

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140512

Docket: A-77-13

Citation: 2014 FCA 123

**CORAM: NOËL J.A.
MAINVILLE J.A.
SCOTT J.A.**

BETWEEN:

FIDUCIE ALEX TRUST

Appellant

And

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on May 12, 2014.

Judgment delivered from the Bench at Montréal, Quebec, on May 12, 2014.

**REASONS FOR JUDGMENT OF THE
COURT BY:**

MAINVILLE J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on May 12, 2014.)

MAINVILLE J.A.

[1] This is an appeal from a judgment of Justice Favreau of the Tax Court of Canada, neutral citation 2013 TCC 14, dismissing the appeal of Fiducie Alex Trust from an assessment made under Part IX of the *Excise Tax Act*.

[2] The facts giving rise to the dispute are simple. Mr. Demirciyan and his spouse created Fiducie Alex Trust in order to protect the family residence from their creditors, mainly the tax authorities. Mr. Demirciyan owes the tax authorities a substantial amount, in the millions of dollars.

[3] Fiducie Alex Trust purchased the family residence from Mr. Demirciyan and his spouse on January 14, 2008, for the amount of \$250,000, paid through a downpayment of \$34,013.65 and the balance by assuming the hypothec of \$215,986.35. Fiducie Alex Trust did not pay the portion of the down payment owed to Mr. Demirciyan in the amount of \$17,006.83, instead signing an acknowledgment of debt for this purpose. The tax authorities are now claiming this \$17,006.83 from Fiducie Alex Trust in order to pay part of the tax debt owed by Mr. Demirciyan. Fiducie Alex Trust submits that this downpayment was paid in the following transactions.

[4] Through a private loan agreement dated June 26, 2008, a friend of Mr. Demirciyan, David Bafri, allegedly loaned Fiducie Alex Trust \$18,000 in order to reimburse the downpayment. Mr. Demirciyan and Mr. Bafri testified that Mr. Bafri wrote a cheque in the amount of \$18,000 payable to Mr. Demirciyan, which was cashed at a branch of the Bank of Montreal.

[5] Justice Favreau concluded from the evidence before him that it was just as likely or possible that Mr. Bafri left the bank with his own money as it was that the money was given to Mr. Demirciyan, and that in this case Fiducie Alex Trust had not rebutted the presumption that

the Tax assessment regarding it was valid. It is this conclusion that Fiducie Alex Trust is challenging in this appeal.

[6] The conclusion is essentially based on the judge's assessment of the credibility of the witnesses he heard. The appellant has not satisfied us that this assessment of the credibility of the witnesses in question was the result of a palpable and overriding error on the part of Justice Favreau.

[7] At the hearing of the appeal, counsel for the appellant raised for the first time the argument that the respondent acknowledged the repayment of the appellant's entire debt to the tax debtor. The reply to notice of appeal from the assessment does indeed make such an allegation.

[8] This issue was not argued before the Tax Court of Canada, nor was it raised in the notice of appeal filed before this Court or in the appellant's memorandum.

[9] In any event, in tax matters, it is trite law that a taxpayer who is not satisfied with a judicial admission and who presents evidence on the admission in question before the Tax Court of Canada cannot subsequently rely on the admission if the evidence suggests the opposite. This Court laid down the following principle in *Hammill v. Canada*, 2005 FCA 252, 257 D.L.R. (4th) 1 (leave to appeal to the Supreme Court of Canada denied), at paragraphs 29 to 32:

[29] Specifically, the appellant argues that the Tax Court Judge was bound by the facts as admitted, even if contrary evidence was adduced at trial. Sopinka, *The*

Law of Evidence in Canada, 2nd ed, Butterworths, 2004 at page 1051; *Urquhart v. Butterfield* (1887), 37 Ch.D. 357, at 369 and 374; *Copp v. Clancy* (1957), 16 D.L.R. (2d) 415, at 425, are relied upon in this regard.

[30] In my view, these authorities which derive from private party civil proceedings are of no assistance to the appellant in the context of this appeal. While the admission reflected in the Agreed Statement of Facts was favourable to the appellant, he was not satisfied to have his appeal disposed of on that basis. The appellant chose to place extensive evidence before the Court, over and beyond what had been agreed to, about the nature and extent of the scam.

[31] In an appeal against an assessment under the Act, the outcome does not belong to the parties. Public funds are involved and the Tax Court is given, in the first instance, the statutory mandate to confirm or vary the assessment based on the facts, proven or admitted. In this respect, while the Court will not generally look behind a formal admission, the parties cannot by agreement dictate the outcome of a tax appeal. The Tax Court is not bound by an admission which is shown, through properly tendered evidence, to be contrary to the facts.

[32] In this case, the relevant evidence was tendered by the appellant himself, and the Tax Court Judge concluded from this evidence that he had been the subject of a fraud from beginning to end, a conclusion which precludes the existence of a business. In my view, the Tax Court Judge could not pronounce on the validity of the reassessments while turning a blind eye on the evidence placed before him.

[10] Therefore, the appeal will be dismissed with costs.

“Robert M. Mainville”

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:

A-77-13

(APPEAL FROM A JUDGMENT OF JUSTICE FAVREAU OF THE TAX COURT OF CANADA DATED JANUARY 22, 2013, DOCKET NO. 2010-2814(GST)I)

STYLE OF CAUSE:

FIDUCIE ALEX TRUST v.
HER MAJESTY THE QUEEN

PLACE OF HEARING:

MONTRÉAL, QUEBEC

DATE OF HEARING:

MAY 12, 2014

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.
MAINVILLE J.A.
SCOTT J.A.

DELIVERED FROM THE BENCH BY:

MAINVILLE J.A.

APPEARANCES:

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