

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110309

Docket: A-112-10

Citation: 2011 FCA 90

**CORAM: DAWSON J.A.
LAYDEN-STEVENSON J.A.
MAINVILLE J.A.**

BETWEEN:

SHEILA WOODS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on March 9, 2011.

Judgment delivered from the Bench at Ottawa, Ontario, on March 9, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 9, 2011)

LAYDEN-STEVENSON J.A.

[1] Despite the able submissions of Mr. Simpson, we are of the view that this appeal from the judgment of Boyle J., a judge of the Tax Court of Canada (the judge) must be dismissed. The judge dismissed the appellant's appeal from a reassessment under paragraph 56(1)(a) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 (the Act). His reasons are reported as 2010 TCC 106, 2010 D.T.C. 1095.

[2] The appellant's brother, Martin Kaye, died in the summer of 2004 while employed by QinetiQ Group PLC or QinetiQ Limited (the employer) in the United Kingdom. The employer had established the QinetiQ Pension Scheme (the plan), a trust fund created to provide a retirement benefits program for its employees and the employees of associated employers. The plan also provided for death benefits equal to three times the employee's annual salary at the date of death.

[3] After the death of Martin Kaye, the plan's trustees paid death benefits in the amount of 110,466 British pounds sterling to his family members. The appellant, a Canadian resident, received approximately \$65,000 Canadian, representing one quarter of the total amount. In filing her 2004 income tax return, the appellant considered the \$65,000 to be non-taxable life insurance proceeds. The Minister of National Revenue (the Minister) reassessed to include the payment as income to the appellant under paragraph 56(1)(a) of the Act. That paragraph requires, among other things, that superannuation, pension and death benefits be included as income. The appellant objected and the Minister confirmed the reassessment. As stated previously, the judge dismissed the appellant's appeal to the Tax Court.

[4] The judge's reasons contain a comprehensive review of the facts, the pertinent statutory provisions and the applicable jurisprudence. The only issue on this appeal is whether the judge erred in finding the death benefits paid to the appellant under the plan constitute superannuation or pension benefits rather than non-taxable life insurance proceeds. No issue is taken with the judge's determination that the payment did not constitute a death benefit within the meaning of subparagraph 56(1)(a)(iii) of the Act.

[5] In the written submissions, relying on the judge's comment at paragraph 18 of his reasons that the death benefits provision of the plan may serve as "the economical functional equivalent of life insurance", the appellant argues the judge ought to have given more weight to her submission that the payment was akin to the proceeds of a life insurance policy. According to the appellant, the judge elevated form over substance and erred in so doing. Notably, the appellant fails to acknowledge the context of the judge's comment – even if it were the economical functional equivalent, that does not make it life insurance. At the hearing, the focus of the appellant's argument was: merely because the payments in issue were paid under the provisions of the pension plan does not mean they are not life insurance benefits.

[6] In *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622 at paragraph 40, the Supreme Court indicated that economic realities will never take priority over the application of an unambiguous provision of the Act. The definition of "superannuation or pension benefit" is found in subsection 248(1) of the Act and includes "any amount received out of or under a superannuation or pension fund or plan."

[7] The only source of entitlement to the payments in this case is found in the plan, which the appellant agrees constitutes a superannuation or pension fund or plan, at least with respect to payments other than those at issue. The judge's review of the financial and administrative provisions of the plan, which are not in dispute, confirms that the death benefits set out in the plan are inextricably tied to the more general retirement benefits provided for under the scheme.

[8] In essence, the appellant simply seeks to reargue the merits of her case before us. In our view, the judge's factual determinations and his characterization of the plan as a superannuation or pension fund or plan are unassailable. This Court has repeatedly stated, "in tax law, form matters." For example, see: *Canada v. Friedberg* (1991), 135 N.R. 61, 92 D.T.C. 6031 (F.C.A.).

[9] For these reasons, the appeal will be dismissed with costs.

"Carolyn Layden-Stevenson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-112-10

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PLACE OF HEARING: Ottawa, Ontario

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DELIVERED FROM THE BENCH BY: LAYDEN-STEVENSON J.A.

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