

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110525

**Dockets: A-188-10
A-187-10**

Citation: 2011 FCA 180

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

A-188-10

BETWEEN:

BASSAM CHALATI

Appellant

and

HER MAJESTY THE QUEEN

Respondent

MAHER MAHROUSE

A-187-10

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on May 25, 2011.

Judgment delivered from the Bench at Montréal, Quebec, on May 25, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

Federal Court
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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on May 25, 2011)

TRUDEL J.A.

[1] These are two appeals from a judgment by the Tax Court of Canada, dated April 9, 2010 (2010 TCC 124, Boyle J. (the judge)), dismissing the appeals of Messrs. Chalati and Mahrouse from reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th supp.) with respect to the 1999, 2000, 2001, 2002 and 2003 taxation years.

[2] On November 30, 2010, this Court ordered that the two appeals be joined and heard together. Only the reassessments with respect to the 2001, 2002 and 2003 taxation years are at issue.

[3] In short, the judge did not believe the version of the facts presented by the appellants and their witnesses. This is essentially what is being challenged by the appellants.

[4] Both are pharmacists who jointly operated two Uniprix pharmacies. During the years at issue and in the course of operating their pharmacies, the appellants received kickbacks from manufacturers of generic pharmaceutical products. Neither the receipt of such kickbacks nor the fact that such benefits are taxable is being denied.

[5] Before the Tax Court of Canada, the appellants unsuccessfully attempted to convince the judge that it would be appropriate to reduce the amount of these kickbacks to take into account certain deductions. For the 2001 and 2002 taxation years, the appellants submitted that they had

paid annual management fees of \$47,000 for the services of Amin Hachem. For the 2003 taxation year, they submitted that an unconnected deduction related to an adjustment of the closing inventory for that calendar year should be taken into account.

[6] With respect to the first argument, the judge was not satisfied with the quality of the evidence: he noted inconsistencies in the documentary evidence and the weakness of the appellants' and Mr. Hachem's testimony (Reasons of the Judge at paragraphs 9 and following). With respect to the second argument, again he noted that insufficient evidence existed in support of the appellants' position (*ibidem*, at paragraphs 6 and 7).

[7] In *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, the Supreme Court wrote the following at paragraph 18:

The trial judge is better situated to make factual findings owing to his or her extensive exposure to the evidence, the advantage of hearing testimony *viva voce*, and the judge's familiarity with the case as a whole. Because the primary role of the trial judge is to weigh and assess voluminous quantities of evidence, the expertise and insight of the trial judge in this area should be respected.

[8] The standard of review for findings of fact is such that they cannot be reversed unless the trial judge has made a "palpable and overriding error". The appellants have not persuaded us that this was the case here. To the contrary, we are of the view that the judge's finding was correct.

[9] Accordingly, the appeals will be dismissed with costs limited to one set for the hearing. A copy of these reasons will be placed in docket A-187-10 in support of the judgment to be rendered therein.

“Johanne Trudel”

J.A.

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COUR OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-188-10

STYLE OF CAUSE: BASSAM CHALATI v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: May 25, 2011

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

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

APPEARANCES:

Dominic Desjarlais FOR THE APPELLANT

Annick Provencher FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada

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HER MAJESTY THE QUEEN

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