

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131118

Docket: A-494-12

Citation: 2013 FCA 268

**CORAM: EVANS J.A.
TRUDEL J.A.
WEBB J.A.**

BETWEEN:

MICHAEL PALANGIO

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on November 18, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on November 18, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

WEBB J.A.

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REASONS FOR JUDGMENT OF THE COURT
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WEBB J.A.

[1] The appellant is appealing the decision of Justice Paris of the Tax Court of Canada (2012 TCC 405). In his Notice of Appeal and in his factum, the appellant raised a number of issues. During the oral hearing, counsel for the appellant stated that the appellant was now only pursuing the issue of whether his writing articles for the Heads Up newspaper issued by the Cochrane and

Area Ratepayers Association was a source of business income for the purposes of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), (the “Act”) and if it was a source whether the legal fees that he had incurred were deductible in determining his income from this source.

[2] The Tax Court Judge had found that the appellant’s writing was not a source of business income for the purposes of the Act and furthermore that the appellant had not established a sufficient connection between the writing activities of the appellant and his legal fees to support a finding that such fees would be deductible, in any event.

[3] The appellant had started writing articles for this newspaper in February or March 2004 after he was elected as a municipal councillor in late 2003. At that time, legal proceedings had already been commenced against the appellant in relation to certain published letters to the editor of another local newspaper that he had written when he was a member of the Public Utilities Commission. It also appears that additional claims were made against the appellant after he started writing articles for the Heads Up newspaper. Although it is not entirely clear, it appears that the appellant is claiming the amount he incurred for legal fees in 2006 and 2007. However, it is not possible to determine what portion of these legal fees would relate to the legal proceedings that had been commenced before he started writing for the Heads Up newspaper (which proceedings continued until the final settlement in 2007 of all of the proceeding that had been commenced against him).

[4] As the appellant noted, in this appeal he has to show that the Tax Court Judge committed a palpable and overriding error in relation to any questions of fact or any questions of mixed fact and law (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235). We are all of the view that the

appellant has failed to demonstrate that the Tax Court Judge made any palpable and overriding error with respect to:

- a) his finding that the appellant did not have a source of business income in relation to his writing articles for the Heads Up newspaper; or
- b) his finding, in any event, that the appellant failed to establish a connection between the legal fees and this writing activity that would support a finding that these legal fees were incurred for the purpose of earning income from this activity.

[5] We would note that the Tax Court Judge did “conclude that the Appellant’s commercial rental did not constitute commercial activity as defined under ss. 123(1) of the *Excise Tax Act*” (paragraph 63). This finding was based on the Judge’s determination that the appellant did not have a reasonable expectation of profit from the commercial rental of real property (paragraph 62). The only part of the definition of commercial activity to which the Judge referred was the part in paragraph (a) of that definition (paragraph 50). We would note that the definition of commercial activity consists of three paragraphs and not just paragraph (a). Since the appellant is not pursuing this appeal under the *Excise Tax Act*, R.S.C. 1985, c. E-15, we will not comment on whether the Judge was correct in this conclusion.

[6] As a result, the appeal will be dismissed with costs.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-494-12

STYLE OF CAUSE: MICHAEL PALANGIO v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

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REASONS FOR JUDGMENT OF THE COURT BY: EVANS J.A.
TRUDEL J.A.
WEBB J.A.

DELIVERED FROM THE BENCH BY:
WEBB J.A.

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