Federal Court of Appeal  Cour d'appel fédérale

Date: 20150923

Docket: A-323-14

Citation: 2015 FCA 204

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

BETWEEN:

LOUIS-FRED MARTIN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on September 14, 2015.

Judgment delivered at Ottawa, Ontario, on September 23, 2015.

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: PELLETIER J.A.
GAUTHIER J.A.

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REASONS FOR JUDGMENT

NADON J.A.

[1] This is an appeal from a decision by Justice Boyle (the Judge) of the Tax Court of Canada (the Tax Court) dated June 19, 2014, 2014 TCC 200, dismissing the appellant's appeal against an assessment made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act), for the 2010 taxation year.

[2] More specifically, the Judge found that the appellant was entitled to neither a $14,000 deduction for income loss for his 2010 taxation year nor a capital loss of $14,800,000 for the same year.

[3] The present tax dispute arises from the fact that the appellant, who had been working for the financial advice company Promutuel since 2005, lost his job in June 2010 after his employer was bought by the Peak brokerage firm.

[4] Unfortunately for the appellant, he was unable to find a job with another brokerage firm, nor was he able to obtain the requisite approval from the provincial authorities to become an independent financial advisor or to establish his own firm. As a result, his clients did not follow him and continued to do business with Peak.

[5] According to the appellant, Peak stole the clients he had been serving for several years.

[6] This is the background of the dispute brought before the Judge and before this Court.

[7] Regarding the loss of income he alleges he suffered in the 2010 taxation year, the appellant explained before the Tax Court that $14,000 represented a net income of $2,000 a month which the clients he had while he was working at Promutuel would have generated for him from June to December 2010.

[8] In other words, according to the appellant, the $14,000 constitutes the income he could have earned had he continued working as a financial advisor after leaving his former employer.

[9] The Judge was of the opinion that the loss claimed by the appellant was not a tax loss under the Act. According to the Judge, since a loss of income only arises to the extent that the expenses incurred by the taxpayer in a year exceed income for that same year, the appellant's claim had to be dismissed on the basis that he had not earned any income during the 2010 taxation year. Consequently, the $14,000 in income anticipated by the appellant but not earned by him could not give rise to a deduction for loss of income. In other words, no income, no eligible expenses.

[10] Regarding the capital loss, the appellant argued before the Judge that the loss of his clients represented the loss of a valuable asset. According to the appellant, this loss was equal to the difference between the value of his client base, calculated by taking into account the income this client base was capable of generating and the fact that he received no compensation for this client base after he left Peak.

[11] The appellant further argued before the Judge that his capital loss was higher since there had to be added to the loss all the costs related to the disposition of the asset (the theft) that he had to incur. To be included in these costs is the value of his own property, including his home and other property seized or lost as a result of his insolvency.

[12] According to the appellant, the adjusted cost base of his capital loss amounted to $800,000, which he increased to $14,800,000 after he filed his income tax return for the 2010 taxation year.

[13] Here is how the Judge explains the situation in paragraphs 7 and 8 of his reasons:

> [7] In computing his capital loss, to reflect his loss of his valuable clientele, M. Martin estimated his adjusted cost base to be $800,000. Using a 3% assumed annual return on investment, an $800,000 pool would have been needed to generate his $24,000 anticipated but lost revenues. Since he had received nothing from Peak or anyone else for his clientele, M. Martin claimed an $800,000 capital loss in his 2010 tax return. It is his position that his capital loss should be repaid to him and not simply available to reduce future capital gains.
>
> [8] After filing his 2010 tax return, M. Martin sought to claim $14,000,000 of disposition costs for his former clientele and increase his capital loss by a like amount – from $800,000 to $14,800,000. M. Martin arrived at his $14,000,000 disposition costs number as follows. He estimated that $2,000,000 was the value of his property seized or lost as a result of the loss of his clientele and the revenue generated thereby. This included the value of his home, his country property, his collection of vehicles, his library, and all of his other collections and belongings. As mentioned, these properties were seized as a consequence of his resulting financial difficulties. M. Martin then multiplied the $2,000,000 value of his lost property by seven, relying upon the proverbial exhortation to thieves to pay back sevenfold what they stole.

[14] The Judge rejected the appellant's arguments and concluded that the loss did not qualify as a capital loss.

[15] First of all, it was not clear to the Judge that the clients served by the appellant were property owned by the appellant and thus susceptible of being sold. In this regard, the Judge noted that a capital loss generally represents a loss resulting from the disposal of property belonging to a taxpayer.

[16] Second, the Judge pointed out that the adjusted cost base of a capital asset that has been disposed of generally reflects the after-tax amounts expended by a taxpayer for the asset and for its improvement. According to the Judge, this is clear from sections 53 and 54 of the Act. Consequently, the Judge was satisfied that the Act in no way permitted the fixing of the cost of property on the basis of its market value since such an approach would remove any possibility of capital gains being realized under the Act.

[17] The Judge then noted the fact that the appellant had not bought his clientele, adding that the expenses incurred by him to build up that clientele had been claimed and allowed as business expenses in the years in which they were so incurred.

[18] Lastly, at paragraph 13 of his reasons, the Judge found that the object of the provisions of the Act dealing with the concepts of income loss and capital loss was not the compensation of a taxpayer for financial losses resulting from a breach of contract or a theft. Yet this, in his opinion, seemed to be the goal of the appellant's appeal from the assessment made in the instant case with respect to the appellant's 2010 taxation year.

[19] In my view, a close reading of the appellant's memorandum confirms beyond any doubt the thinking of the Judge stated at paragraph 13 of his reasons. More specifically, the appellant's memorandum does not in any way address the issue actually before the Judge or before us in this appeal, namely, the deductibility of lost income and of capital losses under the Act. It is important to note that, at the hearing before us, the appellant continued to assert that he was entitled to reimbursement or compensation for the financial losses he suffered after leaving Peak.

[20] It is clear that what the appellant is seeking here is to be reimbursed for the losses he suffered as a result of the breach of his employment contract with Peak and as a result of the "theft" of his clientele. There can be no question that the Tax Court has no jurisdiction with respect to such a claim and that it cannot order the reimbursement sought by the appellant.

[21] In conclusion, the Judge held as he did on the basis of specific provisions of the Act and generally accepted accounting principles. The appellant did not satisfy me that the Judge erred either in law or in his assessment of the facts before him.

[22] Consequently, I would dismiss the appeal with costs.

"M Nadon"

J.A.

"I agree.
J.D. Denis Pelletier J.A."

"I agree.
Johanne Gauthier J.A."

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-323-14
STYLE OF CAUSE:	LOUIS-FRED MARTIN v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 14, 2015
REASONS FOR JUDGMENT BY:	NADON J.A.
CONCURRED IN BY:	PELLETIER J.A. GAUTHIER J.A.
DATED:	SEPTEMBER 23, 2015

APPEARANCES:

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Mounes Ajadi	FOR THE RESPONDENT HER MAJESTY THE QUEEN

SOLICITORS OF RECORD:

Department of Justice Quebec Regional Office Montréal, Quebec	FOR THE RESPONDENT HER MAJESTY THE QUEEN