

Docket: 2000-4691(GST)G

BETWEEN:

ALAIN DÉZIEL,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeal heard on January 11, 2005, at Montréal, Quebec

Before: The Honourable Justice Pierre R. Dussault

Appearances:

Counsel for the Applicant: Jean Dury

Counsel for the Respondent: Michel Morel

---

ORDER

The Respondent's motion for the dismissal of the motion made by the Applicant, Alain Déziel, under paragraphs 172(2)(a) and (b) of the *Tax Court of Canada Rules (General Procedure)* seeking to suspend the operation and to have the judgment of Tardif J. rendered on December 6, 2002, set aside is allowed and the motion of Alain Déziel is dismissed, with costs in favour of the Respondent, is dismissed based on the attached Reasons for Order.

Signed at Ottawa, Canada, this 19th day of January 2005.

“P. R. Dussault”

---

Dussault J.

Translation certified true  
on this 27th day of July 2005.

Daniela Possamai, Translator

Citation: 2005TCC70  
Date: 20050119  
Docket: 2000-4691(GST)G

BETWEEN:

ALAIN DÉZIEL,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR ORDER**

#### **Dussault J.**

[1] On May 6, 7 and 8, 2002, Tardif J. of the Tax Court of Canada heard the appeal of Alain Déziel involving an assessment made under Part IX of the *Excise Tax Act* dated September 27, 2000, and bearing number 02304902.

[2] On December 6, 2002, Tardif J. rendered a judgment dismissing the appeal and allowing costs to the Respondent.

[3] This judgment was appealed before the Federal Court of Appeal (Docket A-715-02). This Court, consisting of Richard C.J. and Noël and Pelletier JJ., heard the appeal at a hearing held on March 18, 2004, and rendered its judgment the same day.

[4] The Reasons for Judgment, *per* Pelletier J., state in paragraph 5 that the appeal is “allowed in part but only to recognize the respondent’s admission that the sum of \$22,718.98 will be granted in input tax credits” and in paragraph 6 that “the respondent will be entitled to her costs.”

[5] On November 26, 2004, the Applicant Alain Déziel made a motion under paragraphs 172(2)(a) and (b) of the *Tax Court of Canada Rules (General Procedure)* seeking to suspend the operation of the judgment of Tardif J. rendered on December 6, 2002, and to have the judgment set aside. The principal ground alleged in support of the motion is that fraud was committed, “fraud based on facts that were discovered after judgment was made.”

[6] On December 10, 2004, the Respondent made a motion seeking to have the motion of Alain Déziel struck out and dismissed. The hearing held on January 11 only involved the Respondent’s motion and the admissibility of the motion of Alain Déziel.

[7] Following the submissions of the parties’ counsel, I am of the opinion that, at this stage, the Tax Court of Canada no longer has the jurisdiction to hear on the merits the motion of Alain Déziel. The judgment rendered by Tardif J., on December 6, 2002, is not a final and enforceable judgement. Only the judgment rendered by the Federal Court of Appeal on March 18, 2004, has those qualities. Based on the principle set out by the Federal Court of Appeal in *Étienne v. Canada et al.*, [1994] 164 N.R. 318, 76 F.T.R. 43 and followed by the Tax Court of Canada in *Schmidt v. The Queen*, 2003 DTC 938, [2003] 4 C.T.C. 2003, I believe that this is now a matter for the Federal Court of Appeal and that the Applicant Alain Déziel must refer the matter to that Court for any relief.

[8] As a result of the preceding, the Respondent’s motion for the dismissal of the motion made by the Applicant, Alain Déziel, under paragraphs 172(2)(a) and (b) of the *Tax Court of Canada Rules (General Procedure)* seeking to suspend the operation and to have the judgment of Tardif J. rendered on December 6, 2002, set aside is allowed and the motion of Alain Déziel is dismissed with costs in favour of the Respondent.

Signed at Ottawa, Canada this 19th day of January 2005.

“P. R. Dussault”

---

Dussault J.

Translation certified true  
on this 27th day of July 2005.

Daniela Possamai, Translator

CITATION: 2005TCC70

COURT FILE NUMBER: 2000-4691(IT)G

STYLE OF CAUSE: Alain Déziel and Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 11, 2005

REASONS FOR ORDER BY: The Honourable Justice Pierre Dussault

DATE OF ORDER: January 19, 2005

APPEARANCES:

For the Appellant: Jean Dury

For the Respondent: Michel Morel

COUNSEL OF RECORD:

For the Appellant:

Name: Jean Dury  
Firm: Rock, Vleminckx, Dury, Lanctôt  
City: Montréal, Quebec

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada