Federal Court of Appeal  Cour d'appel fédérale

Date: 20140514

Docket: A-231-13

Citation: 2014 FCA 127

CORAM: **NOËL J.A.**
MAINVILLE J.A.
SCOTT J.A.

BETWEEN:

ÉRIC ST-DENIS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on May 13, 2014.

Judgment delivered at Montréal, Quebec, on May 14, 2014.

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: MAINVILLE J.A.
SCOTT J.A.

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REASONS FOR JUDGMENT

NOËL J.A.

[1] By judgment of the Tax Court of Canada dated June 6, 2013, the Chief Justice of the Tax Court of Canada (the TCC judge) dismissed the appeal filed by Éric St-Denis (the appellant) against an assessment made on March 12, 2008, pursuant to section 325 of Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the ETA), in the amount of $55,754.10.

[2] The purpose of section 325 of the ETA is to facilitate the collection of unpaid taxes by making the transferee in a transfer of property between related persons liable, up to the amount of the unpaid tax, for the tax debt of the transferor where the transfer takes place for a consideration less than the fair market value of the property in question.

[3] In this case, the assessment is based on the transfer of an immovable property located at 396 Ellice Street, in Salaberry-de-Valleyfield, on January 22, 2008, by Ms. Cousineau, the appellant's mother, to the appellant in consideration of $1. On that date, Ms. Cousineau owed the tax authorities $170,364.97.

[4] In support of his appeal, the appellant presented a series of legal arguments regarding the retroactive effect of the correction of a contractual error under the *Civil Code of Québec*, but in the end, the appeal turns solely on the question of credibility. Indeed, despite the testimony given, the TCC judge found, with reasons in support, that the deed of correction signed on April 22, 2008, was intended to correct an error that had not been made.

[5] The appellant's position rests on his assertion that the deed of assignment dated January 22, 2008, on which the assessment is based, did not give rise to a transfer of property. This argument is based in turn on the alleged fact that the sale of 396 Ellice Street to Ms. Cousineau on December 14, 2007, was the result of an error, which was purportedly recognized by a notarial act signed on April 22, 2008. By that act, the parties recognized that it was the appellant, not his mother, who became the owner of 396 Ellice Street pursuant to the transaction dated December 14, 2007. The TCC judge nonetheless concluded, with reasons in

support, that the existence of an error regarding the identity of the purchaser had not been proved.

[6] For one thing, after noting that the notary had read the deed of sale signed on December 14, 2007, in accordance with accepted professional practice, in the presence of the vendor, the appellant, his mother and his father, the TCC judge refused to believe that none of these individuals, despite being fully aware of the identities of the parties to the transaction to which they were witnesses, had noticed such a flagrant error.

[7] For another, the TCC judge found that the appellant's mother acted as the owner of 396 Ellice Street after she purchased it. Among other things, she received the rent for December 2007 and January 2008, and no evidence was filed to show that it was handed over to the appellant. The appellant tried to play down this fact by saying that he included this rent in his 2008 tax return, but as the TCC judge explained, this was a suspicious act, since the appellant did it after being assessed under section 325 of the ETA.

[8] Furthermore, in a letter to the Revenu Québec collections officer dated March 6, 2008, counsel for the appellant wrote that his client had been the owner of 396 Ellice Street [TRANSLATION] "since January 22, 2008" (Reasons at para. 35), thereby acknowledging that it was not the appellant, but his mother, who had been the owner before that date.

[9] Finally, the TCC judge pointed out that there was no mention in the deed of assignment signed on January 22, 2008, of a previous error. The existence of an error was mentioned for the

first time in the deed of correction drawn up three months later, after the assessment had been received.

[10] This is the evidence that led the TCC judge to conclude at paragraph 37 of his reasons that the identity of the purchaser indicated in the deed of sale was not erroneous.

[11] The issue of whether or not an error regarding the identity of the purchaser was made is a question of fact, such that the finding made by the TCC judge cannot be revisited, absent a palpable and overriding error. No serious challenge was mounted against any of the grounds relied upon by the TCC judge to support his finding.

[12] Counsel for the appellant emphasized the fact that the TCC judge had failed to consider the promise to purchase that named his client as the purchaser. It is true that the appellant is named as the purchaser of one of the immovable properties that was sold at the same time as 396 Ellice Street, but the identity of the prospective purchaser of 396 Ellice Street was not clearly established by the documentary evidence filed.

[13] In the same vein, counsel put forward an economic argument according to which his client, having purchased one of the other immovable properties sold at the same time, must logically have become the owner of 396 Ellice Street.

[14] As the TCC judge stated at paragraph 30 of his reasons, this argument would have been convincing if the appellant had shown that he had provided the funds and/or the necessary financing for these purchases. However, there is no evidence whatsoever in this regard.

[15] It must therefore be concluded that no palpable and overriding error has been proved.

[16] I think it would be useful to add that the recent decision of the Supreme Court in *Quebec (Agence du revenu) v. Services Environnementaux AES inc.*, 2013 SCC 65, [2013] 3 S.C.R. 838 (*AES*), in no way supports the appellant's argument, since in the two cases underlying that judgment, the existence of an error was proved (*AES* at paras. 51 and 53).

[17] In light of the conclusion that I have reached, there is no need to consider the issue addressed by the TCC judge as to whether the appellant should have proceeded by improbation rather than by deed of correction.

[18] I would dismiss the appeal with costs.

"Marc Noël"

J.A.

"I agree.
Robert M. Mainville, J.A."

"I agree.
A.F. Scott, J.A."

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-231-13
(APPEAL FROM A JUDGMENT OF THE HONOURABLE CHIEF JUSTICE RIP OF THE TAX COURT OF CANADA DATED JUNE 6, 2013, DOCKET NO. 2009-3541(GST)G)	
STYLE OF CAUSE:	ÉRIC ST-DENIS v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MAY 13, 2014
REASONS FOR JUDGMENT BY:	NOËL J.A.
CONCURRED IN BY:	MAINVILLE J.A. SCOTT J.A.
DATED:	MAY 14, 2014

APPEARANCES:

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Danny Galarneau	FOR THE RESPONDENT

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