

Date: 20061026

Docket: A-515-05

Citation: 2006 FCA 351

**CORAM: NOËL J.A.
EVANS J.A.
MALONE J.A.**

BETWEEN:

N.A. JOHNSON LTD

Appellant

and

HER MAJESTY THE QUEEN

Respondent

A-516-05

BETWEEN:

MANUFAX HOLDINGS INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on October 26, 2006.

Judgment delivered from the Bench at Vancouver, British Columbia, on October 26, 2006.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia on October 26, 2006)

NOËL J.A.

[1] These are appeals from two judgments delivered by Rip J. of the Tax Court of Canada (as he then was) (2005 TCC 645) upholding penalties assessed against each appellant for failure to remit on time amounts withheld pursuant to subsection 153(1) of the *Income Tax Act*. The matter before the Tax Court was heard on common evidence and the appeals therefrom were consolidated by order of this Court dated January 12, 2006.

[2] The appellants who are represented by their president Norman A. Johnson take issue with all the findings made by the Tax Court Judge. In particular, they take the position that it was not established that they are “prescribed persons”; that the period contemplated by paragraph 108(1.1)(b) of the *Income Tax Regulations* (the “Regulations”) does not end on May the 3rd; and that the “average monthly withholding amounts” provided for in Regulation 108(1.2)(b) were miscalculated. The appellants further challenge the Tax Court Judge’s finding that the remittances were not received by the Canada Customs and Revenue Agency (the “CCRA”) until May 7, 2004.

[3] The first three issues are canvassed fully in the decision under appeal, and we cannot detect any error in the conclusion reached by the Tax Court Judge on these points. With respect to the date of receipt of the remittances, no evidence was adduced by the appellants with the result that it was open to the Tax Court Judge to accept the affidavit and supporting evidence tendered by the CCRA indicating that the amounts were received on May 7, 2004.

[4] The real question which the appellants appear to be pursuing has more to do with fairness than anything else. They argue that in this case they were induced to remit the withheld amounts as they did by the window envelope and addressed remittance forms provided by the CCRA.

[5] However, Rip J. did not accept the submission that Mr. Johnson, as the president and controlling shareholder of the appellants, was in fact misled. He pointed out that Mr. Johnson was aware that financial institutions could be used for making remittances, and that other corporations that he owned did make remittances that way (Appeal Book Vol. 2, Transcript p. 49, 63). According to the Tax Court Judge, the appellants with proper diligence could have avoided the mistake which they made (Reasons, para. 21).

[6] We see no reason to interfere with this conclusion. The appeal will accordingly be dismissed with costs. In conformity with the order consolidating the two appeals, these reasons and the accompanying judgment will be filed in Docket A-515-06 and a copy thereof will be filed in Docket A-516-05.

“Marc Noel”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-515-05

STYLE OF CAUSE: N. A. Johnson Ltd. v.
Attorney General of Canada

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 26, 2006

REASONS FOR JUDGMENT OF THE COURT: Noël, J.A.
Evans, J.A.
Malone, J.A.

DELIVERY FROM THE BENCH BY: Noël, J.A.

APPEARANCES:

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David Everett
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SOLICITORS OF RECORD:

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