Date: 20060612

Docket: A-381-05

Citation: 2006 FCA 216

CORAM: **NOËL J.A.**
EVANS J.A.
PELLETIER J.A.

BETWEEN:

RAY HAUSER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on June 7, 2006.

Judgment delivered at Ottawa, Ontario, on June 12, 2006.

REASONS FOR JUDGMENT BY: NOËL J.A.

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

Date: 20060612

Docket: A-381-05

Citation: 2006 FCA 216

CORAM: **NOËL J.A.**
EVANS J.A.
PELLETIER J.A.

BETWEEN:

RAY HAUSER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an appeal from a judgment of Rip J. of the Tax Court of Canada (2005 TCC 492) dismissing the appeals brought by Mr. Hauser (the "Appellant") against assessments made under the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 (the "Act"), with respect to his 1997, 1998, 1999, 2000 and 2001 taxation years.

[2] These assessments levy a tax on the Appellant on the basis that he was a resident of Canada throughout these years. The Appellant maintains that his country of residence was the Bahamas.

Relevant facts

[3] The facts are fully set out in the decision under review. The brief summary which follows highlights some of the more salient points.

[4] The Appellant was an Air Canada pilot, based in Toronto. From 1992 to 1995, he worked in Florida as a flight instructor for Air Canada. Before starting this post, he sold his house in Cambridge, Ontario, and his family moved with him to Florida. Following a divorce in 1996, he returned to Canada and rented an apartment in Cambridge. In May 1997, after receiving permission from the Bahamian immigration authorities for a residence permit, the Appellant gave notice to his landlord that he would vacate his apartment at the end of July 1997.

[5] On April 17, 1997, he remarried. According to his wife, it was understood that the couple would live in the Bahamas. She, therefore, resigned from her job with the Ontario Ministry of Environment. In June 1997, the couple signed a lease with an option to purchase a fully equipped townhouse. Around July 29, 1997, the couple moved to the Bahamas.

[6] Before leaving the country, the Appellant wrote to the Ontario Health Insurance Plan (OHIP) authorities to inform them that he was moving out of the country and to cancel his coverage. He also shipped his household goods, his car and his boat to the Bahamas. Although he opened a bank account in the Bahamas, the couple kept a joint bank account in Cambridge, registered at the Appellant's mother-in-law's address, where the Appellant's salary was deposited and used to pay

personal expenses. During those years, the couple spent the Christmas holidays in Canada; the Appellant's wife spent much of the hurricane season in Canada.

[7] At all relevant times, the Appellant remained a pilot with Air Canada. He held a Transport Canada licence and belonged to a Canadian chapter of an international pilot's union. His work base was Pearson International Airport in Toronto ("Pearson"). Air Canada required that the Appellant be in Toronto 24 hours before he was scheduled to fly. Air Canada also required that he be within 2 hours of Pearson while on reserve.

[8] While on call, the Appellant usually stayed in a bedroom at his mother-in-law's home where he kept "seasonal" clothing, as well as an Air Canada uniform. Sometimes, however, the Appellant stayed with his mother and father or friends in Cambridge. While in Cambridge, he was often accompanied by his wife.

[9] The Tax Court Judge found as a fact (Reasons, para. 44) that the Appellant was present in Canada in each year on the following number of days:

Year	Days
1997 (after July 29)	99
1998	215
1999	113
2000	184
2001	142

Decision under appeal

[10] The Tax Court Judge noted at the beginning of his reasons the Crown's concession that the Appellant had established residence in the Bahamas as of August 1997. However, he went on to find that the Appellant did not thereby cease to reside in Canada. According to the Tax Court Judge, the Appellant maintained extensive ties with Canada which supported the conclusion that he continued to reside in Canada during each of the taxation years in issue.

Alleged errors

[11] The Appellant submits that the Tax Court Judge committed an error in principle in failing to conduct a comparative analysis of the ties which he maintained with Canada, and those which linked him to the Bahamas. According to the Appellant, such an analysis if conducted on a qualitative basis, would have led to the conclusion that he has substantially greater ties with the Bahamas and that this was his country of residence to the exclusion of Canada.

