

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140610**

**Docket: A-313-13**

**Citation: 2014 FCA 154**

**CORAM: DAWSON J.A.  
TRUDEL J.A.  
NEAR J.A.**

**BETWEEN:**

**BURG PROPERTIES LTD.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

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

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DAWSON J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

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

**DAWSON J.A.**

[1] For reasons delivered orally on July 4, 2013, in court files 2013-97(IT)G and 2011-2468(GST)G, a judge of the Tax Court of Canada:

- a) quashed appeals brought by the appellant, Burg Properties Ltd., from reassessments made under the *Excise Tax Act*, R.S.C. 1985, c. E-15 for its reporting periods ending February 28, 2007, April 30, 2007 and April 30, 2008; and

- b) quashed appeals brought by the appellant from reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 for its 2007, 2008 and 2009 taxation years.

[2] The appeals were quashed on the basis that the appellant had entered into a settlement agreement with the Canada Revenue Agency in which it was agreed that if the Minister of National Revenue reassessed the appellant in accordance with the terms of the settlement agreement, the appellant waived its rights of objection and appeal. The Tax Court of Canada found that the Minister reassessed the appellant in accordance with the terms of the settlement agreement so that the appellant had waived his rights of objection and appeal.

[3] This is an appeal from the order of the Tax Court that quashed the notices of appeal.

[4] The terms of the settlement agreement did not set out the final amounts the appellant owed. Rather, the agreement set out how various amounts at issue were to be increased or decreased on the final reassessment.

[5] On this appeal, the appellant argues that the settlement agreement contemplated that the adjustments were to be made to items set out in original and amended tax returns filed by the appellant.

[6] The respondent denies this and states that the settlement agreement contemplated that the adjustments were to be made to the amounts the Canada Revenue Agency reported in its reassessment of the appellant.

[7] We are of the view that this appeal must fail for the following reasons.

[8] First, on this appeal the appellant largely reargued the merits of his position. However, as explained to its counsel, it is not the role of this Court to re-weigh evidence or reconsider submissions. We are confined to searching for an error of fact, mixed fact and law or error of law that warrants intervention in accordance with the standards articulated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.

[9] The appellant failed to establish any such error.

[10] Second, the letter that accompanied the settlement agreement stated:

We have completed our review of the above Notices of Objection. As a result of our review, we are prepared to offer the following settlement offer without prejudice with respect to the reassessments of the corporate income tax returns [...] and the GST returns [...].

[11] This expressly advised the appellant that, if accepted, the adjustments would be applied to the reassessments which resulted from the audit and which were the subject of notices of objection.

[12] Third, the terms of the waiver provide:

I will waive any right of objection or appeal in respect of any and all issues relating to the above Notices of (Re)Assessments if Canada Revenue Agency reassesses the income tax returns and the GST returns as follows:

[13] Again, this clearly advised the appellant that the adjustments would be applied to the amounts set out in the notices of reassessment.

[14] Fourth, the terms of the settlement agreement included the cancellation of gross negligence penalties. Such penalties were imposed in the reassessments that gave rise to the notices of objection, not in the appellant's amended tax returns.

[15] Finally, section 152 of the *Income Tax Act* and section 299 of the *Excise Tax Act* provide that the Minister is not bound by any return provided by a taxpayer and that assessments, subject to being vacated or reassessed, are deemed to be valid and binding. In the light of this statutory regime there is no reason to believe that the Minister would enter into a settlement agreement that varied a non-binding tax return when she had already made a reassessment which was valid and binding on issuance.

[16] It follows that the Judge made no error when he quashed the appeals.

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

“Eleanor R. Dawson”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-313-13

**STYLE OF CAUSE:** BURG PROPERTIES LTD. v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** VANCOUVER, BRITISH  
COLUMBIA

**DATE OF HEARING:** JUNE 10, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** DAWSON J.A.  
TRUDEL J.A.  
NEAR J.A.

**DELIVERED FROM THE BENCH BY:** DAWSON J.A.

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