

Date: 20080505

Docket: A-362-07

Citation: 2008 FCA 172

**CORAM: LINDEN J.A.
NOËL J.A.
RYER J.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

JOSEPH FONTANA

Respondent

Heard at Toronto, Ontario, on May 5, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on May 5, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on May 5, 2008)

RYER J.A.

[1] This is an appeal from a decision of Justice Sheridan (the "Tax Court Judge") of the Tax Court of Canada (2007 TCC 450) dated August 2, 2007, dismissing the motion brought by Her Majesty the Queen for an order quashing the appeal of Mr. Joseph Fontana from a reassessment of his income for 2001 and 2002, that was issued by the Minister of National Revenue (the "Minister") pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "ITA"), on the basis that Mr. Fontana's appeal is moot.

[2] In its motion before the Tax Court Judge, the Crown argued that the appeal of Mr. Fontana was moot because the Minister was prepared to concede that due to certain calculation errors that it made, there is no longer an issue between the parties with regard to the amounts of federal income tax payable by Mr. Fontana.

[3] The Tax Court Judge did not accept, in the context of what was presented as a motion to quash, that the effect of the Crown's concession would only impact the provincial component of the taxes that were assessed. She indicated that this was better left to be decided at trial in the context of a full hearing on the merits.

[4] We can detect no error in this regard.

[5] Accordingly, the appeal is dismissed with costs.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-362-07

(APPEAL FROM THE ORDER OF JUSTICE G.A. SHERIDAN, OF THE INCOME TAX COURT OF CANADA DATED AUGUST 2, 2007, WHEREBY THE APPELLANT'S MOTION WAS DISMISSED. TAX COURT NO. 2004-1317 (IT) G.)

STYLE OF CAUSE: HER MAJESTY THE QUEEN v. JOSEPH FONTANA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 5, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (LINDEN, NOËL & RYER JJ.A.)

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

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FOR THE RESPONDENT

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FOR THE RESPONDENT