[12] In this respect, the Appellant notes that he called a number of witnesses at trial all of whom testified as to his extensive ties with the Bahamas. The Appellant notes that their evidence was not discussed by the Tax Court Judge in the course of his reasons. As such, it is alleged that the Tax Court Judge failed to consider material evidence.

[13] The Appellant also alleges that the Tax Court Judge erred in conducting too general an analysis which focuses on the whole of the period in issue. According to the Appellant, his task was

to focus on each year and to determine whether the evidence supported the respective assessments with respect to each of these years.

Analysis and decision

[14] In my respectful view, this appeal cannot succeed. It has long been established that a person can reside in more than one place at once (*Thomson v. M.N.R.*, [1946] S.C.R. 209 at p. 213 per Kerwin J.). In this case, the issue before the Tax Court Judge was not limited to the identification of the country with which the Appellant had the greater ties as the Appellant suggests. Rather it was, as the Crown submitted, whether the Appellant, despite having established residence in the Bahamas, continued to reside in Canada.

[15] That is the context in which the Tax Court Judge considered the Appellant's argument that he ceased to reside in Canada in 1997 upon taking up residence in the Bahamas. He quoted (Reasons, para. 56) the comments by Rand J. in *Thomson, supra* at p. 225 where he indicated that residence need not be:

> … a home or particular place of abode or even a shelter. He may sleep in the open. It is important only to ascertain the spatial bounds within which he spends his life or to which his ordered or customary living is related. Ordinary residence can best be appreciated by considering its antithesis, occasional or casual or deviatory residence. The latter would seem clearly to be not only temporary in time and exceptional in circumstance, but also accompanied by a sense of transitoriness and of return.

[16] The Tax Court Judge applied the principles articulated by Rand J. and held (para. 58):

> Canada was a magnet that attracted the Hausers. After they set up residence in the Bahamas both of Mr. and Mrs. Hauser, and particularly Mr. Hauser, continued to have a presence in Canada. Mr. Hauser spent over a third of a year in Canada each year. Air Canada required Mr. Hauser to be in Canada to fly airplanes; he reported to work at Pearson Airport and other airports in Canada. Most of his flights left from and returned to Pearson; much of his training was at Pearson. Pearson Airport was part of the routine of life. Mr. Hauser's presence in Canada during the years in appeal was not

> occasional, casual, deviatory, intermittent or transitory. He was in Canada in great part because he had to be, to earn a living.

The Tax Court Judge went on to conclude that the Appellant remained a Canadian resident as he never divorced himself from Canada (Reasons, para. 61).

[17] I can detect no error in the approach used by the Tax Court Judge to arrive at this conclusion.

[18] Despite becoming a Bahamian resident, the Appellant maintained substantial ties with Canada and continued to be present for extensive periods of time each year (see para. 9 above). The decision as to the place or places in which a person resides in a given year is one of fact (*Beament v. M.N.R.*, 52 D.T.C. 1183 at 1186). In this instance, the conclusion reached by the Tax Court Judge is supported by the evidence, and no palpable or overriding error has been demonstrated.

[19] Furthermore, there is no merit to the Appellant's contention that the Tax Court Judge ignored the evidence of witnesses who testified on his behalf. The Tax Court Judge explains in his reasons that he did consider their testimony, but that there was no need to set out the evidence derived thereof as the purpose of their testimony was to establish that the Appellant resided in the Bahamas, a matter which the Crown had conceded (Reasons, para. 2). Counsel for the Appellant further indicated that none of their evidence contradicted any of the Tax Court Judge's findings of fact.

[20] Finally, it has not been shown that the Tax Court Judge failed to address the issue of residence by reference to each of the years in issue. Indeed, the Tax Court Judge specifically notes in his reasons that the issue to be decided was whether the Appellant was a resident of Canada "in one or more years" under appeal (Reasons, para. 52).

[21] In a case such as this, where the focus is on the Appellant's mode and pattern of life, much of the evidence transcends any given year. This, in turn, invites a global analysis. However, the reasons make it clear that the Tax Court Judge was mindful of his duty to assess the Appellant's status with respect to each of the years in issue.

[22] I would dismiss the appeal with costs.

"Marc Noël"
J.A.

"I agree
John M. Evans J.A."

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