

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141014

Docket: A-375-13

Citation: 2014 FCA 230

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

BETWEEN:

BRENT KERN FAMILY TRUST

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on October 14, 2014.
Judgment delivered from the Bench at Toronto, Ontario, on October 14, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

NEAR J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 14, 2014).

NEAR J.A.

[1] This is an appeal from the Tax Court of Canada. For reasons cited at 2013 TCC 327, the Court dismissed an appeal from reassessments made under the *Income Tax Act*.

[2] The main issues in this matter are whether the Federal Court of Appeal (FCA) case of *Canada v. Sommerer*, 2012 FCA 207, applied to the facts of this case or, in the alternative, whether *Sommerer* was manifestly wrong and ought not to be followed.

[3] In our view there is no reviewable error in the trial judge's finding that *Sommerer* applied, given that *Sommerer* decided that ss. 75(2) applies only to a settler or contributor and not where there is a fair market value disposition into the trust.

[4] In this Court, counsel for the appellant spent most of his time challenging *Sommerer* on the basis that the decision was manifestly wrong largely on the basis that both the trial judge and the FCA in *Sommerer* were not informed sufficiently as to the history and purpose of ss. 75(2).

[5] Like the trial judge in this case (at para. 27) we conclude that this Court in *Sommerer* "spent considerable time analyzing the text, content and purpose of the subsection, or at least sufficiently enough" to arrive at a correct interpretation of ss. 75(2). In our view, counsel for the appellant has not pointed to any fundamental matter that was overlooked sufficient to justify intervention on the basis of *Miller v. Canada (Attorney General)* 2002 FCA 370 at para. 10.

[6] Therefore despite the able arguments of Mr. Pniowsky, the appeal shall be dismissed with costs in this Court.

"D.G.Near"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-375-13

STYLE OF CAUSE: BRENT KERN FAMILY TRUST v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: OCTOBER 14, 2014

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

DELIVERED FROM THE BENCH BY: NEAR J.A.

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