

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20190108**

**Docket: A-375-17**

**Citation: 2019 FCA 5**

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

**BETWEEN:**

**SALWA ABDALLA**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on December 11, 2018.

Judgment delivered at Ottawa, Ontario, on January 8, 2019.

**REASONS FOR JUDGMENT BY:**

**GLEASON J.A.**

**CONCURRED IN BY:**

**NADON J.A.  
DE MONTIGNY J.A.**

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**REASONS FOR JUDGMENT**

**GLEASON J.A.**

[1] The appellant appeals from the order of the Tax Court of Canada in *Abdalla v. The Queen*, 2017 TCC 222, quashing the appellant's appeals from her 2007 and 2009 reassessments by reason of the Agreement to be Bound and Waiver of Objection and Appeal Rights (the Agreement) signed by the appellant.

[2] The appellant contends that the Tax Court's order should be set aside because the Tax Court erred in finding the Agreement constituted a valid and binding waiver, in concluding that the respondent did not bring undue pressure to bear on the appellant and in failing to give weight to or take judicial notice of what the appellant asserts were relevant facts before the Tax Court.

[3] I disagree with each of these assertions.

[4] Turning to the appellant's first argument, contrary to what the appellant submits, the Tax Court correctly identified the legal requirements for a waiver and made no palpable and overriding error in applying those requirements to the Agreement signed by the appellant. Subsection 169(2.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) requires that, to be effective, a waiver must be in writing, and the case law recognizes two elements required to show a valid waiver: (1) full knowledge of rights; and (2) an unequivocal and conscious intention to abandon them communicated to the other party: *Saskatchewan River Bungalows Ltd. v. Maritime Life Insurance Co.*, [1994] 2 S.C.R. 490 at p. 500, 168 N.R. 381. The Agreement signed by the appellant was in writing and, on the facts before the Tax Court, there was more than ample basis for it to have concluded that the above two requirements for a valid waiver were met in light of the terms of the Agreement.

[5] As concerns the argument regarding undue influence, the Tax Court correctly held that the burden was on the appellant to establish that there had been such influence. In the absence of any evidence from the appellant on this point, I see no error in the Tax Court's conclusion on this issue.

[6] Finally, with respect to the facts that the appellant says the Tax Court ignored or failed to take judicial notice of, there were no such facts before the Tax Court and counsel's submissions do not constitute proof. Nor was the Tax Court obliged to take judicial notice of the section 174 record that counsel referred to in his submissions, which was not placed before the Tax Court in the instant case.

[7] I would, therefore, dismiss this appeal with costs.

“Mary J.L. Gleason”

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J.A.

“I agree.  
M. Nadon J.A.”

“I agree.  
Yves de Montigny J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-375-17

**STYLE OF CAUSE:** SALWA ABDALLA v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** DECEMBER 11, 2018

**REASONS FOR JUDGMENT BY:** GLEASON J.A.

**CONCURRED IN BY:** NADON J.A.  
DE MONTIGNY J.A.

**DATED:** January 8, 2019

**APPEARANCES:**

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