Federal Court of Appeal Cour d'appel fédérale

Date: 20171207

Docket: A-158-16

Citation: 2017 FCA 239

CORAM: **NADON J.A.**
BOIVIN J.A.
GLEASON J.A.

BETWEEN:

ANA MARIA CHIASSON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on December 5, 2017.

Judgment delivered at Montréal, Quebec, on December 7, 2017.

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: NADON J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] This is an appeal from the judgment of Favreau J. (the Judge) of the Tax Court of Canada (2016 TCC 95). The Judge dismissed the Appellant's appeal from the Minister of National Revenue's (Minister) reassessment of her 2002 taxation year. In the reassessment, the Minister had included an additional $117,000 in the Appellant's income for 2002, on the basis that the Appellant had withdrawn that sum from her existing Registered Retirement Savings Plan (RRSP)

and invested in a new plan that was not a “qualified investment” under the terms of the *Income Tax Act*, R.S.C. 1985 (5th supp.), c. 1, as amended (the Act).

[2] The Appellant withdrew the funds from her existing RRSP on November 27, 2001 and, through a Self-Directed RRSP administered by Yorkton Securities Inc., invested them in a Canadian company called Landmark Capital Partners Ltd. (Landmark Canada). Landmark Canada, in turn, invested in a Barbados company, Landmark Capital Inc. (Landmark Barbados), whose purported business was to invest in venture capital opportunities in the energy industry. The Appellant believed she was merely transferring her funds from one RRSP to another, and that therefore the transfer would not bring about any tax consequences. Unfortunately, the Appellant’s investments were lost by 2004.

[3] The sole issue before the Judge was to decide whether the Appellant’s investment in Landmark Canada was a “qualified investment” pursuant to subsection 146(1) of the Act. This determination required the Judge to make findings of mixed fact and law. On appeal, this Court is thus precluded from interfering with his conclusions absent a palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[4] The Judge found as a fact that the Appellant’s investment in Landmark Canada took place on January 4, 2002. Further, he concluded that Landmark Canada’s main business was to derive income from its shareholdings in Landmark Barbados, which did not conduct active business in Canada. Therefore, the Judge found that Landmark Canada did not conduct active business in Canada either. As a result of this finding, the Judge decided that Landmark Canada

could not be an “eligible corporation”, as defined in subsection 5100(1) of the *Income Tax Regulations*, C.R.C., c. 945, or a “small business corporation”, as defined in subsection 248(1) of the Act. Ultimately, therefore, the Judge determined that the Appellant’s investment was not a “qualified investment” pursuant to subsection 146(1) of the Act.

[5] The Appellant is challenging the Judge’s decision in several ways. Essentially, she claims that he erred in finding that her investment in Landmark Canada took place on January 4, 2002 - the date the shares were issued to the Appellant’s Plan by virtue of a share certificate - instead of on November 1, 2001, as she had argued. She submits that this error led the Judge to further err in finding that Landmark Canada was not a “small business corporation” because Landmark Canada would have met that definition on November 1, 2001. She finally submits that the declaration of trust of the RRSP through which she made her investment in Landmark Canada was invalid under Quebec law.

[6] Regretfully for the Appellant, I am of the view that the Judge made no reviewable error either of fact or law. There was ample evidence before the Judge to support his conclusion that the proper date at which the investment took place was January 4, 2002 (Respondent’s Compendium of Documents, Tab 1: Subscription Agreement to Yorkton Plan dated August 28, 2001; Tabs 2-3: Statements of Account for the Yorkton Plan for November 2001 and January 2002; Tab 4: Share Certificate #050 of Landmark Capital Partners Ltd. dated January 4, 2002; and Tab 7: Landmark Capital Partners Ltd.’s Statement of Account for December 15, 2001 to January 15, 2002). With respect to the trust issue, not only was it not raised before the Judge, there was no evidence before him, nor before this Court, that could allow the Judge, or this

Court, to decide in the Appellant's favour. Finally, it must be recalled that the Canadian income tax system is a self-reporting system, and it was thus incumbent on the Appellant to present evidence and documentation in support of her Notice of Objection (Appellant's Compendium of Documents, Tab 3, p. 4).

[7] Hence, there is no basis for this Court to interfere with the Judge's decision and the appeal should be dismissed with costs.

"Richard Boivin"

J.A.

"I agree
Marc Nadon J.A."

"I agree
Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED APRIL 21, 2016, DOCKET NUMBER 2014-3217(IT)I)

DOCKET:	A-158-16
STYLE OF CAUSE:	ANA MARIA CHIASSON v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	DECEMBER 5, 2017
REASONS FOR JUDGMENT BY:	BOIVIN J.A.
CONCURRED IN BY:	NADON J.A. GLEASON J.A.
DATED:	DECEMBER 7, 2017

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