

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120503

Docket: A-436-10

Citation: 2012 FCA 134

**CORAM: SHARLOW J.A.
PELLETIER J.A.
STRATAS J.A.**

BETWEEN:

MARIAN JAVOR

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on May 2, 2012.

Judgment delivered at Toronto, Ontario, on May 3, 2012.

REASONS FOR JUDGMENT BY:

SHARLOW J.A.

CONCURRED IN BY:

**PELLETIER J.A.
STRATAS J.A.**

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120503

Docket: A-436-10

Citation: 2012 FCA 134

**CORAM: SHARLOW J.A.
PELLETIER J.A.
STRATAS J.A.**

BETWEEN:

MARIAN JAVOR

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

SHARLOW J.A.

[1] This is an appeal by Marian Javor of a judgment of the Tax Court of Canada (2010 TCC 578) dismissing appeals of assessments under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for 2003, 2004 and 2006. Mr. Javor did not file income tax returns for those years. In 2009, the Minister of National Revenue assessed his tax liability for those years based on T4 slips and other information received by the Minister. The assessment included a late filing penalty and interest. For the following reasons, I would dismiss the appeal.

[2] The amount of taxable income as determined by the Minister for each of 2003, 2004 and 2006 includes an amount of \$536. The Minister determined that Mr. Javor was required by section 146.01 of the *Income Tax Act* to repay that amount to his registered retirement savings plan in each of those years, failing which the amounts were required to be included in his income for income tax purposes. The Minister's position is that this repayment obligation arose because in 1997, Mr. Javor withdrew approximately \$8,000 from his registered retirement savings plan to buy a home. The relevant statutory provisions are summarized in the next paragraph.

[3] The amount in a registered retirement savings plan typically consists of amounts contributed to the plan by its owner, who claims a tax deduction for the amount contributed. The contributed amounts are invested by the plan administrator to earn income free of tax. Generally, any amount withdrawn from a registered retirement savings plan must be included in the plan owner's income for the year of the withdrawal. However, section 146.01 of the *Income Tax Act* provides an exception for amounts withdrawn from a registered retirement savings plan that are used to buy a home. Such withdrawals are not required to be included in income in the year of withdrawal, subject to the condition that the withdrawn amount must be repaid to the registered retirement savings plan in instalments over a 15 year period. If the repayment required for a particular year is not made, the amount of the missed repayment must be included in the person's income for that year for income tax purposes.

[4] Mr. Javor admits that he withdrew approximately \$8,000 from his registered retirement savings plan in 1997 to buy a home, but he takes the position that the statutory repayment obligation

does not apply to him, and therefore the income inclusion provision does not apply either. His position is rooted in the order of a judge of the Ontario Superior Court of Justice issued June 19, 2001 in a matrimonial matter.

[5] It appears that the June 19, 2001 order granted Mr. Javor's former spouse the proceeds of the sale of the matrimonial home, and that the order was made solely on the basis of material filed by or on behalf of Mr. Javor's former spouse because Mr. Javor's pleadings were struck. Mr. Javor alleges that the factual information on which the June 19, 2001 order was made was false or misleading. His submissions on this point are not entirely clear, but I infer that the information before the judge who made the June 19, 2001 order does not take into account the fact that the home was acquired with money withdrawn from Mr. Javor's registered retirement savings plan that he has a continuing obligation to repay.

[6] Mr. Javor has drawn a number of conclusions from the June 19, 2001 order which have led him to challenge the reassessments in issue.

[7] Mr. Javor argues that the June 19, 2001 order precludes him from filing income tax returns and that if he files an income tax return in the face of the June 19, 2001 order he will be in contempt of court or will be acting unlawfully. Mr. Javor is mistaken about what the June 19, 2001 order says, and about its legal consequences. Nothing in the June 19, 2001 order says or implies in any way that Mr. Javor cannot file his income tax returns, or that if he files his income tax returns he will be in

contempt for court or will be acting unlawfully. More importantly, the Ontario Superior Court of Justice does not have the legal authority to stop anyone from filing income tax returns.

[8] Mr. Javor argues that the June 19, 2001 order relieved him of the legal obligation to repay the 1997 registered retirement savings plan withdrawal, or that it shifted the obligation to his former spouse, and therefore he should not be required to suffer any income inclusion for failure to make the repayment. Again, Mr. Javor is mistaken. The June 19, 2001 order does not say or imply anything of that kind. And again, the Ontario Superior Court of Justice does not have the legal authority to relieve anyone of the legal obligation to repay money withdrawn from a registered retirement savings plan to buy a home, or the obligation to pay tax on missed repayments.

[9] Mr. Javor argues that because the facts about the registered retirement savings plan withdrawal and his resulting liability were not appropriately taken into account when the June 19, 2001 order was made, he has been deprived of the benefit of the registered retirement savings plan withdrawal and therefore should not have to repay it or to pay tax on it. Mr. Javor is mistaken. His obligation to repay the money withdrawn from his registered retirement savings plan to buy a home, or to pay tax on any missed repayments, exists regardless of what may have happened to the home that was bought with the withdrawn money, or what may have happened to the proceeds of sale. It is not legally relevant to Mr. Javor's income tax obligation that the home was sold, or that a court order granted Mr. Javor's former spouse the entire proceeds of the sale.

[10] Mr. Javor argues that he should have no liability to repay the withdraw amounts, and therefore no tax liability in respect of the missed repayments, because he was precluded from participating in the hearing that led to the June 19, 2001 order. That argument must be rejected. There are many possible explanations as to why Mr. Javor did not participate in the hearing that led to the June 19, 2001 order, and it is impossible to determine from the record before this Court why that occurred or whether it occurred because of a procedural mistake made by the Ontario Superior Court of Justice. But even if there was an error of some kind, it does not matter. I repeat: as a matter of law the Ontario Superior Court of Justice does not have the legal authority to relieve Mr. Javor of his obligation to repay the 1997 registered retirement savings plan withdrawal, or his obligation to pay tax on the missed repayments.

[11] Mr. Javor argues that the June 19, 2001 order was based on the fraud of his former spouse, her lawyer, the judge, or some combination of them. The fraud, according to Mr. Javor, consists of their disregard of the facts relating to his withdrawal of money from his registered retirement savings plan to buy the home and his continuing obligation to repay the money. The record discloses no evidence of fraud by anyone, and for the reasons already explained, even if the June 19, 2001 order was made without regard to the facts about the withdrawal of money from Mr. Javor's registered retirement savings plan, he would not be relieved of his obligation to repay the amount withdrawn in 1997 from his registered retirement savings plan, or his obligation to pay tax on the missed repayments.

[12] For all of these reasons, the Tax Court judge made no error in concluding that there is no basis in law or fact for allowing Mr. Javor's appeal of the income tax assessments for 2003, 2004 and 2006.

[13] In his appeal to this Court, Mr. Javor raised a number of procedural issues. His main point relates to two subpoenas that the Tax Court judge quashed. The subpoenas had been issued at Mr. Javor's request to his former spouse and to an official of the Law Society of Upper Canada, requiring them to attend the Tax Court proceedings to give evidence. Mr. Javor argues that the Tax Court judge erred in quashing the subpoenas. I do not agree.

[14] Mr. Javor's belief that his former spouse and an official of the Law Society of Upper Canada could give relevant evidence is incorrect. It is based on his misunderstanding of the law relating to his obligation to repay the amounts he withdrew in 1997 from his registered retirement savings plan to buy a home, and his obligation to pay tax on any missed repayments, all of which are explained above. Having carefully reviewed the transcript of the Tax Court proceedings, it is readily apparent that the subpoenas were appropriately quashed. Nothing in the record, and nothing Mr. Javor said in the Tax Court or in this Court, establishes that either of the subpoenaed individuals could have testified to anything that was legally relevant to Mr. Javor's income tax liability.

[15] Mr. Javor alleges that the Tax Court judge followed an unfair procedure when considering whether to quash the subpoena issued to his former spouse. That allegation is not supported by the evidence. The transcript discloses that the Tax Court judge was informed by Registry staff that Mr.

Javor's former spouse had presented herself at the Registry in response to the subpoena. She was allowed to remain in a private meeting room while the propriety of the subpoena was discussed in open court. Mr. Javor failed to state what evidence his former spouse could have offered that was legally relevant to his income tax appeals. The procedure followed by the judge in these unusual circumstances was appropriate and resulted in no prejudice to Mr. Javor. As previously explained, his understanding that her evidence might be relevant was based on an incorrect understanding of the law.

[16] Mr. Javor has asked this Court, as he asked the Tax Court, to submit a complaint to the Canadian Judicial Council about the Ontario judge who dealt with his matrimonial matter, and a complaint to the Law Society of Upper Canada about the lawyer who acted for his former spouse in the matrimonial matter. The Tax Court judge refused to do so, and this Court must also refuse. I appreciate that Mr. Javor is strongly of the view that the judge and the lawyer acted improperly, but the record before this Court discloses no evidence can reasonably support that belief. In any event, we generally do not consider it appropriate to file complaints against judges or lawyers with respect to alleged misconduct in proceedings before other courts.

[17] Mr. Javor alleges that Tax Court judgment is fatally flawed by bias, a reasonable apprehension of bias, or excessive interventions and interruptions on the part of the judge. A careful review of the transcript and judgment reveals no support for that allegation.

[18] Finally, Mr. Javor disputes his liability to pay a late filing penalty and interest. However, he does not dispute that he failed to file his income tax returns on time, and he has no valid basis for disputing the amount of tax assessed. It necessarily follows that he is liable for interest and late filing penalties.

[19] I would dismiss the appeal with costs.

“K. Sharlow”

J.A.

“I agree.

J.D. Denis Pelletier J.A.”

“I agree.

David Stratas J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-436-10

**(APPEAL FROM THE JUDGMENT OF THE HONOURABLE JUSTICE S.K. DARCY
DATED OCTOBER 21, 2012, NO. 2012 – 1812 (IT)I)**

STYLE OF CAUSE: Marian Javor v. Her Majesty the
Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 2, 2012

REASONS FOR JUDGMENT BY: SHARLOW J.A.

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

DATED: May 3, 2012

APPEARANCES:

Marian Javor
(Self-represented) FOR THE APPELLANT

Jenna Clark
Rishma Bhimji FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPELLANT

Myles J. Kirvan
Deputy Attorney General of Canada
Toronto, Ontario FOR THE RESPONDENT