

Federal Court of Appeal



Cour d'appel fédérale

Date: 20181023

Docket: A-222-17

Citation: 2018 FCA 193

[ENGLISH TRANSLATION]

**CORAM: PELLETIER J.A.
BOIVIN J.A.
DE MONTIGNY J.A.**

BETWEEN:

DANIEL LAPLANTE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on October 22, 2018.

Judgment delivered at Montréal, Quebec, on October 23, 2018.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**PELLETIER J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] The appellant is appealing from the judgment of Justice Ouimet of the Tax Court of Canada (the TCC judge) dated June 23, 2017 (2017 TCC 118). The TCC judge found that there was a simulation that apparently consisted in the beneficiaries receiving a trust distribution when in reality the appellant, through a mandate, was the true beneficiary of all the distributions. The TCC judge therefore dismissed the appellant's appeal from the reassessment made by the

Minister of Revenue under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the ITA) for the 2008 taxation year.

[2] The standard of review in this case is that of palpable and overriding error for the questions of mixed fact and law, and the standard of correctness for the questions of law (*Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33 [*Housen*]).

[3] The appellant essentially argues that there can be no question of simulation or mandate because the distributed amounts did not belong to him but rather to each of the beneficiaries.

[4] In his decision, the TCC judge properly directed himself in law in applying the principles set out by the Supreme Court of Canada according to which the Minister of Revenue must make an assessment based on the true legal relationship between the parties (*Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622). He also correctly identified and defined the material element and the element of intent, which are the two elements that must be present in order to make a finding of simulation under article 1451 of the *Civil Code of Québec*, C.Q.L.R. c. CCQ-1991. In addition, given the evidence in the record, the TCC judge did not err in finding simulation in this case, that is, that the appellant was the true beneficiary of the amounts distributed by Fiducie DL to the apparent beneficiaries.

[5] Furthermore, I do not detect any error in the TCC judge's application of the legal standards applicable to mandate (article 2130 of the *Civil Code of Québec*) in the context of a contract to act as nominee (*prête-nom*) (*Victuni v. Minister of Revenue of Quebec*, [1980] 1

S.C.R. 580). His finding of fact is moreover amply supported by the evidence, and the inference-drawing process that he followed does not appear to me to be palpably in error (*Housen* at paragraph 23).

[6] Counsel for the appellant stated before this Court that the TCC judge, in giving precedence to Ms. Laplante's testimony, essentially dismissed the other witnesses as liars. However, one has only to read the TCC judge's reasons to see that he weighed all the testimony but gave more weight to Ms. Laplante's testimony, as it appeared to him to be more consistent with the evidence in the record. It was therefore open to the TCC judge to find as he did, considering the factual framework revealed by the evidence, in particular that (i) at the meeting of December 25, 2008, Fiducie DL distributed amounts by cheque to the beneficiaries even though they did not intend to accept and deposit the cheques; (ii) the beneficiaries nonetheless subsequently endorsed them to the appellant rather than simply giving them to him; and (iii) in addition, the beneficiaries signed a deed of gift in favour of the appellant.

[7] In light of the above, the TCC judge did not commit any error requiring this Court's intervention.

[8] It therefore follows that the reassessment made by the Minister of Revenue was justified in the circumstances despite the expiry of the normal reassessment period applicable to the appellant for the 2008 taxation year.

[9] For these reasons, I would dismiss the appeal with costs.

“Richard Boivin”

J.A.

“I agree.

J.D. Denis Pelletier J.A.”

“I agree.

Yves de Montigny J.A.”

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-222-17

STYLE OF CAUSE: DANIEL LAPLANTE v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 22, 2018

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: PELLETIER J.A.
DE MONTIGNY J.A.

DATED: OCTOBER 23, 2018

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