

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140331

Docket: A-240-13

Citation: 2014 FCA 86

**CORAM: PELLETIER J.A.
GAUTHIER J.A.
NEAR J.A.**

BETWEEN:

PRÉVOST CAR INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on March 31, 2014.

Judgment delivered from the Bench at Toronto, Ontario, on March 31, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 31, 2014).

GAUTHIER J.A.

[1] Prévost Car Inc. (Prévost) appeals from the order of D'Arcy J. of the Tax Court of Canada (the judge) declaring that the parties should bear their own costs following the judgment issued in accordance with the parties' consent to partial judgment.

[2] Cost awards are highly discretionary and this Court can only interfere if the judge considered irrelevant facts, failed to consider relevant factors or reached a conclusion that is plainly wrong.

[3] Prévost submits that the judge made three reversible errors and that, as such, this Court should grant a lump sum cost award or remit the matter back for reconsideration.

[4] First, Prévost argues that the judge failed to consider its success in the proceeding or misinterpreted the meaning of “result of the proceeding” in subsection 147(3) of the *Tax Court of Canada Rules (General Procedure)*, SOR/98-688a (the *Rules*).

[5] Second, Prévost contends that the judge erred in considering the respondent’s concession as an offer to settle. In Prévost’s view, the respondent’s complete concession cannot be characterized as an offer to settle as it is not a compromise.

[6] Third, Prévost says that the judge’s conclusion conflicts with recent Tax Court of Canada jurisprudence and is therefore unreasonable. It also points to the potential disincentive to resolve disputes early and to the duty of the respondent’s counsel to assist the Court in determining the correctness of an assessment rather than doggedly arguing in favour of the minister.

[7] In his reasons, the judge properly identified the relevant principles and the factors to be considered in exercising his discretionary power over costs. He then went on to consider the relevant factors in subsection 147(3) of the *Rules* and applied them to the facts before him.

[8] We cannot agree with Prévost's interpretation of paragraph 12 of the judge's reasons. In our view, the judge did consider the result of the proceeding and we understand him to say that this was the most important factor in favour of Prévost. Properly construed, his reasons indicate that he found that this factor had to be balanced with others which favoured the respondent such as the fact that by making its offer at an early enough stage of the proceeding the respondent saved Prévost the costs of preparing and participating in a trial.

[9] We note that contrary to Prévost's argument the judge considered that the respondent had acted in an efficient and reasonable way throughout. On the basis of the record before him, we cannot agree that the judge was clearly wrong in qualifying the concession in this case as an offer to settle.

[10] Despite counsel's able arguments we have not been persuaded that his ultimate conclusion is clearly wrong.

[11] In the circumstances, the appeal will be dismissed with costs.

"Johanne Gauthier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE D'ARCY OF THE
TAX COURT OF CANADA, DATED JUNE 26, 2013, DOCKET NO. 2011-2070(IT)G**

DOCKET: A-240-13

STYLE OF CAUSE: PRÉVOST CAR INC. v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 31, 2014

REASONS FOR JUDGMENT OF THE COURT BY: PELLETIER J.A.
GAUTHIER J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY:
GAUTHIER J.A.

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