

Federal Court
of Appeal



Canada

Cour d'appel
fédérale

Date: 20090908

Docket: A-241-09

Citation: 2009 FCA 257

**CORAM: NOËL J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

**FIDUCIE DAUPHIN, 9125-9622 QUÉBEC INC., CHANTAL FRÉGAULT, STÉPHANE
DESCOTEAUX, SOPHIE LEBEL, NORMAND DESCOTEAUX**

Applicants

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 8, 2009.

REASONS FOR ORDER BY:

TRUDEL J.A.

CONCURRED IN BY:

**NOËL J.A.
PELLETIER J.A.**

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REASONS FOR ORDER

TRUDEL J.A.

[1] The Federal Court dismissed the applicants' applications by which they sought, among other things, to set aside the *ex-parte* collection order made against them under subsections 225.2(2) and (3) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (*ITA*).

[2] The applicants filed an application for judicial review before this Court to reverse the judgment of the Federal Court (2009 FC 346).

[3] The respondent requests that the application be struck out and dismissed. The applicants did not file a record in reply and are out of time to do so.

[4] It is clear that the Federal Court made its decision pursuant to subsections 225.2(8) and (11) of the *ITA*, which provide as follows:

(8) Where a judge of a court has granted an authorization under this section in respect of a taxpayer, the taxpayer may, on 6 clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

(11) On an application under subsection 225.2(8), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make such other order as the judge considers appropriate.

[5] Moreover, under subsection 225.2(13) of the *ITA*, the review order made in accordance with the above subsections is not subject to appeal:

(13) No appeal lies from an order of a judge made pursuant to subsection 225.2(11).

[6] In applying for judicial review of a decision of the Federal Court, the applicants are trying to do indirectly what they cannot do directly.

[7] Subsection 225.2(13) would be of no effect if it could be circumvented by the mere choice of another procedural vehicle, provided that this other proceeding is even available to the applicants. However, for the purposes of the application at issue, it is not necessary to discuss the merits of the applicants' approach any further.

[8] Accordingly, I would dismiss the applicants' application for judicial review with costs.

“Johanne Trudel”

J.A.

“I agree.
Marc Noël J.A.”

“I agree.
J.D. Denis Pelletier J.A.”

Certified true translation
Sarah Burns

Federal Court
of Appeal



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FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:

A-241-09

STYLE OF CAUSE:

Fiducie Dauphin et al. v. Her Majesty
the Queen

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

TRUDEL J.A.

CONCURRED IN BY:

NOËL J.A.
PELLETIER J.A.

DATED:

20090908

WRITTEN REPRESENTATIONS BY:

Sébastien Sénéchal

FOR THE APPLICANTS

Martin Lamoureux

FOR THE RESPONDENT

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