

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141008

Docket: A-261-13

Citation: 2014 FCA 227

**CORAM: NADON J.A.
GAUTHIER J.A.
SCOTT J.A.**

BETWEEN:

MOHAMMED TIBILLA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on October 8, 2014.
Judgment delivered from the Bench at Montréal, Quebec, on October 8, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on October 8, 2014).

NADON J.A.

[1] The Tax Court dismissed the appellant's appeals from the reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1, (5th Supp.) of his 2007 and 2008 taxation years.

[2] Two issues were before Madam Justice Lamarre (the judge). The first one consisted in determining the year in which the appellant's capital gain should be declared following the disposition of a rental property which he acquired in 2002.

[3] The judge reviewed the evidence and concluded that the sale had occurred in December 2007. In so concluding, she considered the appellant's version of the events in which he asserted that because, at the time of the sale, he and the purchaser had a dispute regarding the purchase price, which was only settled in March 2008, it was open to him to treat the disposition as having occurred in 2008.

[4] The judge also considered the fact that the sale had occurred by way of a deed of sale before a notary on December 18, 2007 and that in the deed, the appellant, as vendor, had acknowledged having received the purchase price of \$285,000 from the purchaser and in respect of which he gave a complete discharge.

[5] She also gave consideration to the appellant's testimony to the effect that he had received advice from someone at the Canada Revenue Agency (CRA) that he could include his income in the 2008 taxation year.

[6] After proper consideration, she concluded that the capital gain had to be declared in 2007.

[7] We have not been persuaded that the judge made any error in concluding as she did on this issue.

[8] The second issue which the judge had to determine is the amount of capital gain made by the appellant as a result of the sale of his property. More particularly, the appellant claimed that an amount of \$52,810 had to be added to the adjusted cost base of his property so as to reduce his capital gain. The CRA refused the addition.

[9] Again the judge carefully considered the evidence, including the appellant's testimony that he had effected repairs to the property in 2002, prior to his purchase thereof, with the consent of the previous owner.

[10] She also considered the appellant's evidence that he had lost all of his supporting vouchers and documents in 2008 as a result of a flood in the basement of the house he was living in at the time.

[11] The judge also noted the appellant's testimony to the effect that he had filed, with his 2000 income tax return, copies of these vouchers and documents.

[12] In the end, the judge found it difficult to believe the appellant's explanations and she indicated in her reasons why this was so. While we do not doubt that it is possible that the appellant did file the documents which he says he filed in 2002 with his income tax return, it was open to the judge, on the evidence before her, to disregard the appellant's testimony.

[13] Hence, the judge held that the appellant was not entitled to add the expenses of \$52,810 to his adjusted cost base.

[14] We have also not been persuaded that this conclusion by the judge is an error. With respect to the appellant's arguments concerning the proper application of section 230 of the *Income Tax Act*, we are also of the view that the judge made no error.

[15] While we are sympathetic to the appellant's plight, we have no choice, in the circumstances of this case, but to dismiss his appeal. There shall be no costs granted to the respondent.

"M. Nadon"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-261-13

STYLE OF CAUSE: MOHAMMED TIBILLA v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: OCTOBER 8, 2014

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
GAUTHIER J.A.
SCOTT J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

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