

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20110916**

**Docket: A-336-10**

**Citation: 2011 FCA 254**

**CORAM: NOËL J.A.  
NADON J.A.  
STRATAS J.A.**

**BETWEEN:**

**GO SIMON SUNATORI**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Ottawa, Ontario, on September 14, 2011.

Judgment delivered at Ottawa, Ontario, on September 16, 2011.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

NADON J.A.  
STRATAS J.A.

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**REASONS FOR JUDGMENT**

**NOËL J.A.**

[1] Mr. Sunatori (the appellant) appeals from a decision of Hershfield J. of the Tax Court of Canada (the Tax Court Judge) wherein he dismissed the appeals from reassessments disallowing business investment losses claimed by the appellant for his 2004, 2005, 2006 and 2007 taxation years on the basis that he had failed to demonstrate that the debts which formed the basis of the claimed losses were bad, as contemplated by subsection 50(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.).

[2] Subsection 50(1) provides in part:

**50.** (1) For the purposes of this subdivision, where

*(a)* a debt owing to a taxpayer at the end of a taxation year (other than a debt owing to the taxpayer in respect of the disposition of personal-use property) is established by the taxpayer to have become a bad debt in the year, or

...

and the taxpayer elects in the taxpayer's return of income for the year to have this subsection apply in respect of the debt or the share, as the case may be, the taxpayer shall be deemed to have disposed of the debt or the share, as the case may be, at the end of the year for proceeds equal to nil and to have reacquired it immediately after the end of the year at a cost equal to nil.

**50.** (1) Pour l'application de la présente sous-section, lorsque, selon le cas :

*a)* un contribuable établit qu'une créance qui lui est due à la fin d'une année d'imposition (autre qu'une créance qui lui serait due du fait de la disposition d'un bien à usage personnel) s'est révélée être au cours de l'année une créance irrécouvrable;

[...]

le contribuable est réputé avoir disposé de la créance ou de l'action à la fin de l'année pour un produit nul et l'avoir acquise de nouveau immédiatement après la fin de l'année à un coût nul, à condition qu'il fasse un choix, dans sa déclaration de revenu pour l'année, pour que le présent paragraphe s'applique à la créance ou à l'action.

[Emphasis added]

[3] The effect of that provision, when read with paragraphs 38(c) and 39(1)(c), is to allow a taxpayer to deduct half of a debt outstanding in a given taxation year provided that he or she can establish that the debt became bad at some point in time during the year in question.

[4] The facts are not in dispute. The appellant is the sole shareholder and employee of a company engaged in scientific research and experimental development. The company has a taxation year which coincides with the calendar year. For each of the taxation years at issue, the company

paid the appellant a one-time salary by cheque on December 31. On the same day, the appellant lent the company an amount of money equal to the salary by issuing a personal cheque payable to the company. In filing his tax returns for each of the years in question, the appellant took the position that as of the date of the loan the amount so loaned was a bad debt thereby giving rise to the claimed losses. The Tax Court Judge explains the matter this way (Reasons, para. 12):

... On the same day as these [salary] cheques were delivered, a determination was also made by the appellant, in his personal capacity as a creditor, that the loan to the company was a bad debt.

[5] The Tax Court Judge framed the issue before him as “whether the requirement in paragraph 50(1)(a), that the taxpayer established that the subject debts owing at the end of a particular year had become bad in that year, has been satisfied” (Reasons, para. 5). He determined that the loans were *bona fide*, but that the appellant had not demonstrated that the resulting debts were bad. More precisely, the Tax Court Judge found as a fact that the appellant did not even consider the present and future collection possibilities (*Ibid.*, para. 39).

[6] The appellant raises a variety of arguments in support of his appeal. However, none address the central issue, *i.e.* whether the appellant has established that the respective loans became bad debts on the day on which they were advanced.

[7] I can detect no error in the Tax Court Judge’s holding that the appellant did not meet his onus on this point. The appellant cannot maintain at once that he made *bona fide* loans to his company and that the loans gave rise to bad debts on the very day on which they were advanced. A

monetary loan, by definition, is an amount advanced in the expectation that it be repaid and the appellant's position throughout, which he reiterated before us, is that he always thought that his company would be profitable (Transcript, Appeal Book, tab 5, p. 87, line 9 to p. 91, line 7; p. 121, line 14 to p. 122, line 18; p. 124, lines 22-25; p. 125, lines 1-9).

[8] In order to succeed, it was incumbent upon the appellant to show that he could reasonably foresee that the loans would not be repaid on December 31 of each year. As the Tax Court Judge found, it is apparent that the appellant never turned his mind to this issue and that if he had, the prospect of repayment could not have been excluded.

[9] It follows that the Tax Court Judge properly held that the debts underlying the claimed losses were not shown to have become bad in any of the years in issue.

[10] I would dismiss the appeal with costs.

“Marc Noël”

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J.A.

“I agree  
M. Nadon J.A.”

“I agree  
David Stratas J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-336-10

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE  
HERSHFIELD OF THE TAX COURT OF CANADA DATED JUNE 25, 2010, DOCKET  
NO. 2009-1638(IT)I.**

**STYLE OF CAUSE:** GO SIMON SUNATORI and  
HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** September 14, 2011

**REASONS FOR JUDGMENT BY:** NOËL J.A.

**CONCURRED IN BY:** NADON J.A.  
STRATAS J.A.

**DATED:** September 16, 2011

**APPEARANCES:**

Go Simon Sunatori FOR THE APPELLANT  
(SELF-REPRESENTED)

Jack Warren FOR THE RESPONDENT  
Ronald MacPhee

**SOLICITORS OF RECORD:**

N/A FOR THE APPELLANT  
(SELF-REPRESENTED)

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada