

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160314

Docket: A-394-14

Citation: 2016 FCA 83

**CORAM: RYER J.A.
NEAR J.A.
BOIVIN J.A.**

BETWEEN:

SIRUS FAMILAMIRI

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on March 14, 2016.
Judgment delivered from the Bench at Vancouver, British Columbia, on March 14, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on March 14, 2016).

RYER J.A.

[1] This is an appeal by Mr. Sirus Familamiri (the "Taxpayer") from a decision of Justice Kathleen Lyons of the Tax Court of Canada (the "Judge"), dated May 1, 2014, in Docket Number 2013-3866(GST)I, dismissing an appeal from a reassessment, dated June 6, 2012 (the "Reassessment"), that was issued by the Minister of National Revenue (the "Minister") pursuant

to the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the "Act") with respect to the Taxpayer's reporting period between January 1, 2005 and December 31, 2010 (the "Period").

[2] The Reassessment imposed net goods and services tax ("GST") and harmonized sales tax ("HST"), in the amount of \$22,950, and certain penalties on the Taxpayer on the basis that he had failed to collect GST and HST on the amounts that were paid to him by 494743 B.C. Ltd. (the "Company") as fees for management services that he provided to the Company during the Period.

[3] In paragraph 22 of his memorandum of fact and law, the Taxpayer asserts, as the sole issue in this appeal, that he was not required to charge or be paid GST or HST on the fees that he received from the Company on the basis of an agreement to that effect between the Company, the Canada Revenue Agency (the "CRA") and himself. This assertion is without merit.

[4] The alleged agreement is a one-page document, dated January 15, 2002, which was signed only by Ms. Satpal Kaur, the President of the Company. It consists of a single sentence:

This is to confirm that we (494743 B.C. Ltd.) have agreed with (Sirus Familamiri) that Sirus Familamiri, P. Eng. shall not charge or be paid GST for the year ended 2002 on his earnings in a capacity of General Manager.

[5] The services provided by the Taxpayer to the Company constituted a taxable supply, within the meaning of subsection 123(1) of the Act. Subsection 165(1) of the Act clearly obligated the Company to pay GST/HST on that supply. Subsection 221(1) of the Act clearly obligated the Taxpayer to collect GST/HST from the Company in respect of that supply.

Assuming that the alleged agreement was valid as between the Taxpayer and the Company, it could not override subsections 165(1) and 221(1) of the Act and negate the obligations of the Company and the Taxpayer under those provisions.

[6] Whether or not the CRA could validly agree to exempt the Company and the Taxpayer from their obligations under the Act - a dubious proposition at best - the record contains no cogent evidence to support the Taxpayer's assertion that the CRA was in fact a party to the alleged agreement. Indeed, the CRA is not mentioned in the single sentence that is quoted above.

[7] In any event, the alleged agreement, by its own terms, contemplates only the year ended 2002 and does not extend to any portion of the Period.

[8] The Taxpayer asserts that he did not intend to avoid paying taxes under the Act, noting that if he had collected and remitted GST/HST on the management fees, the Company would have been permitted to claim an input tax credit, pursuant to section 169 of the Act, thereby recovering any tax that it was required to pay pursuant to subsection 165(1) of the Act. This assertion has no bearing upon the validity of the Reassessment. The possibility that the Company may have been able to claim an input tax credit for the GST/HST that the Taxpayer was obliged to collect and remit has no impact upon the Taxpayer's statutory collection and remission obligations in respect of such taxes.

[9] Whether or not the CRA actually informed the Taxpayer that he was obliged to collect and remit GST/HST on the management service fees that he received from the Company is

irrelevant. The provisions of the Act apply to the Taxpayer regardless of his awareness or comprehension of them.

[10] While not raised in his notice of appeal or memorandum of fact and law, the Taxpayer asserts that the Judge erred in not allowing certain input tax credits that he wished to claim. The Judge reached that conclusion on the basis that the Taxpayer presented no evidence to support his claim. The Taxpayer now agrees that he did not present any such evidence, but asserts that this was because his records were lost or misplaced by his accountant. In our view, the Taxpayer's acknowledgement that he did not provide any such evidence to the Tax Court of Canada is sufficient for us to conclude that the Judge made no error when she decided that the Taxpayer was not entitled the input tax credits that he claimed.

[11] The Taxpayer also asserts that the Judge erred in rejecting a binder of documents that he wished to enter into evidence. This assertion has no merit in light of the transcript of the hearing in which the Judge stated that the Taxpayer would be permitted to introduce any of the documents in the binder at the appropriate point or points in the presentation of his case.

[12] While the Taxpayer makes assertions of bias on the part of the Judge, these assertions have not been supported by any cogent evidence and are groundless.

[13] For completeness, we note that subsection 156(2) of the Act can, in certain circumstances, operate to eliminate GST/HST collection and remission obligations on

management fees. However, that provision is inapplicable to individuals and therefore did not, and could not, apply to the Taxpayer at any time during the Period.

[14] For these reasons, we have not been persuaded that the Judge committed any error in upholding the Reassessment and dismissing the Taxpayer's appeal. Accordingly, this appeal will be dismissed with all inclusive costs in the amount of \$1,000.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-394-14

**(APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE
KATHLEEN LYONS OF THE TAX COURT OF CANADA, DATED JULY 2, 2014,
DOCKET NO. 2013-3866(GST)I)**

STYLE OF CAUSE: SIRUS FAMILAMIRI v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: MARCH 14, 2016

REASONS FOR JUDGMENT OF THE COURT BY: RYER J.A.
NEAR J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

Sirus Familamiri ON HIS OWN BEHALF

Perry Derksen FOR THE RESPONDENT
Zachary Froese

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario