

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20111117

Docket: A-349-10

Citation: 2011 FCA 330

**CORAM: EVANS J.A.
PELLETIER J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

Gregory Welch

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Winnipeg, Manitoba, on November 17, 2011.

Judgment delivered from the Bench at Winnipeg, Manitoba, on November 17, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

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Reissued

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Winnipeg, Manitoba, on November 17, 2011)

PELLETIER J.A.

[1] Despite Mr. Fleetwood's able presentation, we are unable to find that the Tax Court Judge committed a palpable and overriding error in failing to reduce the appellant's income by the amounts of \$12,500 and \$28,000 for the 2003 and 2004 tax years. In our view, there was evidence, in the form of the invoices submitted by the appellant to Cactus Cowboys, to support the Tax Court

Judge's conclusion. The evidence to the contrary was Mr. Welch's oral testimony, which the Tax Court Judge found was generally not credible. To the extent that the Tax Court Judge's conclusion rests on inferences *Housen v. Nikolaisen*, [2002] 2 SCR 235, is authority for the proposition that palpable and overriding error is the standard of review for both findings of fact and inferences of fact.

[2] The appeal will therefore be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-349-10

(APPEAL FROM A JUDGMENT OF THE HONOURABLE D'ARCY. J. OF THE TAX COURT OF CANADA DATED AUGUST 27, 2010, DOCKET NO. 2008-1387)

STYLE OF CAUSE: GREGORY WELCH v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: November 17, 2011

REASONS FOR JUDGMENT OF THE COURT BY: EVANS, PELLETIER & LAYDEN-
STEVENSON

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

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Melissa Burkett

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Brooke Sittler

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT