

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210326

Docket: A-255-18

Citation: 2021 FCA 64

**CORAM: BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.**

BETWEEN:

EKUE T. KUEVIAKOE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by online video conference hosted by the registry on March 9, 2021.

Judgment delivered at Ottawa, Ontario, on March 26, 2021.

REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

**BOIVIN J.A.
LEBLANC J.A.**

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REASONS FOR JUDGMENT

LOCKE J.A.

[1] Ekue T. Kueviakoe (the appellant) appeals a decision of the Tax Court of Canada that maintained the disallowance of various business losses and charitable donations (see judgment dated June 14, 2018 in Docket 2017-914(IT)I).

[2] The standard of review in this appeal is as contemplated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235: questions of law are reviewable on a standard of correctness (see para. 8), and questions of fact and of mixed fact and law without an extricable error of law are reviewable on a standard of palpable and overriding error (see paras. 10 and 31). As noted by the respondent, a palpable error is one that is obvious, and an overriding error is one that goes to the very core of the outcome. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall: *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286 at para. 46.

[3] The business losses in issue concern two businesses: (i) WENZE, described as concerning the import and distribution of frozen Cassava leaves, and (ii) Jireh, described as concerning the export and resale of heavy equipment and used cars.

[4] The Tax Court found no factual basis upon which it could determine the revenues and losses of WENZE. It found that invoices produced by the appellant lacked detail, and the appellant had failed to produce any ledgers, business cards, letterhead, cheques, or notebook concerning the business.

[5] The Tax Court found that the documents produced by the appellant in relation to the Jireh business were unorganized and unreferable, and lacked ledgers, depreciation schedules or a revenue expense journal. The Tax Court concluded that there was simply no evidence or statement of earnings or losses that would allow it to approach considering that the appellant had incurred the losses claimed.

[6] In his submissions, the appellant cites various documents allegedly related to his businesses, but he does not identify any palpable and overriding error by the Tax Court in considering the evidence that was before it.

[7] The appellant argues that he was not obliged to keep records beyond six years following the tax year to which they relate, but that argument lacks merit because the 2007 and 2008 claimed business losses were carried forward to 2009 to 2012.

[8] The appellant also argues that, if his business expenses are disallowed, then his business revenues should likewise not be counted. In my view, this reasoning simply does not follow.

[9] With regard to charitable donations, the Tax Court relied on the requirements of Regulation 3501 of the *Income Tax Regulations*, C.R.C., c. 945, concerning receipts for charitable contributions. The Tax Court identified multiple deficiencies in all of the receipts in issue. One shortcoming that it found in all of the receipts was that they failed to comply with paragraph 1(g) of Regulation 3501, requiring that they include “the name and address of the donor including, in case of an individual, the individual’s first name and initial.” Other deficiencies variously cited by the Tax Court included the absence of:

- A. the name and address of the charity (as required by paragraph 1(a) of Regulation 3501),
- B. the registration number assigned by the Canada Revenue Agency (CRA) (as required by paragraph 1(b)),

- C. the serial number of the receipt (as required by paragraph 1(c)),
- D. the place or locality where the receipt was issued (as required by paragraph 1(d)),
and
- E. the name and internet site of CRA (as required by paragraph 1(j)).

[10] The appellant takes issue with all of the cited deficiencies. With regard to the name appearing on the receipts, the appellant argues that his full name is Ekue Arthur Thierry Kueviakoe, and that he is the “Thierry Kueviakoe” named on the receipts.

[11] In my view, the Tax Court did not err in finding that the sole omission of the appellant’s first name and middle initial would be sufficient to render the receipts for the charitable donations non-compliant with Regulation 3501, and hence incapable of supporting a tax credit. Moreover, I see no palpable and overriding error by the Tax Court in (i) its analysis of the appellant’s name with CRA, as well as on his personal cheques, wire transfers and currency exchange documents, and (ii) its conclusion that this name differs from that on the receipts.

[12] With a single exception discussed in the next paragraph, all of the receipts in issue name “Thierry Kueviakoe” as the donor. In my view, the Tax Court did not err in finding that these receipts failed to include the “first name and initial” of the donor. These receipts were rightly rejected for this reason, and it is therefore unnecessary to consider the other grounds cited by the Tax Court for rejecting them.

[13] In one case, a receipt for a donation in the amount of \$100 to Les Térébinthes de la Justice dated February 19, 2010 (the “Térébinthes receipt”, at tab 21 of the Appeal Book), the donor’s name is not the same; it appears as “Ekue A Thierry Kueviakoe”. In this case, it is not clear to me on what basis the Tax Court concluded that the donor’s first name and initial was missing from this receipt. The Tax Court may simply have not noticed the difference in this receipt. This appears to be a palpable error by the Tax Court.

[14] I must now determine whether this palpable error is also overriding, i.e. whether the error goes to the very core of the outcome. The Tax Court found that the Térébinthes receipt was also missing “the place or locality where the receipt was issued”, per paragraph 1(d) of Regulation 3501. If so, the Térébinthes receipt would be invalid for that reason, and the error regarding the appellant’s name would not be overriding.

[15] The Térébinthes receipt clearly indicates an address for the charity as required by paragraph 1(a) of Regulation 3501, but it does not separately indicate the place of issuance of the receipt. Though it may seem strict to reject a receipt on this basis, the law requires a separate indication of the place or locality where the receipt was issued: *Sowah v. The Queen*, 2013 TCC 297, 235 A.C.W.S. (3d) 1127 at para. 19, aff’d 2015 FCA 103; *Bope v. The Queen*, 2015 TCC 120, 252 A.C.W.S. (3d) 872 at paras. 17-18; *Okafor v. The Queen*, 2018 TCC 31, A.C.W.S. (3d) 796 at paras. 20-22 (*Okafor*). As indicated in *Okafor* at para. 20, quoting from *Plante v. R.*,

[2018] T.C.J. No. 20, [1999] 2 C.T.C. 2631:

[46] The requirements in question are not frivolous or unimportant; on the contrary, the information required is fundamental, and absolutely necessary for checking both that the indicated value is accurate and that the gift was actually made.

[47] The purpose of such requirements is to prevent abuses of any kind. They are the minimum requirements for defining the kind of gift that can qualify the taxpayer making it for a tax deduction.

[48] If the requirements as to the nature of the information that a receipt must contain are not met, the receipt must be rejected, with the result that the holder of the receipt loses tax benefits. [...]

Accordingly, there was no error in the Tax Court's conclusion that the Térébinthes receipt fails to comply with Regulation 3501 on the basis that it omits the place or locality where the receipt was issued. It follows therefore that the error regarding the appellant's name made no difference to the result and was therefore not overriding. The Tax Court's rejection of the Térébinthes receipt should not be disturbed.

[16] The appellant also argues that fault for deficiencies in receipts issued by charities should lie with the charities themselves, and that donors should not be denied tax credits due to such deficiencies. This argument cannot succeed. A donor who wishes to claim a tax credit for a charitable donation must be responsible for ensuring that he meets all of the requirements for making such a claim, even if he must rely on documents obtained from a third party.

[17] For the foregoing reasons, I would dismiss the appeal with costs.

"George R. Locke"

J.A.

"I agree.
Richard Boivin J.A."

"I agree.
René LeBlanc J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-255-18

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MAJESTY THE QUEEN

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REASONS FOR JUDGMENT BY: LOCKE J.A.

CONCURRED IN BY: BOIVIN J.A.
LEBLANC J.A.

DATED: MARCH 26, 2021

APPEARANCES:

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