

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141028

Docket: A-317-13 Citation: 2014 FCA 243

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

BETWEEN:

TERRY PIERSANTI

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on October 28, 2014.
Judgment delivered from the Bench at Toronto, Ontario, on October 28, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 28, 2014).

TRUDEL J.A.

[1] This is an appeal by Terry Piersanti of a judgment of the Tax Court of Canada rendered by V.A. Miller J. (the Judge) on July 10, 2013 (2013 TCC 226).

[2] Few facts are needed to understand the appellant's position in this appeal. In 1999, the Canada Revenue Agency (CRA) launched an investigation under the *Excise Tax Act*, R.S.C. 1985, c. E-15 [the *ETA*] into allegations that corporations controlled by the appellant and her

spouse were not reporting the Goods and Services Tax they collected. As part of the investigation, the CRA obtained a search warrant which it exercised at the law firm of the appellant's spouse – the search gave rise to numerous proceedings in the Ontario Court of Justice that have no bearing on the outcome of this appeal. It suffices to know that, as a result, 68 criminal charges were laid against the appellant, her spouse, and some of the corporations they controlled. In the end, the appellant pled guilty to 35 criminal charges under the ETA for offences committed between 1995 and 1998.

[3] As part of its criminal investigation, the CRA had also issued third-party requirements for documents or information under section 289 of the *ETA*. Most of the requirements concerned the corporations but some referenced the appellant. The Minister relied on these documents to reassess the appellant's income tax liability under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for the taxation years 1995, 1996, and 1997.

[4] At trial, the appellant brought a motion asking the Judge to exclude all documents used by the Minister of National Revenue (the Minister) in issuing the Notices of Reassessment dated November 14, 2001 on the ground that the documents were obtained without judicial authorization during the course of a criminal investigation and in violation of her rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 [the *Charter*]. The Judge dismissed the motion and upheld the reassessments. Hence the within appeal. The appellant asks this Court to set aside the Tax Court judgment and vacate the Notices of Reassessment. For the reasons that follow, the appeal will be dismissed.

[5] Before dismissing the appellant's motion, the Judge correctly stated that the issue before the Tax Court was "the determination of the [a]ppellant's income tax liability not her penal liability" (Judge's reasons at paragraph 20). The Judge was alive to the teachings of the Supreme Court of Canada in *R v. Ling*, 2002 SCC 74, [2002] 3 S.C.R. 814, decided on the principles enunciated in *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757 [*Jarvis*]: a distinction must be maintained between the administrative audit process and the investigation of alleged criminal offences. A taxpayer's *Charter* rights are engaged when an audit becomes a criminal investigation.

[6] Here, the Judge was asking herself whether the appellant's *Charter* rights were violated when the documents obtained through the requirements were later used to reassess the appellant's income tax liability. The appellant opines that the Judge erred while framing that question. Rather, the violation occurred when the documents were seized without judicial authorization.

[7] In dismissing the appellant's motion, the Judge relied on this Court's recent decision in *Romanuk v. The Queen*, 2013 FCA 133, 455 N.R. 353 (leave to appeal to SCC refused, 35480 (November 21, 2013)) and held that the CRA could use documents obtained under its audit powers to further an administrative matter, such as a reassessment.

[8] *Romanuk* is dispositive of this ground of appeal. In *Romanuk*, Webb J.A. noted paragraph 103 of *Jarvis* and concluded that "...the results [of an audit] can be used in relation to an

administrative matter, such as a reassessment". This is what was done here. We have not been persuaded that *Romanuk* is distinguishable from the present matter.

[9] The Judge did not err in law when concluding that the appellant's rights under sections 7 and 8 of the *Charter* were not violated by the CRA when it used the information gathered in the course of the criminal investigation to reassess the appellant's income tax liability for the years in question. The Judge's legal finding accords with *Jarvis* and with the self-assessment and the self-reporting nature of the income tax regime. Whether the CRA could properly use such documents to prosecute the appellant for criminal offences under the *ETA* is irrelevant to the current civil proceedings. A found by the Judge, whether the appellant's *Charter* rights were violated by using the information from the requirements to prosecute the appellant under the *ETA* was a question for the Ontario Superior Court of Justice where the criminal matter was heard and disposed of. In any event, even if the appellant was right in distinguishing between the civil audit and criminal investigation, we are all of the view that the facts of this case, which raise at best a technical breach, do not call for a remedy under subsection 24(2) of the *Charter*.

[10] On the substance of the reassessments, the appellant mostly takes issue with the Judge's findings of fact. More specifically, she argues that disbursements made by corporations she controlled should not be included in her income since they were repayments of a loan she had made to a family trust. The Judge did not believe the appellant and rejected this argument (see in particular paragraphs 46, 55, 57, 58, and 60 of the Judge's reasons).

[11] The appellant has failed to show that the Judge committed any palpable and overriding error in her assessment of the evidence. In particular, having examined the record, we are all agreed that the Judge was entitled to conclude that the appellant had not made a personal loan to the family trust or to corporations under her control. As a result, there was no need for the Judge to intervene on the penalties.

[12] Consequently, the appeal will be dismissed with costs.

"Johanne Trudel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-317-13

STYLE OF CAUSE: TERRY PIERSANTI v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 28, 2014

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

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

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