

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160608

Docket: A-406-14

Citation: 2016 FCA 173

**CORAM: TRUDEL J.A.
STRATAS J.A.
BOIVIN J.A.**

BETWEEN:

HAROLD PEACH

Appellant

and

THE QUEEN

Respondent

Heard at St. John's, Newfoundland and Labrador, on June 8, 2016.
Judgment delivered from the Bench at St. John's, Newfoundland and Labrador, on June 8, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at St. John's, Newfoundland and Labrador, on June 8, 2016).

TRUDEL J.A.

[1] Mr. Harold Peach appeals from a Judgment of the Tax Court of Canada affirming the Minister of National Revenue's reassessments of his 2009 and 2010 taxation years, denying losses from business and from rental property. Reasons were delivered orally via a conference call on September 9, 2014 and filed on record on November 14, 2014 (Bocock, T.C.J. (the Judge), Docket number 2013-4435(IT)I).

[2] The issue in this appeal is essentially whether the Judge erred in his conclusions that the losses were properly disallowed; it can be subdivided into two questions, first in respect of the rental losses and second in respect of the business losses.

[3] We agree with the respondent that the Judge did not err in concluding that the appellant did not have a source of income and therefore could not claim losses in relation to the rental properties. He stated the correct legal test, set out by the Supreme Court in *Stewart v. the Queen*, 2002 SCC 46, [2002] 2 S.C.R. 645 [*Stewart*]. The appellant has not persuaded us that the Judge made palpable and overriding errors of fact that undermine his conclusion on this issue. In the overall context of the evidence, the Judge could conclude as he did.

[4] With respect to the appellant's business losses, however, we are all of the opinion that the appeal must succeed. We are all of the view that on the section 67 issue, the oral reasons suffer from lack of structure, lack of clarity and confusion. At the hearing of this appeal, both parties agreed that in the Court below, it was taken for granted that there was a source of income and all expenses had been incurred to earn business income.

[5] Under section 67, the Judge, without saying why, considered globally whether the expenses were reasonable and accepted that, as set out in the Minister's assessment, some of the expenses should be allowed to the extent they matched the appellant's commission income. He did not have regard to the particular expenses and the appellant's explanation for them.

[6] *Stewart* makes it clear (at paragraph 57) that under section 67, unreasonable expenses can be eliminated or reduced to make them reasonable.

[7] We are not satisfied that the Judge asked himself that question, namely whether the actual expenses in this case were unreasonable and what reduction in the appellant's claimed expenses might be necessary in order to be reasonable.

[8] As a result, the appeal will be allowed in part, with costs, the judgement of the Tax Court of Canada will be set aside with respect to the appellant's business losses and returned to the Tax Court of Canada for redetermination of the section 67 issue.

"Johanne Trudel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-406-14

STYLE OF CAUSE: HAROLD PEACH v. THE QUEEN

PLACE OF HEARING: St. John's, Newfoundland and
Labrador

DATE OF HEARING: JUNE 8, 2016

REASONS FOR JUDGMENT OF THE COURT BY: TRUDEL J.A.
STRATAS J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

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