

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230928

Docket: A-187-22

Citation: 2023 FCA 196

**CORAM: DE MONTIGNY J.A.
LEBLANC J.A.
GOYETTE J.A.**

BETWEEN:

STEVE BRAND

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on September 28, 2023.
Judgment delivered from the Bench at Toronto, Ontario, on September 28, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

DE MONTIGNY J.A.

Federal Court of Appeal



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BETWEEN:

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on September 28, 2023).

DE MONTIGNY J.A.

[1] This appeal is about the Minister of National Revenue (the “Minister”)’s reassessment of the Appellant’s personal income tax returns for 2012 and 2013. The Minister disallowed a portion of the business expenses claimed under the Appellant’s real estate operation, and disallowed all the business expenses with respect to his sole proprietorship.

[2] The Tax Court dismissed the Appellant's appeal, finding that the Appellant's poor record keeping made it impossible for him to demonstrate that any amounts were deductible beyond what was already allowed by the Minister. The Tax Court also found that the Appellant often conflated his various personal and commercial activities, making it impossible to determine whether the alleged expenditures were incurred in order to earn income from the business or property against which it was claimed.

[3] After having carefully considered the Appellant's written and oral arguments and the record, we are all of the view that the Trial Judge committed no reviewable error. Her finding as to whether the Appellant was entitled to the disallowed expenses is predominantly a factual issue, and subject to the deferential standard of palpable and overriding error. She made no such error in concluding that the Appellant's evidence was unpersuasive.

[4] During oral submissions, emphasis was put on assumptions of facts and their impact on the burden of proof. However, nothing turns on these assumptions. The Trial Judge reserved her decision so that she could review the Appellant's documents together with his testimony more closely. She was unable to link the business expenses with the sources of income. This is clearly a finding of fact that is entitled to a high degree of deference.

[5] Accordingly, this appeal is dismissed, with costs in the amount of \$1,500.00 in favour of the Respondent.

"Yves de Montigny"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-187-22

APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED AUGUST 12, 2022, DOCKET NO. 2018-4262(IT)I.

STYLE OF CAUSE:

STEVE BRAND v. HIS MAJESTY
THE KING

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

SEPTEMBER 28, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:**

DE MONTIGNY J.A.
LEBLANC J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY:

DE MONTIGNY J.A.

APPEARANCES:

Leigh Somerville Taylor

FOR THE APPELLANT

Gerard Westland and
Craig Maw

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Leigh Somerville Taylor
Professional Corporation

FOR THE APPELLANT

Shalene Curtis-Micallef
Deputy Attorney General of Canada

FOR THE RESPONDENT