

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161018

**Dockets: A-562-14
A-563-14**

Citation: 2016 FCA 254

**CORAM: GAUTHIER J.A.
DE MONTIGNY J.A.
GLEASON J.A.**

BETWEEN:

JOHN WHISELL

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Edmonton, Alberta, on October 18, 2016.
Judgment delivered from the Bench at Edmonton, Alberta, on October 18, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Edmonton, Alberta, on October 18, 2016).

GLEASON J.A.

[1] The appellant appeals from two judgments of the Tax Court rendered on November 21, 2014. The two appeals were consolidated by Order of this Court dated January 14, 2015. The first Tax Court judgment upheld an assessment under the *Income Tax Act*, R.S.C. 1985, c 1 (5th Supp.) [the *ITA*] for unpaid payroll source deductions of federal and provincial income taxes,

Employment Insurance and Canada Pension Plan premiums as well as interest and penalties. The second judgment upheld an assessment under the *Excise Tax Act*, R.S.C. 1985, c. E-15 [the *ETA*] for unremitted net tax, penalty and interest. Both judgments and the Tax Court's reasons are cited under *John Whissell v. Her Majesty The Queen*, 2014 TCC 350, 249 A.C.W.S. (3d) 913. In both cases, the appellant was assessed on the basis that he was a director of Canadian Aggregate Co. Ltd. at the time the corporation failed to make the required remittances. The Tax Court determined that the appellant was liable for the amounts assessed as he failed to exercise the degree of care, diligence and skill to prevent the failures to remit that a reasonably prudent person would have exercised in comparable circumstances as the appellant took no steps to prevent these failures.

[2] The appellant argues that the Tax Court erred in so concluding as it failed to give adequate weight to the appellant's personal circumstances, which he submits prevented him from doing anything to prevent the failures to remit. These circumstances included his limited education and lack of knowledge of financial matters, the key roles played by others in the conduct of the corporation's business, his own lack of knowledge of the corporation's obligations and his lack of ability to influence the financial decisions of the corporation.

[3] Despite the able arguments of counsel for the appellant, we have not been persuaded that the Tax Court made any reviewable error. The Tax Court applied the correct legal principles to assess the appellant's liability under sections 227.1 of the *ITA* and 323 of the *ETA*, applying the decision of this Court in *Buckingham v. R.*, 2011 FCA 142, 417 N.R. 178. Nor did the Tax Court make a palpable and overriding error in applying these principles to the appellant's situation as

the evidence before the Tax Court established that the appellant took no steps to prevent the failures to remit, failed to ask question of the others who controlled the financial affairs of the corporation and ignored warning signs, such as previous seizures made by the Canada Revenue Agency. In the circumstances, it was open to the Tax Court to conclude that someone as unsophisticated as the appellant claims to have been should have done more to prevent the failures to remit. The Tax Court therefore did not commit a reviewable error in upholding the assessments.

[4] These appeals will thus be dismissed, with a single set of costs fixed in the amount of \$1700.00 based on the parties' agreement. The style of cause shall be amended to substitute Her Majesty the Queen in the place of the Attorney General of Canada as the respondent.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-562-14
A-563-14

APPEALS FROM JUDGMENTS OF THE HONOURABLE JUSTICE V. MILLER OF THE TAX COURT OF CANADA, DATED NOVEMBER 21, 2016, NO. 2012-4374(GST)G (A-562-14) AND 2012-4375 (IT)G (A-563-14)

STYLE OF CAUSE: JOHN WHISELL v. THE
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: OCTOBER 18, 2016

REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.
DE MONTIGNY J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY: GLEASON J.A.

APPEARANCES:

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