Federal Court of Appeal Cour d'appel fédérale

Date: 20160118

Docket: A-552-14

Citation: 2016 FCA 12

CORAM: PELLETIER J.A.
STRATAS J.A.
GLEASON J.A.

BETWEEN:

LIPING LIU

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on January 13, 2016.

Judgment delivered at Ottawa, Ontario, on January 18, 2016.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: PELLETIER J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] The appellant appeals from the judgment dated November 13, 2014 of the Tax Court of Canada (*per* V.A. Miller J.): 2014 TCC 335.

[2] The main issue before the Tax Court was whether the appellant was entitled to a Goods and Services Tax/Harmonized Sales Tax New Housing Rebate for some of the tax she paid for

the purchase of land and the construction of a house on that land in 2010. The Tax Court ruled against the appellant.

[3] Subsection 254(2) of the *Excise Tax Act*, R.S.C. 1985, c. E-15 allows for a new housing rebate for “a single unit residential complex or a residential condominium unit” purchased from a builder. Section 123 defines “a single unit residential complex” as both the house and the land. In other words—and this is the interpretation adopted by the Tax Court—a rebate is available only where a person buys the land and contracts for the building of the house from the same entity.

[4] On the same day in 2010, the appellant and her spouse purchased a lot from one company and contracted with another company to construct a house on the lot. On these facts, the Tax Court ruled that the appellant had entered into two separate transactions on the same day and that they could not be viewed as one. This meant that a rebate could not be claimed under section 254 of the *Excise Tax Act*.

[5] Unless there is an error of law or legal principle, we can only interfere with the Tax Court’s finding on the basis of palpable and overriding error. This is a high test. See *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 and on the meaning of palpable and overriding error, see, *e.g.*, *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286.

[6] On this issue, the Tax Court did not err in its interpretation of the relevant provisions, nor is there any palpable and overriding error in the Tax Court’s assessment of how the provisions applied to the evidence before it.

[7] The Tax Court also held that the appellant could not receive another rebate for tax—one for an owner-built home—because she failed to claim it within the two-year legislative limitation period. Here again, the Tax Court did not err in its interpretation of the legislation, nor is there any palpable and overriding error in the Tax Court's assessment of how the legislation applied to the evidence before it. I also note that the Canada Revenue Agency advised the appellant to file for the rebate for an owner-built home in time but the appellant did not do so.

[8] The appellant also submits that the delay of the Canada Revenue Agency in dealing with her notice of objection and the delay of the Tax Court in holding the hearing of her appeal was unfair and prejudiced her. On the record before us, I see no unfairness and prejudice. It is true that the Canada Revenue Agency did delay in dealing with her notice of objection but nevertheless the appellant could have launched and prosecuted her appeal promptly despite that delay: *Excise Tax Act*, above, section 81.22. As well, she could have asked the Tax Court to expedite her appeal but did not do so.

[9] The appellant also submits that any ambiguities in taxation legislation should be resolved in her favour: *Johns-Manville v. The Queen*, [1985] 2 S.C.R. 46 at page 72. This principle does not assist her: no ambiguities arise from the application of the relevant legislative provisions in this case.

[10] Finally, the appellant also submits that she was confused concerning the relevant provisions in this appeal and their effect. Nevertheless, the relevant provisions are binding law and they must be applied according to their terms.

[11] For the foregoing reasons, I would dismiss the appeal with costs.

"David Stratas"

J.A.

“I agree
J.D. Denis Pelletier J.A.”

“I agree
Mary J.L. Gleason J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-552-14

APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE V.A. MILLER DATED NOVEMBER 13, 2014, DOCKET NO. 2013-1929(GST)I

STYLE OF CAUSE:	LIPING LIU v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 14, 2016
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	PELLETIER J.A. GLEASON J.A.
DATED:	JANUARY 18, 2016

APPEARANCES:

Liping Liu	ON HER OWN BEHALF
Sheherazade Ghorashy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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