

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140410

Docket: A-173-13

Citation: 2014 FCA 99

**CORAM: BLAIS C.J.
SHARLOW J.A.
STRATAS J.A.**

BETWEEN:

ROBERT MCADAMS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on April 10, 2014.
Judgment delivered from the Bench at Vancouver, British Columbia, on April 10, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on April 10, 2014).

SHARLOW J.A.

[1] Mr. McAdams is appealing the order of Justice Campbell Miller of the Tax Court of Canada dated May 3, 2013. The order dismissed Mr. McAdams' motion to strike the Crown's reply to a notice of appeal against a reassessment issued under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for the 2001 taxation year.

[2] The factual basis of the income tax reassessment under appeal is in dispute. Mr. McAdams takes the position that he settled a spousal trust in 2001. He says that later in that same year he transferred certain corporate shares to the trust. Those shares were redeemed soon after, giving rise to a deemed dividend in the amount of approximately \$7.6 million. When the trust filed its income tax return for its 2001 taxation year, the deemed dividend was included in the trust's income and the trust paid tax accordingly.

[3] The Minister takes the position that the settlement of the spousal trust was a sham and that Mr. McAdams was the beneficial owner of the shares when they were redeemed. If the Minister's position is correct, the deemed dividend should have been taxed in the hands of Mr. McAdams in 2001.

[4] Mr. McAdams argues that the Minister cannot lawfully take the position that the trust was not valid or that Mr. McAdams is liable for the tax on the deemed dividend. He argues that the Crown's reply is a collateral attack on the Minister's assessment of the trust's tax liability for 2001 which, pursuant to subsection 152(8) of the *Income Tax Act*, is valid and binding on everyone, including the Minister, unless it is varied or vacated or the trust is reassessed. Mr. McAdams argues that it cannot be the case that both the trust and Mr. McAdams are taxable on the deemed dividend, and therefore it is plain and obvious that the Minister's reply discloses no reasonable basis for rejecting his income tax appeal.

[5] We agree with Justice Miller that it is not plain and obvious that the reassessment under appeal is an impermissible collateral attack by the Minister on the initial assessment of the trust.

This Court has said that when facts are in dispute, the Minister may issue inconsistent assessments pending the resolution of the dispute (see, for example, *Antle v. Canada*, 2010 FCA 280, *Hawkes v. Canada*, 97 DTC 5060).

[6] In theory, the deemed dividend is taxable in the hands of only one taxpayer, which must be either the trust or Mr. McAdams. However, it does not follow that the initial assessment of the trust for its 2001 taxation year necessarily reflects the correct result. Nor is it plain and obvious that the Minister, having initially assessed the trust on the basis of the trust's 2001 tax return, is precluded from assessing what she now believes to be the correct tax in the hands of Mr. McAdams (*M.N.R. v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 205), or from defending that assessment on the basis stated in the reply.

[7] For these reasons, the appeal will be dismissed with costs.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-173-13

(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE CAMPBELL MILLER OF THE TAX COURT OF CANADA, DATED MAY 6, 2013, DOCKET NUMBER 2011-3289(IT)G.)

STYLE OF CAUSE: ROBERT MCADAMS v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: APRIL 10, 2014

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J.
SHARLOW J.A.
STRATAS J.A.

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Gavin Laird
Drew Gilmour

FOR THE APPELLANT

Michael Taylor
Shankar Kamath

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Laird & Company
Pitt Meadows, B.C.

FOR THE APPELLANT

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT