

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240201

Docket: A-61-23

Citation: 2024 FCA 24

**CORAM: WOODS J.A.
LOCKE J.A.
GOYETTE J.A.**

BETWEEN:

MARIA PILLON

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Vancouver, British Columbia, on February 1, 2024.

Judgment delivered from the Bench at Vancouver, British Columbia, on February 1, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

WOODS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on February 1, 2024).

WOODS J.A.

[1] These reasons relate to an appeal from an oral decision of the Tax Court of Canada in the matter of *Maria Pillon v. His Majesty the King* (Docket No. 2018-917(IT)G) (*per* Biringer J., as she then was). The decision upheld an assessment issued to Ms. Pillon pursuant to s. 160(1) of

the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) (the Act). In this appeal, Ms. Pillon submits that the Tax Court made several errors that warrant our intervention.

[2] By way of background, s. 160(1) is a tax collection measure. It concerns a situation in which a person with an outstanding tax liability transfers property to another person without receiving adequate consideration. If they were not dealing at arm's length, the person who received the property, the transferee, is liable for the transferor's outstanding tax liability up to the net amount received.

[3] In making the assessment issued to Ms. Pillon, the Minister of National Revenue alleged that Ms. Pillon was a transferee who received property from Mr. John Wall, who had outstanding tax liabilities. In 2009 and 2010, Ms. Pillon purportedly received amounts from Mr. Wall totalling \$978,900 at a time when he owed over twice that amount under the Act.

[4] The assessment was appealed to the Tax Court. In that appeal, Ms. Pillon submitted that s. 160(1) did not apply— first because she gave full consideration for the property received; and second because she dealt at arm's length with Mr. Wall. Ms. Pillon's oral evidence in support of these submissions was limited to her own testimony and that of her tax accountant. Mr. Wall did not testify.

[5] The trial judge was not persuaded by either of these submissions.

[6] With respect to the consideration paid, Ms. Pillon testified in the Tax Court that she had given full consideration because the transfers were simply repayments of loans that she had made to Mr. Wall. The trial judge rejected this testimony on the grounds that it was not credible. Accordingly, the Court concluded that no loans were made.

[7] With respect to the non-arm's length requirement, the issue was whether Ms. Pillon and Mr. Wall were spouses or common-law partners, or whether they were otherwise not dealing at arm's length. The trial judge determined that they were not spouses or common-law partners, but they otherwise did not deal at arm's length.

[8] To determine the non-arm's length issue, the trial judge applied the legal principles articulated by the Supreme Court of Canada in *Canada v. McLarty*, 2008 SCC 79. She found that Ms. Pillon and Mr. Wall were not dealing at arm's length because they acted in concert without separate interests. In making this finding, the Court noted that Ms. Pillon or Mr. Wall had signed various documents which indicated that they were: "partners, common law, husband and wife, reflected a common address, and had also a financial relationship between them." The trial judge concluded that they had a close personal relationship.

[9] The Tax Court also considered the evidence concerning Ms. Pillon's purported loans to Mr. Wall, stating that this might potentially bear on the non-arm's length issue. The trial judge reached the conclusion that the terms and conditions of the alleged loans did not reflect "ordinary commercial dealings between parties acting in their own interests."

[10] Based on this and other factors, the Tax Court concluded that s. 160(1) applied.

[11] In this Court, Ms. Pillon submits that the Tax Court made several errors that concern both issues which warrant our intervention.

[12] We are of the view that the Tax Court made no such errors. Although the decision was rendered orally, the reasons were detailed and thorough. There was ample support for the conclusions that were reached. In applying the relevant standards of appellate review, we conclude that the correct legal principles were applied by the Tax Court and there was no palpable and overriding error of fact or mixed fact and law.

[13] Most of Ms. Pillon's submissions in this Court misinterpret the Tax Court's decision and are devoid of merit. We would mention two of the submissions in particular.

[14] At this hearing, Ms. Pillon submitted that the trial judge made a palpable and overriding error in characterizing the evidence. She submits that she and Mr. Wall acted in their own separate interests and did not act with one single mind.

[15] We disagree with this submission. The trial judge's conclusion that there was an absence of separate interests was well supported by the evidence. This was far from a palpable and overriding error.

[16] The second submission we will mention relates to a finding by the trial judge that there likely would have been a clearer picture of events if Mr. Wall had testified. Ms. Pillon submitted that, because of this finding, it was an error for the Court to decide against her.

[17] We disagree with this because it fails to take into account that Ms. Pillon had the burden of proof. The Tax Court made this clear and noted that it was Ms. Pillon's choice to have only herself and her tax accountant testify. Ultimately, the Court concluded that the burden of proof was not satisfied. Therefore, it was not an error to find against Ms. Pillon in circumstances where Mr. Wall did not testify.

[18] In the result, we are in agreement that the appeal should be dismissed, with costs to the respondent.

“Judith Woods”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-61-23

STYLE OF CAUSE: MARIA PILLON v. HIS
MAJESTY THE KING

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: FEBRUARY 1, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** WOODS J.A.
LOCKE J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: WOODS J.A.

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