

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151203

Docket: A-314-13

Citation: 2015 FCA 276

**CORAM: STRATAS J.A.
RYER J.A.
GLEASON J.A.**

BETWEEN:

KAY FISHER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on December 3, 2015.
Judgment delivered from the Bench at Toronto, Ontario, on December 3, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 3, 2015).

RYER J.A.

[1] This is an appeal from a decision of Justice Brent Paris of the Tax Court of Canada (the “Judge”) dismissing an appeal by Ms. Kay Fisher from reassessments of her 2003 and 2004 taxation years pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “Act”).

[2] The issue before the Court is whether the Judge erred in concluding that Ms. Fisher failed to establish that an indebtedness owing to her by Niagara Falls Entertainment and Attraction Limited

("Niagara") was a bad debt, within the meaning of paragraph 50(1)(a) of the Act, at the end of either her 2003 or 2004 taxation year.

[3] In *Rich v. The Queen*, 2003 FCA 38, [2003] 3 F.C. 493, this Court found that the determination of whether a debt is bad at any particular time is factual in nature and set out a number of factors that usually should be taken into account in making this determination. At paragraph 12, Rothstein, J.A. stated:

After the creditor personally considers the relevant factors, the question is whether the creditor honestly and reasonably determined the debt to be bad.

[4] Ms. Fisher has the burden of establishing that she honestly and reasonably believed that the debt owing to her by Niagara was uncollectible no later than the end of 2004. In the circumstances, no issue was taken with the honesty of her belief. However, after reviewing the evidence that was presented to him, the Judge concluded that it was insufficient to establish that her belief was reasonable.

[5] In reaching this conclusion, the Judge weighed the evidence and made factual findings. Such findings cannot be overturned by this Court in absence of a palpable and overriding error.

[6] We have not been persuaded that the Judge made any such error and accordingly the appeal is dismissed with costs.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-314-13

APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BRENT PARIS OF THE TAX COURT OF CANADA, DATED JULY 11, 2013, DOCKET NUMBER: 2011-1(IT)G

DOCKET: A-314-13

STYLE OF CAUSE: KAY FISHER v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: DECEMBER 3, 2015

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
RYER J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

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