

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220615

Docket: A-218-20

Citation: 2022 FCA 115

**CORAM: STRATAS J.A.
LASKIN J.A.
MACTAVISH J.A.**

BETWEEN:

ALEXANDER MARINO

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on June 15, 2022.
Judgment delivered from the Bench at Vancouver, British Columbia, on June 15, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on June 15, 2022).

STRATAS J.A.

[1] We are all of the view that this appeal from the judgment of the Tax Court of Canada (*per* Monaghan J.) (2020 TCC 50) must be dismissed. The Tax Court correctly interpreted sections 118.5 and 118.61 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). We agree with the Tax Court's reasons in this regard.

[2] In interpreting sections 118.5 and 118.61 of the Act, the Tax Court applied this Court's decision in *Oceanspan Carriers Ltd. v. Canada*, [1987] 2 F.C. 171, [1987] 1 C.T.C. 210. The Tax Court found that *Oceanspan* determines the statutory interpretation issues in this case.

[3] The appellant does not explicitly submit that *Oceanspan* is manifestly wrong under *Miller v. Canada (A.G.)*, 2002 FCA 370, 220 D.L.R. (4th) 149. However, in his oral submissions, the appellant submits that the Court in *Oceanspan* did not interpret the provisions in light of their text, context and purpose. We disagree. In substance it did so: see pages 177-180 F.C. The appellant also invites us to re-do the analysis in *Oceanspan* of text, context and purpose and reach a different conclusion. But, as a matter of horizontal *stare decisis* set out in *Miller*, that is not a task open to us. *Oceanspan* is also directly on point. Thus, overall, *Oceanspan* binds us, just as it bound the Tax Court.

[4] The appellant contends that section 250.1 of the Act, added after *Oceanspan*, supersedes *Oceanspan* and has the effect of deeming every non-resident person to have a taxation year in Canada. We disagree for the reasons expressed by the Tax Court at paragraphs 35-40.

[5] The appellant submits that it was incumbent on Parliament to use words specifically precluding him from the tax treatment he seeks in this case. We do not accept such a sweeping proposition. But, in any event, in our view, examining Parliament's provisions in light of their text, context and purpose, and giving the text its due weight in the analysis, Parliament did so in this case. The Tax Court so found. It did not err.

[6] Therefore, we will dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-218-20

**APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE K.A. SIOBHAN
MONAGHAN DATED JULY 10, 2020, DOCKET NO. 2018-3112(IT)I**

STYLE OF CAUSE: ALEXANDER MARINO v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: JUNE 15, 2022

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
LASKIN J.A.
MACTAVISH J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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