

Docket: 2004-325(GST)I

BETWEEN:

ROMAN A. SZREMSKI,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 18, 2004 at Calgary, Alberta

By: The Honourable Justice R.D. Bell

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Marta E. Burns

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act*, notice of which is dated June 13, 2003 and bears number 10CT0200752, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada this 6th day of December, 2004.

"R.D. Bell"

Bell J.

Citation: 2004TCC776
Date: 20041206
Docket: 2004-325(GST)I

BETWEEN:

ROMAN A. SZREMSKI,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bell, J.

[1] The Appellant, a painter, worked for Paulo's Painting, owned by a gentleman whose name was Paulo. The Appellant came to Canada from Poland in 1996. He said that he had trouble learning English and that he knew nothing about the Goods and Services Tax ("GST"). For the period November 1, 1999 to December 31, 1999 he invoiced Paulo in the sum of \$14,388.10 for painting services he had supplied to Paulo. For the January 1 to March 31, 2000 period he invoiced Paulo for supplies provided in the amount of \$20,568.50. He had, prior to the earlier date, ceased to be a small supplier and was obliged to collect GST from Paulo and to remit same. He failed so to do.

[2] Consequently, he was assessed for GST and interest and penalties. After a number of enquiries, he attempted to right this problem by making a payment of the GST to Paulo who could then pay the tax, claim an input tax credit and return the amount to the Appellant. Paulo refused to have anything to do with this, allegedly on the advice of his accountant. In any event, it appears that the application for an input tax credit would have been made too late.

[3] Section 224 of the *Excise Tax Act*, Part IX, (GST), reads as follows:

Where a supplier has made a taxable supply to a recipient, is required under this Part to collect tax from the recipient in respect of the supply, has complied with subsection 223(1) in respect of

the supply and has accounted for or remitted the tax payable by the recipient in respect to the supply to the Receiver General but has not collected the tax from the recipient, the supplier may bring an action in a court of competent jurisdiction to recover the tax from the recipient as though it was a debt due by the recipient to the supplier.

This remedy is not available to the Appellant. He advised the Court that the institution of any action by him would precipitate his being fired by Paulo.

[4] The unfortunate circumstances giving rise to this obligation are not the result of any avoidance manoeuvre on the part of the Appellant. An apparent remedy under the *Act* is not available to him. There is no recourse in the Court's jurisdiction and, accordingly, the appeal must be dismissed.

[5] Section 281.1 of the *Act* provides that the Minister may waive or cancel interest and penalties assessed. This court cannot order the Minister so to do but in these circumstances I highly recommend that the interest and penalties be so waived.

Signed at Ottawa, Canada this 6th day of December, 2004.

"R.D. Bell"

Bell, J.

CITATION: 2004TCC776
COURT FILE NO.: 2004-325(GST)I
STYLE OF CAUSE: Roman A. Szremski v. The Queen
PLACE OF HEARING: Calgary, Alberta
DATE OF HEARING: November 18, 2004
REASONS FOR JUDGMENT BY: The Honourable Justice R.D. Bell
DATE OF JUDGMENT: December 6, 2004

APPEARANCES:

Counsel for the Appellant:

Counsel for the Respondent: Marta E. Burns

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada