

Date: 20060328

Docket: A-158-05

Citation: 2006 FCA 128

CORAM: NOËL J.A.

SHARLOW J.A.

PELLETIER J.A.

BETWEEN:

BAYIT LEPLETOT

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Ottawa, Ontario, on March 28, 2006.

Judgment delivered from the Bench at Ottawa, Ontario, on March 28, 2006.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on March 28, 2006)

PELLETIER J.A.

[1] The issue in this appeal is whether the appellant is carrying on its own charitable works. The charitable works which the appellant claims to be carrying on are the operation of three institutions for orphans in Israel.

[2] It is worth noting that the three institutions are being operated by an Israeli organization of the same name which has done so since 1947. The appellant was incorporated in 1980.

[3] The appellant has no staff in Israel. It says that it is carrying on the charitable works through its agent Rabbi Stern. The record shows that Rabbi Stern requests funds from the appellant after having satisfied himself that the request is "valid and within the guidelines and framework" of the appellant. Once the funds are approved, they are forwarded to Rabbi Stern who disburses them.

[4] Rabbi Stern is part of the "Directorate in residence" of the Israeli organization. Presumably, he exercises some control over the operations of the Israeli organization, but there is no evidence to what extent. More importantly, there is no evidence to show that Rabbi Stern exercised any control over the charitable works in his capacity as the appellant's agent.

[5] It is open for the appellant to carry on its charitable works through an agent but it must be shown that the agent is actually carrying on the charitable works. It is not sufficient to show that the agent is part of another charitable organization which carries on a charitable program. The question which remains in such a case, as it does here, is who is carrying on the charitable works. It was incumbent upon the appellant to show that they were being carried on its behalf. On the record before us it was open to the Minister to conclude that it had failed to do so.

[6] The appellant argues that the Minister is wrong in law to require proof that the activities of the agent are subject to the appellant's control. The Minister's concern with respect to control of the agent's activities is not directed to proof of the agency relationship but rather to the issue of whether the charitable works are the appellant's charitable works or someone else's.

[7] Finally, the appellant also argued in the alternative that Rabbi Stern had sub-delegated his agency functions to the Israeli organization. We cannot accept that argument as it lacks a factual basis.

[8] For those reasons, we would dismiss the appeal with costs.

"J.D. Denis Pelletier"

J.A.

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-158-05

(APPEAL FROM A JUDGMENT OR ORDER OF THE (See comment in left margin) DATED (DATE), DOCKET NO. (DOCKET NUMBER)) if applicable

STYLE OF CAUSE: Bayit Lepletot and

Minister of National Revenue

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 28, 2006

REASONS FOR JUDGMENT OF THE COURT BY: NOËL, SHARLOW, PELLETIER J.J.A.

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

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