

Agence du Revenu du Québec (formerly the Deputy Minister of Revenue of Quebec) (appellant)
v. Services Environnementaux AES inc. and Centre Technologique AES inc. (respondents) and
Attorney General of Canada (intervener)

Agence du Revenu du Québec (appellant) v. Jean Riopel, Christiane Archambault and Entreprise
J.P.F. Riopel inc. (respondents) and Attorney General of Canada (intervener)
(34235; 34393; 2013 SCC 65; 2013 CSC 65)

Indexed As: Agence du Revenu du Quebec v. Services Environnementaux AES inc. et al.

Supreme Court of Canada
McLachlin, C.J.C., LeBel, Fish, Abella, Rothstein, Cromwell and Karakatsanis, JJ.
November 28, 2013.

Summary:

Shareholders of corporations engaged in various transactions to reorganize the corporations and transfer interests in them. The intention was that their agreements would have no tax consequences. As a result of errors made by the shareholders' tax advisors, the Agence du Revenu du Québec (ARQ) and the Canada Revenue Agency issued notices of assessment in which they claimed tax amounts these taxpayers had not expected to pay. After the notices of assessment were issued, those involved agreed to correct the documents relating to their agreements in order to attain the intended tax neutrality. They applied for rectification of their original documents, which, they argued, did not reflect their true agreements.

The Quebec Superior Court delivered contradictory judgments in the two cases, granting one of the applications for rectification (see 2009 QCCS 790) but dismissing the other (see 2010 QCCS 1576). Appeals were filed.

The Quebec Court of Appeal granted both applications for rectification to give effect to the true intentions of the parties to the agreements (see 2011 QCCA 394 and 2011 QCCA 954). ARQ appealed.

The Supreme Court of Canada dismissed the appeals.

Quebec Obligations - Topic 501

Formation of contract - General principles - General - The Supreme Court of Canada reviewed the basic concepts of the civil law concept of contracts - See paragraphs 27 to 35.

Quebec Obligations - Topic 2003

Rectification of contracts - General principles - Jurisdiction - Shareholders of corporations engaged in various transactions to reorganize the corporations and transfer interests in them - The intention was that their agreements would have no tax consequences - As a result of errors made by the shareholders' tax advisors, the Agence du Revenu du Québec (ARQ) and the Canada Revenue Agency (CRA) issued notices of assessment in which they claimed tax amounts these taxpayers had not expected to pay -

After the notices of assessment were issued, those involved agreed to correct the documents relating to their agreements in order to attain the intended tax neutrality - They applied for rectification of their original documents, which, they argued, did not reflect their true agreements - The Quebec Superior Court delivered contradictory judgments in the two cases, granting one of the applications for rectification but dismissing the other - The Quebec Court of Appeal granted both applications for rectification to give effect to the true intentions of the parties to the agreements - The Court of Appeal saw no impediment to the respondents' motion in Quebec's rules of civil procedure - The courts had the power to correct acts in order to give effect to the parties' true common intention, and there was no need to import the common law doctrine of rectification into Quebec's law of obligations - Article 1425 of the Civil Code of Québec authorized the correction of a discrepancy between the common intention of the parties and the intention declared in the acts, provided that the application was legitimate and that the correction did not affect the rights of third parties - ARQ appealed - The Supreme Court of Canada dismissed the appeals - The true agreements of wills were as described by the parties - The parties acknowledged the errors made in the writings giving effect to their agreements and agreed to correct them - The correction of the acts resulted from the wills of the parties - There was no need to rely on a supposed power to correct based on the implicit powers of the Superior Court - It was open to the courts to intervene to find that the amendments made by the parties to the acts at issue were legitimate and necessary - Their intervention was justified by the substantive law and was not precluded by Quebec's rules of civil procedure - Since there was a real dispute about the nature of the parties' common intention, the issue could be brought before the Superior Court, and a motion for rectification was the normal way to do so - See paragraphs 36 to 54.

Cases Noticed:

Juliar v. Canada (Attorney General) et al. (2000), 136 O.A.C. 301; 50 O.R.(3d) 728 (C.A.), *refd to.* [para. 23].
Bank of Nova Scotia v. Angelica-Whitewear Ltd. and Angelica Corp., [1987] 1 S.C.R. 59; 73 N.R. 158, *refd to.* [para. 28].
Banque de Montréal v. Européenne de Condiments S.A., [1989] R.J.Q. 246 (C.A.), *refd to.* [para. 28].
Addison & Leyen Ltd et al. v. Canada Customs and Revenue Agency, [2007] 2 S.C.R. 793; 365 N.R. 62; 2007 SCC 33, *refd to.* [para. 43].
Sobeys Québec inc. v. Coopérative des consommateurs de Sainte-Foy, [2006] R.J.Q. 100; 2005 QCCA 1172, *refd to.* [para. 49].
KRG Insurance Brokers (Western) Inc. v. Shafron et al., [2009] 1 S.C.R. 157; 383 N.R. 217; 265 B.C.A.C. 1; 446 W.A.C. 1; 2009 SCC 6, *refd to.* [para. 55].
Sylvan Lake Golf & Tennis Club Ltd. v. Performance Industries Ltd. and O'Connor (No. 2), [2002] 1 S.C.R. 678; 283 N.R. 233; 299 A.R. 201; 266 W.A.C. 201; 2002 SCC 19, *refd to.* [para. 55].

Authors and Works Noticed:

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Campbell, Colin, *Administration of Income Tax 2013* (2013), pp. 564 to 570 [para. 30].

Cresp, Marie, *Le temps juridique en droit privé, essai d'une théorie générale* (2013), pp. 116 to 126 [para. 50].

Deslauriers, Jacques, *Vente louage, contrat d'entreprise ou de service* (2nd Ed. 2013), para. 67 [para. 30].

Gendron, François, *L'interprétation des contrats* (2002), p. 31 [para. 49].

Ghestin, Jacques, *La notion de contrat* (1990), 12 *Droits* 7, p. 19 [para. 30].

Krishna, Vern, *The Fundamentals of Canadian Income Tax* (9th Ed. 2006), pp. 1206, 1207 [para. 39].

Lafond, Pierre-Claude, *JurisClasseur - Collection droit civil - Obligations et responsabilité civile* (2008) (2013 Looseleaf Update, Release 1), p. 26 [para. 30].

L'Heureux, Nicole, Fortin, Edith, and Lacoursière, Marc, *Droit bancaire* (4th Ed. 2004), pp. 290 to 292 [para. 28].

Lluelles, Didier, and Moore, Benot, *Droit des obligations* (2nd Ed. 2012), para. 53 [para. 30].

Marquis, Paul-Yvan, *L'inscription de faux et la correction des actes notariés* (1990), 92 *R. du N.* 407, p. 426 [para. 52].

Moore, Benot, *Mélanges Jean-Louis Baudouin, Flexible Contrat* (2012), pp. 569, 574 [para. 30].

Pineau, Jean, Burman, Danielle, and Gaudet, Serge, *Théorie des obligations* (4th Ed. 2001), p. 51, § 20 [para. 30].

Swan, Angela, and Adamski, Jakub, *Canadian Contract Law* (3rd Ed. 2012), pp. 768 to 770 [para. 55].

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These appeals were heard on November 8, 2013, by McLachlin, C.J.C., LeBel, Fish, Abella, Rothstein, Cromwell and Karakatsanis, JJ., of the Supreme Court of Canada. The following judgment of the Supreme Court was delivered in both official languages by LeBel, J., on November 28, 2013.

Appeals dismissed.

Editor: Anick Ouellette-Levesque