

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20170201**

**Docket: A-177-16**

**Citation: 2017 FCA 21**

**CORAM: STRATAS J.A.  
WEBB J.A.  
SCOTT J.A.**

**BETWEEN:**

**THOMAS HELGESEN**

**Appellant**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Respondent**

Heard at Edmonton, Alberta, on February 1, 2017.  
Judgment delivered from the Bench at Edmonton, Alberta, on February 1, 2017.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SCOTT J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Edmonton, Alberta, on February 1, 2017).**

**SCOTT J.A.**

[1] In reasons cited as 2016 TCC 114, Ouimet J. (the Judge) of the Tax Court of Canada found that M. Thomas Helgesen (the appellant) was liable as a director of 1072519 Alberta Ltd. (the corporation) for tax and unremitted payroll deductions pursuant to section 227.1 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the ITA); section 21.1 of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the CPP); section 83 of the *Employment Insurance Act*, S.C. 1996, c.

23; and section 77 of the *Alberta Personal Income Tax Act*, RSA 2000, c. A-26. The Judge confirmed the Minister's assessment that the appellant owed \$111,482.41 for unremitted payroll deductions, including related interest and penalties.

[2] In coming to his decision, the Judge determined that the appellant, an experienced businessman, failed to act the way a reasonably prudent person would have in comparable circumstances in order to prevent the corporation's failure to remit. According to the Judge, since subsection 227.1(3) of the ITA provides for a defence to the specific liability set out in subsection 227.1(1) (*Buckingham v. Canada*, 2011 FCA 142, [2013] 1 F.C.R. 86), it was incumbent on the appellant to establish that he turned his attention to the required remittances with a view to preventing a failure by the corporation to remit the amounts owed.

[3] The appellant challenges the Judge's decision, arguing that he incorrectly applied the due diligence test as set out in subsection 227.1(3) of the ITA by failing to consider contextual and subjective circumstances, and more specifically, the malfeasance of the other director of the corporation as a defence. He also claims that the evidence in the record supported the appellant's defence under subsection 227.1(3).

[4] An appeal from a decision of the Tax Court determining whether a due diligence defence under subsection 227.1(3) of the ITA has been established, requires the application of a legal standard to a set of facts. It is, therefore, a question of mixed fact and law which is reviewable on a standard of overriding and palpable error, unless the appellant can show an error of law or extricable principle of law, which he has not done here (*Housen v. Nikolaisen*, 2002 SCC 33,

[2002] 2 S.C.R. 235 at paragraphs 26-37; *Canada v. Chriss*, 2016 FCA 236 at paragraph 7, [2017] 1 C.T.C. 107).

[5] In the present appeal, despite the able submissions from counsel for the appellant, we are all of the view that the Judge did not make a palpable and overriding error in reaching his determination. The appellant has failed to establish that a reasonably prudent person would rely simply on third party assurances that remittances were being made when it was clear that these persons had misled him about making remittances in the past. Moreover, the appellant knew that remittances were not made as he received letters from the Canada Revenue Agency to that effect on July 16, July 18, and August 2, 2008. He failed to take any direct action to ensure that the corporation made its remittances as required.

[6] Before us, the appellant suggested that in paragraph 27 of the reasons that the Judge said he should have made a personal payment in fulfillment of his duty. We do not agree that the Judge said this.

[7] For these reasons, the appeal will be dismissed with costs fixed at \$500.00, all inclusive.

"A.F. Scott"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-177-16

APPEAL OF THE JUDGMENT RENDERED BY OUIMET J. OF THE TAX COURT OF CANADA, DATED MAY 5, 2016, DOCKET NO. 2016 TCC 114.

**STYLE OF CAUSE:** THOMAS HELGESEN v. HER  
MAJESTY THE QUEEN IN  
RIGHT OF CANADA

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** FEBRUARY 1, 2017

**REASONS FOR JUDGMENT OF THE COURT BY:** STRATAS J.A.  
WEBB J.A.  
SCOTT J.A.

**DELIVERED FROM THE BENCH BY:** SCOTT J.A.

**APPEARANCES:**

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Gergely Hegedus FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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