

Federal Court of Appeal



CANADA

Cour d'appel fédérale

Date: 20120126

Docket: A-228-10

Citation: 2012 FCA 30

**CORAM: EVANS J.A.
SHARLOW J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

GIUSEPPE TARASCIO

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on January 26, 2012.

Judgment delivered at Toronto, Ontario, on January 26, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on January 26, 2012)

EVANS J.A.

[1] Giuseppe Tarascio is a lifelong gambler: horses, slots, casino games, and lotteries. By day he is employed as a Bell technician, but after work and at the weekends he spends most of his time gambling. He says that gambling is his calling.

[2] In his income tax returns for 2002 and 2003 he deducted from his gambling winnings his losses and associated expenses: \$40,933 for 2002, and \$56,000 for 2003. The Minister of National

Revenue disallowed these deductions on the ground that Mr Tarascio's gambling activities did not constitute a business.

[3] This is an appeal by Mr Tarascio from the decision of the Tax Court of Canada (Court File No. 2008-401 (IT)I), in which Associate Chief Justice Rossiter (Judge) dismissed his appeal from the reassessment. In his reasons for decision, the Judge relied on *Stewart v. Canada*, 2002 SCC 46, [2002] 2 S.C.R. 645, for the proposition that, when an activity has elements of a hobby or personal venture and a business it is necessary to ask whether the activity was conducted in a sufficiently commercial manner, that is, with the subjective intention of making a profit and objective evidence of business-like behaviour.

[4] The Judge then marshalled the case law on determining whether a taxpayer's gambling activities have the requisite objective indicia of a business, and made the following findings.

[5] First, although Mr Tarascio had books and records of his gambling activities, he had prepared them for the purpose of supporting his submission that he was engaged in a business. Consequently, they were of little value in proving that he was conducting a business. Second, Mr Tarascio testified that, while he liked to win, he gambled, win or lose, because he loved the thrill of gambling. Third, he had little by way of a systematic method for gambling and spent no time practising his skills, especially after he switched his principal gambling from horse racing to slots and the casino.

[6] Accordingly, the Judge concluded that Mr Tarascio was not conducting a gambling business.

[7] In our view, the Judge applied the correct legal test. Hence, we can interfere with his decision only if persuaded that he made a palpable and overriding error in either finding the facts on which he based his decision, or applying the legally relevant factors to the facts that he found. We can detect no such error.

[8] In his submissions to this Court Mr Tarascio says that his experience with various forms of gambling, together with his degree in mathematics, including probability theory, constitutes his special knowledge and skill as a gambler. In our view, this is insufficient to demonstrate that the Judge made a palpable and overriding error on the evidence before him when he concluded that Mr Tarascio's gambling activities did not constitute a business.

[9] The fact that in previous years Mr. Tarascio may have reported his gambling activities as a business without being audited is not relevant in determining whether the reassessments for 2002 and 2003 were justified.

[10] For these reasons, the appeal will be dismissed with costs fixed in the amount of \$1,000 inclusive of disbursements and taxes.

“John M. Evans”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-228-10

(APPEAL FROM THE JUDGMENT OF THE HONOURABLE E.P. ROSSITER, ACJ, OF THE TAX COURT DATED MARCH 4, 2010, DOCKET NO. 2008-401(IT)G.

STYLE OF CAUSE: GIUSEPPE TARASCIO v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 26, 2012

**REASONS FOR JUDGMENT
OF THE COURT BY:** EVANS, SHARLOW & LAYDEN-
STEVENSON J.J.A.

DELIVERED FROM THE BENCH BY: EVANS J.A.

APPEARANCES:

Giuseppe Tarascio

FOR THE APPELLANT
(self-represented)

Laurent Bartleman
Marie-Thérèse Boris

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

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FOR THE RESPONDENT