

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141008

Docket: A-368-13

Citation: 2014 FCA 224

**CORAM: NADON J.A.
GAUTHIER J.A.
SCOTT J.A.**

BETWEEN:

NORMAND VACHON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on October 6 and 8, 2014.

Judgment delivered from the bench at Montréal, Quebec, on October 8, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

SCOTT J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal, Quebec, on October 8, 2014.)

SCOTT J.A.

[1] This is an appeal by Normand Vachon (the appellant) from a decision of Justice Tardif (the judge) of the Tax Court of Canada (the TCC), who, among other things, authorized the Minister to make an assessment for the 2003 and 2004 taxation years, despite the expiration of the limitation period referred to in subparagraph 152(4)(a)(i) of the *Income Tax Act*, R.S.C.

(1985), c. 1 (5th Supp.) (the Act), on the ground that the taxpayer made a misrepresentation attributable to neglect.

[2] From the appellant's standpoint, the only issue is whether the judge erred in considering that the reassessments made by the Minister were related to a "misrepresentation that is attributable to neglect, carelessness or wilful default" as stated in subparagraph 152(4)(a)(i) of the Act.

[3] The parties agree that the judge had to examine the appellant's behaviour at the time he filed his income tax returns to determine whether he exercised due diligence.

[4] In *Aridi v. The Queen*, 2013 TCC 74, 2013 DTC 1189, the TCC points out at paragraph 34 that "it is not the accountant's neglect that makes it possible to disregard the limitation period under subparagraph 152(4)(a)(i) of the ITA. It is the taxpayer's neglect at the time of the misrepresentation that must be analyzed".

[5] In the case at bar, the judge found that the appellant had indeed paid very significant amounts that should have been used to pay all or part of his tax debt, but, instead, the accountant Mr. Simard diverted the amounts in question to serve his own interests, thereby defrauding the appellant (para. 27 of the decision).

[6] The judge then analyzed the relationship between the appellant and his accountant before concluding that the appellant failed to exercise due diligence in his relations with Mr. Simard. In

this regard, he referred to, among other things, the fact that the appellant should have read and followed up on the letters received from the respondent in 2007 and subsequently.

[7] The respondent acknowledges that the judge did not indicate what misrepresentations were made in the income tax returns or what the appellant knew or ought to have known when they were filed. The respondent emphasizes, however, that the evidence on the record is such as to enable the Court to perform this exercise and to draw conclusions on these points.

[8] Before this Court, the parties referred on several occasions to a number of pieces of evidence in the record to support their respective positions.

[9] The relevant factual background is highly complex. To assess the appellant's behaviour at the time of filing of his income tax returns would require an assessment of the evidence without the benefit of hearing the witnesses and in the absence of important documents that are usually part of this type of dispute (including the income tax returns of the appellant and his company). It is therefore inappropriate in the present case for this Court to substitute itself for the TCC in order to rule on this key issue of the dispute.

[10] For these reasons, we conclude that the appeal should be allowed, with costs. The decision of the judge dated October 24, 2013, dismissing the appellant's appeal from the assessments for the 2003 and 2004 taxation years will be set aside, and the matter will be

referred back to the Chief Justice of the TCC so that he can assign it for rehearing. The costs at trial will depend on the outcome of the new hearing.

“A.F. Scott”

J.A.

Translation

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-368-13

**(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED
OCTOBER 24, 2013, DOCKET 2011-1901(IT)G)**

STYLE OF CAUSE: NORMAND VACHON v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 6 AND 8, 2014

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.
GAUTHIER J.A.
SCOTT J.A.

DELIVERED FROM THE BENCH BY: SCOTT J.A.

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