

Date: 20071203

Docket: A-411-06

Citation: 2007 FCA 382

**CORAM: DESJARDINS J.A.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

CAROL ANN HISCOCK

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Halifax, Nova Scotia, on December 3, 2007.

Judgment delivered from the Bench at Halifax, Nova Scotia, on December 3, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on December 3, 2007)

NOËL J.A.

[1] This is an appeal from a decision of Campbell J. of the Tax Court of Canada who dismissed the appellant's appeal with respect to reassessments pertaining to her 2002 and 2003 taxation years on the ground that the Tax Court of Canada was without jurisdiction to hear it. In so doing, the Tax Court Judge gave effect to the respondent's preliminary application to dismiss the appeal on the basis that only the Supreme Court of Nova Scotia had jurisdiction to hear it. The motion was brought by the respondent before the filing of her reply to the Notice of Appeal. While not framed

as such, the motion was, in effect, a motion to strike the appellant's Notice of Appeal before a reply had to be filed.

[2] The Tax Court Judge relied on subsections 64(1) and (2) of the *Nova Scotia Income Tax Act*, R.S.N.S. 1989, c.217 according to which issues of residency, to the extent that they impact on Nova Scotia taxes, are to be heard and decided by the Supreme Court of Nova Scotia.

[3] The Tax Court Judge accepted that the Nova Scotia Supreme Court had exclusive jurisdiction given that the only matter in issue in Ms. Hiscock's appeal was whether she resided in Nunavut or Nova Scotia during the relevant period, which determination impacted only on the amount of "provincial taxes applicable" (Reasons for Judgment, Appeal Book, p. 9).

[4] However, in the statement of relevant facts filed by Ms. Hiscock before the Tax Court, she alleged that as a resident of Nunavut, she was eligible for the Northern Residents Allowance (Appeal Book, p. 16). The allowance in question is provided for by section 110.7 of the *Income Tax Act*, 1985 c.1 (5th Supp) and is available to persons who have resided in a prescribed area for not less than 6 consecutive months. To the extent that Ms. Hiscock did qualify for this allowance, the assessments in issue which treat her as a resident of Nova Scotia, do impact on the federal taxes that she owes.

[5] Based on the limited record that we have and in the absence of the respondent's reply, we cannot say whether Ms. Hiscock has any entitlement to the Northern Residents Allowance.

However, at the preliminary stage when the appeal was dismissed, the issue was not whether the appellant could benefit from this allowance. Rather it was whether the appeal could be dismissed on a preliminary basis given the allegation made by Ms. Hiscock that she was eligible for this allowance. In my respectful view, it could not.

[6] On what is in effect a motion to strike, the allegation that Ms. Hiscock was eligible for the Northern Residents Allowance must be taken as proven and be given its widest reach, with the result that it was not open to the Tax Court Judge to hold at that stage that only provincial taxes were in issue in the appeal.

[7] The appeal will therefore be allowed, the decision of the Tax Court Judge will be set aside, and giving the judgement which the Tax Court ought to have given, the respondent's preliminary motion to dismiss the appeal will be dismissed. The respondent will be granted a period of 60 days to serve and file her reply.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-411-06

STYLE OF CAUSE: CAROL ANN HISCOCK and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: December 3, 2007

REASONS FOR JUDGMENT OF THE COURT BY: DESJARDINS, NOËL, TRUDEL J.J.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

Mr. Robert Hiscock ON HER OWN BEHALF
Ms. Carol Ann Hiscock

Ms. Caitlin Ward FOR THE RESPONDENT

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