the Tax

Court did not err in dismissing Georgeson's application, it is not necessary to consider *SLFI Group* further as the decision does not assist Georgeson in this appeal.

[12] I would dismiss the appeal with costs.

“Judith Woods”

J.A.

“I agree
M. Nadon J.A.”

“I agree
Marianne Rivoalen J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-335-19

STYLE OF CAUSE: GEORGESON SHAREHOLDER
COMMUNICATIONS CANADA
INC. v. HER MAJESTY THE
QUEEN

PLACE OF HEARING: HEARD BY ONLINE VIDEO
CONFERENCE HOSTED BY THE
REGISTRY ON AUGUST 20,
2020.

DATE OF HEARING: AUGUST 20, 2020

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: NADON J.A.
RIVOALEN J.A.

DATED: SEPTEMBER 8, 2020

APPEARANCES:

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