Federal Court of Appeal | Cour d'appel fédérale

Date: 20110509

Docket: A-346-10

Citation: 2011 FCA 157

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

BETWEEN:

RALPH BODINE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on May 4, 2011.

Judgment delivered at Ottawa, Ontario, on May 9, 2011.

REASONS FOR JUDGMENT BY: LAYDEN-STEVENSON J.A.

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

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REASONS FOR JUDGMENT

LAYDEN-STEVENSON J.A.

[1] Mr. Bodine appeals from the judgment of Sheridan J. of the Tax Court of Canada (the judge) dismissing his appeal from income tax reassessments for the 2000 and 2001 taxation years. This appeal relates only to the 2000 taxation year and concerns the sale of a 20-acre parcel of land near Phoenix, Arizona (Parcel 6).

[2] Despite the capable submissions of Mr. Laird, I am of the view that the appeal should be dismissed.

[3] The judge concluded that the sale of Parcel 6 to the Price Company in 2000 constituted an adventure in the nature of trade.

[4] The judge's conclusion was based on her findings of fact and mixed fact and law with respect to the factors articulated in *Canada Safeway Ltd. v. Canada*, 2008 FCA 24, 2008 D.T.C. 6074. The judge carefully and comprehensively considered and analysed the evidence before her. She concluded, on the basis of that evidence, that as of September 28, 1994, there was a clear intention to convert Parcel 6 from a capital asset used in the production of farm income to an item of inventory for sale in the partnership's business (reasons for judgment at paras. 39-40). Based on her appreciation of the evidence, she also concluded, notwithstanding the use of the property for citrus production between the date of its acquisition by the partnership and the date of its sale, the intention (of the partners or the partnership) to use the property as inventory in an isolated sales transaction remained constant.

[5] The standard of review applicable to the judge's findings is established by *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235. Questions of law are reviewed for correctness and the questions of fact and questions of mixed fact and law (absent an extricable legal question) are reviewed for palpable and overriding error.

[6] Having again reviewed the transcript, the judge's reasons and the submissions of the parties, I conclude that there is evidence in the record to support the judge's conclusion. In other words, the judge's decision was one that was open to her on the evidence before her. Contrary to Mr. Bodine's

assertion, it was not premised only on the existence of a change in form (the 1994 reorganization) although that was reflective of intention.

[7] Mr. Bodine's argument rests essentially on the judge's appreciation of the evidence. Absent palpable and overriding error, this Court will not engage in a reassessment of evidence, nor substitute its view for that of the judge. Mr. Bodine has not demonstrated palpable and overriding error.

[8] Accordingly, I would dismiss the appeal with costs.

"Carolyn Layden-Stevenson"
J.A.

"I agree
M. Nadon J.A."

"I agree
Robert M. Mainville
J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-346-10
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PLACE OF HEARING:	Vancouver, British Columbia
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REASONS FOR JUDGMENT BY:	LAYDEN-STEVENSON J.A.
CONCURRED IN BY:	NADON J.A. MAINVILLE J.A.
DATED:	May 9, 2011

APPEARANCES:

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