

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161125

Docket: A-142-16

Citation: 2016 FCA 297

[ENGLISH TRANSLATION]

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

BETWEEN:

RAYNALD GRENIER

Appellant

And

HER MAJESTY THE QUEEN

Respondent

Hearing held at Quebec City, Quebec, on November 16, 2016.

Judgment delivered at Ottawa, Ontario, on November 25, 2016.

REASONS FOR JUDGMENT BY:

SCOTT J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
TRUDEL J.A.**

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] In a judgment dated May 13, 2016 of the Tax Court of Canada (reasons delivered from the Bench on May 4, 2016), Justice Tardif (the Judge) dismissed the appeal of Raynald Grenier (the appellant) against reassessments established by the Minister of National Revenue (the Minister) for the 2012 and 2013 taxation years. The Judge determined that the appellant had knowingly failed to declared a sum of \$17,242 as farm income in 2012 and \$20,162 of pension income for 2013. He also confirmed the penalties assessed by the Minister under subsection 163(2) of the *Income Tax Act*, R.S.C. 1985 1985, c.1 (5th Supp.), (the ITA), having

found that the appellant was unable to show that the omissions in his 2012 income tax return were due to forgetfulness or negligence. He also upheld the penalties assessed for the 2013 taxation year under subsection 163(1) of the ITA because the appellant had failed to declare a source of interest income more than once during the three previous years, i.e. in 2012.

[2] The Judge determined that the documentary evidence presented was clear and showed that the uncontested facts used to validate the assessments were completely appropriate.

[3] This is an appeal from that decision. Both at the hearing before our Court and in his memorandum, the appellant raised issues and sought declaratory relief that was outside our jurisdiction and that does not pertain to the appeal before us. The issues regarding the taxation of compensation received and the penalties assessed therefore still remain.

[4] Before proceeding to the analysis of the taxation of compensation, it is important to note the concession of counsel for the respondent, according to which \$5,596.93 of the \$17,242.49 received by the appellant as compensation did not constitute income from a farm business, but were the proceeds of the disposition of an asset under subsection 43(1) of the ITA.

[5] At the hearing, the appellant criticized the Judge for having erred in maintaining the Minister's decision to tax the sum of \$11,645 as farm income that he received from Énergie Éolienne des Moulins S.E.C. for the use of and access to his agricultural land, which was allocated in the notarized contract (the contract) entered into on February 12, 2012, as follows: \$11,120.56 as compensation for standing timber, \$500 for inconveniences arising from

accidental loss and damage caused to his property due to the installation of the wind turbines, and \$25 in rent. He submitted instead that these compensations were indemnities for personal injuries, which are not taxable within the meaning of subsection 9(1) of the ITA, and that there were therefore no grounds for assessing a penalty for gross negligence under subsection 163(2) of the ITA. He also submitted that the compensation paid for standing timber did not represent the fair market value of the timber, and that it constituted a loss rather than income, because he would have received more money had he sold this timber to third parties.

[6] The appellant also argued that the Judge erred in upholding the Minister's decision to add \$20,162.84 as pension income that he failed to report for the 2013 taxation year and by assessing penalties against him. He submits that the Canada Revenue Agency (CRA) was negligent in failing to verify whether the T4RIF issued by Laurentian Bank and NBCN Inc., where he is not a client, constituted duplicate information slips. According to the appellant, the CRA failed to respond to his requests in that regard and neglected to follow its policy consisting in the validation of the information it receives. He concluded that the Minister could therefore not assess interest penalties for the omission set out in subsection 163(1) of the ITA.

[7] The law is well settled: This Court can only intervene if a judge has committed a palpable and overriding error in finding as he did (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] S.C.R. 235).

I. Analysis

A. *Compensation*

[8] I am of the view that the Judge could have been more explicit in his reasoning and should have referred to the provisions of the ITA to support his findings. That being said, the appellant nevertheless did not convince me that the Judge erred in upholding the Minister's position that the amounts received as compensation constitute income from a farm business. I must reject the appellant's argument that the sum of \$11,120.56 for standing timber, rent and inconveniences constitutes an indemnity for personal injury. The concept of indemnity for personal injury that the appellant is raising is not consistent with the language of the contract.

[9] Section 25 of the contract clearly states that part of the compensatory amounts paid to him offset the loss of farm income that could otherwise have been made in the absence of this contract, through which the appellant gave Énergie Éolienne des Moulins S.E.C. partial access to his farm.

[10] I cannot accept the argument that the \$11,120.56 compensatory amount paid for the standing timber constitutes a loss for the appellant. In Section 25.1.b) of the contract, he agreed that the sum paid to offset the value of the standing timber be set at that amount.

[11] In addition, that sum does not qualify for a specific exemption under the ITA. It therefore constitutes farm income under paragraph 3(a) and subsection 9(1) of the ITA.

[12] In my opinion, the \$25 paid as rent does not constitute a compensatory payment, rather it is income directly drawn for use of the appellant's property, which is taxable under subsection 9(1) of the ITA.

[13] The \$500 lump sum set out in Section 25.7 of the contract is designed to compensate for property damage and inconvenience caused to the appellant's property. The second paragraph of Section 25.7 states that it covers, for example, damage [TRANSLATION] "to the Owner's fences, forest roads, buildings and other facilities" during the wind turbine construction work. I find that this amount also constitutes income that can be considered the proceeds of the disposition of property as defined in paragraph 54(e) of the ITA.

[14] Moreover, the appellant failed to report the sums thus received as compensation. Given his failure to do so, the Minister was justified in assessing the penalty set out in subsection 163(2) of the ITA.

B. Pension incomes and penalties

[15] I am of the opinion that the Judge did not err in upholding the assessment for the 2013 taxation year because the appellant received a total of \$63,855 in pension income, but reported only \$43,693.55. He thus knowingly failed to report \$20,162.84 of pension income. It follows that the assessment of a penalty under subsection 163(1) was warranted because he had failed to report incomes in the three previous years. In fact, he did not report certain interest income in his 2012 return. I would like to draw attention to counsel for the respondent's explanations that,

contrary to the appellant's submission, the existence of two T4RIF information slips that were apparently issued by two separate parties did not lead to double taxation.

[16] I therefore propose to grant this appeal in part, give effect to the respondent's concession to reduce the appellant's \$17,242.49 farm business income to \$11,645 for the 2012 taxation year, subtract from it the \$500 compensation that must be considered income from the disposition of an asset, and order that the penalty assessed under subsection 163(2) of the ITA be adjusted in proportion to the amounts thus reduced and subtracted, with costs to the appellant set at \$500 including disbursements and taxes.

“A.F. Scott”

J.A.

“I agree.

Johanne Gauthier, J.A.”

“I agree.

Johanne Trudel J.A.”

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-142-16

STYLE OF CAUSE: RAYNALD GRENIER v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: NOVEMBER 16, 2016

REASONS FOR JUDGMENT: SCOTT J.A.

CONCURRED IN BY: GAUTHIER J.A.
TRUDEL J.A.

DATED: NOVEMBER 25, 2016

APPEARANCES:

Raynald Grenier
Representing himself

FOR THE APPELLANT

Anne Poirier

FOR THE RESPONDENT

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