

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131003

Docket: A-567-12

Citation: 2013 FCA 233

**CORAM: NOËL J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

CHANTAL CONSTANTIN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on October 2, 2013.

Judgment delivered at Montréal, Quebec, on October 3, 2013.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**NOËL J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

TRUDEL J.A.

[1] Ms. Constantin is appealing a decision of the Tax Court of Canada [2012 TCC 425] in which Deputy Judge Masse dismissed her appeal from an assessment made under subsection 323(3) of the *Excise Tax Act*, R.S.C. 1985, c. E-15.

[2] The assessment at issue covers the period from November 30, 2003 to August 31, 2007, during which Ms. Constantin was the sole director and shareholder of the corporation 9121-1482 Québec Inc. The Canada Revenue Agency (CRA) is claiming \$136,028.65 from her, in her capacity as director, for goods and services tax that the company failed to remit during that period.

[3] The appellant's defence is straightforward: she was completely unaware of the amounts owing to the CRA. The debtor company was at all times controlled by her spouse, and it was at his explicit request and for the sole purpose of protecting the family's assets that the appellant agreed to be designated the sole director and shareholder of the company. She stated that her spouse did not keep her informed about the company's financial difficulties, much less about his personal trouble with individuals who were threatening and harassing him. When she asked him questions about the company, she contented herself with his answers and trusted him completely. It was not until September 2008 that the appellant's spouse told her what the true circumstances of the company were, well after the period covered by the assessment. She was therefore unable to act any earlier to prevent the failure. Relying on the decision of the Court of Appeal of Quebec in *Wightman c. Widdrington (Succession de)*, 2013 QCCA 1187, she submits that she was only an outside administrator so that she had less of a duty of diligence than her spouse, who was the *de facto* director of the company.

[4] I am certainly sympathetic with respect to the situation in which the appellant finds herself, but I cannot identify any error of fact or law in the judgment being appealed that would warrant the intervention of this Court.

[5] The deputy judge held on the basis of the evidence that “[a] reasonably prudent person, who knew that there were bad debts, would not have asked only general questions” (Reasons at paragraph 39). He also concluded that “the appellant should have known that the company had serious financial problems that should have been closely monitored” (Reasons at paragraph 41), particularly given that, during the period at issue, she had accompanied her spouse to two cheque-cashing centres and she knew at the time that the company’s bank account was with a banking institution. She also personally undertook to indemnify one of the cheque-cashing centres for any harm suffered as consequence of any refusal to pay, any stop payment order or any NSF cheque (Appeal Book, Tab P, Exhibit P-7, clause 8). The appellant therefore could not have been unaware of the fact that, during the period at issue, the company was experiencing serious financial problems, or failed to wonder about the debts accumulated by the company, including its tax debt.

[6] Having carefully considered the record, I am satisfied that the deputy judge took into account the appellant’s particular circumstances (*Canada v. Buckingham*, 2011 FCA 142) and did not err in concluding that the appellant “was not concerned about the tax remittances and took no concrete action in order to prevent the company's failure to remit the amounts at issue” (Reasons at paragraph 42). He did not err in finding that the appellant had not “exercised the

degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances” (Reasons at paragraph 43).

[7] Accordingly, I would dismiss the appeal with costs in this Court, the deputy judge not having made any award of costs at trial.

“Johanne Trudel”

J.A.

“I agree.
Marc Noël J.A.”

“I agree.
J.D. Denis Pelletier J.A.”

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-567-12

STYLE OF CAUSE: CHANTAL CONSTANTIN v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 2, 2013

REASONS FOR JUDGMENT BY: TRUDEL J.A.

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

DATED: OCTOBER 3, 2013

APPEARANCES:

Chantal Constantin SELF-REPRESENTED

Philippe Morin FOR THE RESPONDENT

SOLICITORS OF RECORD:

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