

Date: 20090420

Docket: A-512-08

Citation: 2009 FCA 121

**CORAM: LÉTOURNEAU J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

CLAUDE DALPHOND

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on April 20, 2009.

Judgment delivered from the Bench at Montréal, Quebec, on April 20, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

Date: 20090420

Docket: A-512-08

Citation: 2009 FCA 121

**CORAM: LÉTOURNEAU J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

CLAUDE DALPHOND

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on April 20, 2009)

LÉTOURNEAU J.A.

[1] Despite Mr. Fournier's efforts, we were not persuaded that Justice Angers of the Tax Court of Canada (judge) made an error warranting our intervention, for the reasons that follow. But first, here is a brief review of the issue before us.

[2] The appellant is challenging the judge's decision, which concluded with the finding that the Minister of National Revenue was justified in relying on paragraph 152(4)(a) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (Act) to reassess the appellant after the normal assessment period.

[3] Based on the evidence, the judge stated that in his opinion, the appellant had made a misrepresentation in his income tax return for 2000. That is the first condition for exercising the authority to make reassessments under paragraph 152(4)(a).

[4] The judge then analyzed and weighed the evidence to verify whether the second condition of the paragraph was met, namely that this misrepresentation resulted from neglect, carelessness or wilful default.

[5] He concluded that the appellant had been negligent and that he had not exercised reasonable care to ensure, at the time of filing his return, that the information provided in the return and the documents accompanying it was accurate and complete and disclosed all income: see paragraphs 30 and 36 of the reasons for decision. According to the judge, the duty to act with care also applies to claims made for deductions, especially when the deduction results in a substantial benefit for the taxpayer: *ibidem*.

[6] Essentially, the appellant is asking us to review the evidence and the judge's findings of fact based on credibility: see, for example, the findings of fact at paragraphs 32, 33 and 35 of the reasons

for decision. In the absence of any palpable and overriding error by the judge, we lack the authority to do as the appellant asks.

[7] The appellant purchased shares in a small Canadian-controlled private corporation which qualified for capital gains deduction under subsection 110.6(2.1) of the Act. Following a merger of the corporation in which he held shares with another corporation, those shares ceased to be shares of a Canadian-controlled private corporation, since the corporation resulting from the merger became a wholly-owned subsidiary of an American public company.

[8] According to the judge, the appellant was an informed investor. He was aware of the merger of the two corporations, the 200,000 shares he held in the corporation having become 50,000 shares in the merged corporation. Shortly after the merger, he sold his 50,000 shares and realized a substantial gain.

[9] When preparing his income tax return and claiming a significant capital gains deduction, the appellant did not inquire about the status of the company that had acquired his 200,000 shares or the status, for income tax purposes, of the 50,000 shares that resulted from the merger.

[10] The judge dismissed and rejected the appellant's explanation to the effect that if there was a misrepresentation in his income tax return, it was simply because he was honestly unaware that he was not entitled to the requested deduction. The appellant states that he was unaware that the

corporation resulting from the merger had become a wholly-owned subsidiary of an American public corporation.

[11] To reject the appellant's argument, the judge relied on the appellant's knowledge, experience, training and qualifications in the fields of investment income management, investment, investment portfolios and the tax benefits or consequences of those investments. Clearly, he did not believe the appellant's explanation.

[12] I am satisfied that there was sufficient evidence for the judge to conclude that the appellant made a misrepresentation in his income tax return and that the misrepresentation was caused by the appellant's negligence.

[13] For these reasons, the appeal will be dismissed with costs.

“Gilles Létourneau”

J.A.

Certified true translation
Sarah Burns

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-512-08

(APPEAL FROM A JUDGMENT OF JUSTICE ANGERS OF THE TAX COURT OF CANADA,
DATED SEPTEMBER 8, 2008, DOCKET 2006-3317(IT)G)

STYLE OF CAUSE: CLAUDE DALPHOND v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 20, 2009

REASONS FOR JUDGMENT OF THE COURT BY: LÉTOURNEAU J.A.
PELLETIER J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

APPEARANCES:

Serge Fournier FOR THE APPELLANT

Mounes Ayadi FOR THE RESPONDENT

SOLICITORS OF RECORD:

BCF FOR THE APPELLANT
Montréal, Quebec

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