

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140429

Docket: A-78-13

Citation: 2014 FCA 108

**CORAM: PELLETIER J.A.
STRATAS J.A.
NEAR J.A.**

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

**QUINCO FINANCIAL INC.
(formerly LANDEX INVESTMENTS
COMPANY)**

Respondent

Heard at Calgary, Alberta, on November 27, 2013.

Judgment delivered at Ottawa, Ontario, on April 29, 2014.

REASONS FOR JUDGMENT BY:

THE COURT

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[1] We are of the view that the appeal from the judgment of D'Auray J. of the Tax Court of Canada, reported at 2013 TCC 20, should be dismissed.

[2] We have not been persuaded by the Crown's arguments, all of which involve a strained interpretation of the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15 so as to avoid a result that the Crown, for obvious reasons, regards as a windfall.

[3] This case falls to be decided by the usual principles that govern the interpretation of provisions in taxation statutes. The Supreme Court has set out the governing principles in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601.

[4] The Tax Court correctly identified *Canada Trustco* as the leading authority and, in our view, correctly interpreted the principles in it: see the Tax Court's reasons at paragraph 30.

[5] In *Canada Trustco*, the Supreme Court held that in interpreting provisions in taxation statutes one must look to the text, context and purpose of the provision. However, where the particular words of a provision are precisely-worded and unequivocal, the ordinary meaning of those words plays a "dominant role" in the process. The Supreme Court expressed this at paragraph 10 of *Canada Trustco*:

It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": [citation omitted]. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play [*sic*] a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[6] The Supreme Court in *Canada Trustco* (at paragraph 13) also noted that the *Income Tax Act* is “an instrument dominated by explicit provisions dictating specific consequences,” and this invites “a largely textual interpretation”: *Canada Trustco*, at paragraph 13. The same can be said for the Act before us in this appeal: *CIBC World Markets Inc. v. Canada*, 2011 FCA 270 at paragraph 29.

[7] On the dominant role that the particular words of taxation statutes play in the statutory interpretation process, *Canada Trustco* does not stand alone. A few years earlier, the Supreme Court emphasized that where a provision in a taxation statute is “clear and unambiguous,” its words “must simply be applied”: *Shell Canada Ltd. v. Canada*, [1999] 3 S.C.R. 622 at paragraph 40. And one year after *Canada Trustco*, the Supreme Court emphasized that in cases where the language is precise one cannot posit a purpose behind a provision and then use it “to create an unexpressed exception to clear language” or “supplant” clear language: *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20 at paragraph 23.

[8] Overall, the Act consists of clear, precise rules to facilitate ease of application, consistency and predictability. This underscores the dominance of the plain meaning of the text of the Act in the process of interpreting provisions of the Act.

[9] There may be cases where precisely-worded provisions or their interaction creates an advantage or a windfall for a registrant under the Act. But we do not interpret taxation provisions in a tendentious or result-oriented way to enhance the federal treasury: *Shell Canada, supra* at paragraphs 39 and 40. Instead, absent words allowing us to address situations of abuse or

windfall, where the provisions are precisely-worded, clear and unambiguous, they must be given their plain effect.

[10] In this case, we agree with D'Auray J.'s interpretation of the combined effect of subsections 169(1), 232(2) and paragraph 232(3)(c) of the Act.

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

“J.D. Denis Pelletier”

J.A.

“David Stratas”

J.A.

“David Near”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-78-13

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE
D'AURAY DATED JANUARY 23, 2013, NO. 2010-1608(GST)G**

STYLE OF CAUSE: HER MAJESTY THE QUEEN v.
QUINCO FINANCIAL INC.

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: NOVEMBER 27, 2013

REASONS FOR JUDGMENT BY: THE COURT

DATED: APRIL 29, 2014

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