Federal Court of Appeal | Cour d'appel fédérale

Date: 20100223

Docket: A-109-09

Citation: 2010 FCA 58

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

BETWEEN:

MANSHIP HOLDINGS LTD.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Fredericton, New Brunswick, on February 22, 2010.

Judgment delivered at Fredericton, New Brunswick, on February 23, 2010.

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: PELLETIER J.A.
TRUDEL J.A.

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REASONS FOR JUDGMENT

NOËL J.A.

[1] I can see no error in the Tax Court judge's conclusion that the appellant was providing a single supply of services to its customers who paid for a massage and that it was thus obliged to collect and remit HST on the entire amount received from its customers.

[2] The fact that the masseuses were independent contractors rather than employees does not preclude a finding that they performed their services on behalf of the appellant. The question in this regard is whether the masseuses, as self-employed persons, supplied their services in their own

name or as agents of the appellant? If the services were provided as agents, the appellant is the sole provider of these services and is responsible for the collection and remittance of the HST on the full amount paid by the customers.

[3] The relevant facts are set out by the Tax Court judge in the course of his reasons. The following are worth highlighting.

[4] The appellant operates massage parlours at different locations in New Brunswick and Nova Scotia offering massage services performed by on site masseuses (reasons, paras. 2 and 11). The rates for the massage were set by the appellant and were inclusive of HST: $70.00 for an half hour; $120.00 for an hour and $150.00 for a “Turkish bath”. The appellant would keep half the rate charged and the masseuses would get the other half (reasons, para. 5). The masseuses were prohibited from charging more, although they could agree to reduce their half share (reasons, paras. 15 and 21).

[5] Once a customer had chosen the service to be provided, payment was made in cash and the money was handed by the masseuses over to the on site manager. In 2002 time cards were introduced. The appellant would collect its flat rate on the basis of those time cards (reasons, para. 15). The appellant calculated the HST on the total rate charged for the massage and paid it out of its half of the fees collected (reasons, para. 5).

[6] This monetary arrangement between the appellant and the masseuses supports the conclusion that the masseuses, when providing their services within the appellant's premises, were acting for the appellant rather than in their own name. Significantly, they had no say in the determination of the rate set by the appellant for the services which they performed as self-employed persons and were not at liberty to charge more than the set rate. The appellant, as the person responsible for the payment of the HST, had to be aware of the amounts actually paid for the services. These are clear indications that the masseuses were not acting in their own name.

[7] Equally significant is the Tax Court judge's finding that the parlours were single purpose facilities (reasons, para. 35):

> ... customers would not come to the appellant were it not for the massage services being offered. From a business standpoint, the appellant supplies a massage parlour service, one element of which is to provide the premises.

It follows that from a customer's perspective, the contractual relationship was with the appellant and not the masseuses. This is consistent with the view that the masseuses were not acting in their own name but for the appellant.

[8] It is also worth emphasizing that for HST purposes, the appellant and the masseuses were acting on the basis that the masseuses were engaged pursuant to a contract of services, a relationship from which agency naturally flows. The fact that the masseuses were found to be self-employed alters the capacity in which they rendered their services, but it does not alter the fact that these services were rendered in the course of the appellant's business.

[9] Finally, the case of *Spearmint Rhino Ventures (UK) Limited v. The Commissioners for H.M. Revenue and Customs*, [2007] EWHC 613 (Ch) is of no assistance for the appellant since it deals with a different factual situation. In this respect, I need only point out that the dancers in that case did not operate in a single purpose facility.

[10] In my view, the Tax Court Judge correctly held that the appellant was providing a single supply of services to its customers and as such was responsible for the collection and remittance of the HST on the entire amount received from the customers.

[11] I would dismiss the appeal with costs.

"Marc Noël"
J.A.

“I agree
J.D. Denis Pelletier”

“I agree
Johanne Trudel”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-109-09

(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE ANGERS OF TAX COURT OF CANADA DATED FEBRUARY 3, 2009, FILE NO. 2006-3027(GST)G.)

STYLE OF CAUSE:	MANSHIP HOLDINGS LTD. v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Fredericton, New Brunswick
DATE OF HEARING:	February 22, 2010
REASONS FOR JUDGMENT BY:	Noël J.A.
CONCURRED IN BY:	Pelletier J.A. Trudel J.A.
DATED:	February 23, 2010

APPEARANCES:

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