

Date: 20090316

**Docket: A-183-08
A-184-08**

Citation: 2009 FCA 86

**CORAM: EVANS J.A.
RYER J.A.
TRUDEL J.A.**

BETWEEN:

Docket: A-183-08

ALLAN R. GOLDEN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

BETWEEN:

Docket: A-184-08

SHARAN GOLDEN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Winnipeg, Manitoba, on March 16, 2009.

Judgment delivered from the Bench at Winnipeg, Manitoba, on March 16, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Winnipeg, Manitoba, on March 16, 2009)

EVANS J.A.

[1] Allan and Sharan Golden, who are married to each other, have appealed to the Tax Court of Canada against reassessments of their income tax liability for the taxation years 1989, 1990, and 1991. The Crown brought motions to prevent the appellants from re-litigating part of their liability for the 1989 taxation year, on the ground of issue estoppel and abuse of process, as a result of Mr Golden's conviction of tax evasion with respect to his 1989 income. The criminal charges and reassessments were based on a net worth audit of the Golden's by the Canada Revenue Agency ("CRA").

[2] In careful and comprehensive reasons covering both appeals, Justice Boyle of the Tax Court of Canada ("the Tax Court Judge") allowed the motions: *Golden v. Her Majesty the Queen*, 2008 TCC 173. He held that issue estoppel prevented Mr Golden from denying both that his unreported income for 1989 was less than \$34,000 and that he was liable to penalties on this amount. He also held that Ms Golden was prevented by abuse of process from denying that her unreported income for 1989 was less than \$217,816.90.

[3] The Golden's have appealed this decision. Because these appeals are related and raise similar, but not identical issues, we, like the Tax Court Judge, will issue one set of reasons dealing with both appeals. A copy of these reasons will be placed in each appellant's file.

[4] Counsel for the appellants argued that the Tax Court Judge exercised his discretion erroneously when he concluded that the Crown's failure to disclose material, seized by the CRA

from Mr Golden in the course of its investigation, did not render it unfair to apply issue estoppel and abuse of process in the tax appeals. Counsel said that fairness requires that the appellants' 1989 net income for the purpose of their tax appeals should be decided on all the available evidence, including the material seized from Mr Golden.

[5] The Tax Court Judge found that in the criminal proceedings the Manitoba courts had refused to order further disclosure of material by the Crown, including material seized by the CRA which Mr Golden now has in his possession and says should be considered in the tax appeals. However, this argument, in effect, impugns the basis on which, for the purpose of determining the fine, the judge in the criminal trial calculated the amount of income on which Mr Gold had evaded tax. It amounts to an allegation that the criminal trial judge should have taken into consideration the information contained in the seized documents.

[6] We are not persuaded that the Tax Court Judge erred in applying issue estoppel and abuse of process when he found that the material on which Mr Golden seeks to rely does not constitute "fresh, new evidence" which "conclusively impeaches the original results": *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 52. Further, the appellants did not put before the Tax Court Judge the materials which they allege constitute "fresh, new evidence" and justify re-litigation of the amounts of unreported income.

[7] Hence, the Tax Court Judge made no error in the exercise of his discretion that warrants the intervention of this Court. For these reasons, the appeals will be dismissed with costs of \$1,750.00 payable to the Crown by each appellant.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-183-08

(APPEAL FROM AN ORDER OF THE TAX COURT OF CANADA DATED MARCH 26, 2008, DOCKET NO. 2004-27(IT)G (2008 TCC 173))

STYLE OF CAUSE: Allan R. Golden and Her Majesty
the Queen

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: March 16, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (Evans, Ryer and Trudel JJ.A.)

DELIVERED FROM THE BENCH BY: Evans J.A.

APPEARANCES:

Barbara M. Shields FOR THE APPELLANT

Cecil S. Woon FOR THE RESPONDENT

SOLICITORS OF RECORD:

Aikins, MacAuley & Thorvaldson LLP FOR THE APPELLANT
Winnipeg, Manitoba

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-184-08

(APPEAL FROM AN ORDER OF THE TAX COURT OF CANADA DATED MARCH 26, 2008, DOCKET NO. 2004-26(IT)G (2008TCC173))

STYLE OF CAUSE: Sharan Golden and Her Majesty the Queen

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: March 16, 2009

REASONS FOR JUDGMENT OF THE COURT BY: (Evans, Ryer and Trudel JJ.A.)

DELIVERED FROM THE BENCH BY: Evans J.A.

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Aikins, MacAuley & Thorvaldson LLP FOR THE APPELLANT
Winnipeg, Manitoba

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada