

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160223

Docket: A-410-14

Citation: 2016 FCA 57

**CORAM: DAWSON J.A.
NEAR J.A.
BOIVIN J.A.**

BETWEEN:

MOHAMMED S. ELBADAWI

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on February 18, 2016.

Judgment delivered at Ottawa, Ontario, on February 23, 2016.

REASONS FOR JUDGMENT BY:

DAWSON J.A.

CONCURRED IN BY:

**NEAR J.A.
BOIVIN J.A.**

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] The Minister of National Revenue concluded that the appellant had, during the 2000, 2001 and 2002 taxation years, received unreported income from a corporation that he controlled. The Minister assessed the appellant accordingly. The appellant appealed the assessment to the Tax Court of Canada. For reasons cited as 2014 TCC 259, a judge of the Tax Court dismissed the appeal. For supplementary reasons cited as 2014 TCC 363, the Judge ordered the appellant to

pay costs fixed in a lump sum, in an amount in excess of the applicable court tariff. This is an appeal from the judgment of the Tax Court with respect to the appeal and costs.

[2] While the appellant asserts numerous errors on the part of the Judge, I am of the view that the Judge made no reviewable error.

[3] In reaching her decision on the main appeal, the Judge made the following findings of fact:

- i) The appellant treated all of his corporate entities as being interchangeable with him.
- ii) There was a scarcity of records and supporting documentation.
- iii) The Judge received only the appellant's self-serving testimony and very little else to support his allegation that he did not receive the income attributed to him.
- iv) In addition to being self-serving, the appellant's testimony was vague and, at times, evasive and contradictory. None of his assertions were supported by documentation, and he did not call his accountant to testify.
- v) Some documentation submitted by the appellant had been altered.
- vi) The Judge could not give any weight to the appellant's evidence because of the credibility issues and lack of corroborative evidence.

[4] These findings have not been demonstrated to be vitiated by any palpable and overriding error and they are dispositive of the appeal.

[5] With respect to the issue of costs, the appellant failed to make any submissions on the issue of costs before the Tax Court. The Judge found that the respondent's work in respect of the proceeding in the Tax Court was much greater than would normally be required, largely due to the difficulties in dealing with the appellant. Throughout the proceeding in the Tax Court, the appellant's focus centred upon the conduct of officials of the Canada Revenue Agency during the assessment process. This, notwithstanding what the Judge characterized to be her "explanations and repeated redirections" to the appellant. In the Judge's words, this "accounted in large part for the hearing ballooning from its allotted five days for hearing to the ten days it took to complete". As the Judge ultimately concluded at paragraph 28 of her supplementary reasons, the appellant disregarded her warnings "because his goal was a fact-finding mission against the [Canada Revenue Agency] in order to implement" a civil suit against a number of individuals employed by the Canada Revenue Agency and others.

[6] Additionally, the Judge listed unnecessary steps required in the proceeding as a result of the appellant's conduct.

[7] In this circumstance, no error has been demonstrated in the Judge's discretionary order as to costs.

[8] For these reasons, I would dismiss the appeal and the appeal from the award of costs, with costs.

“Eleanor R. Dawson”

J.A.

“I agree.

D. G. Near J.A.”

“I agree.

Richard Boivin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-410-14

STYLE OF CAUSE: MOHAMMED S. ELBADAWI v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 18, 2016

REASONS FOR JUDGMENT BY: DAWSON J.A.

CONCURRED IN BY: NEAR J.A.
BOIVIN J.A.

DATED: FEBRUARY 23, 2016

APPEARANCES:

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FOR THE APPELLANT

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FOR THE RESPONDENT

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