

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161128

Docket: A-504-15

Citation: 2016 FCA 303

**CORAM: PELLETIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.**

BETWEEN:

JOHN ROBERTSON

Appellant

And

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on November 28, 2016.
Judgment delivered from the Bench at Vancouver, British Columbia, on November 28, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

SCOTT J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161128

Docket: A-504-15

Citation: 2016 FCA 303

**CORAM: PELLETIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.**

BETWEEN:

JOHN ROBERTSON

Appellant

And

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on November 28, 2016).

SCOTT J.A.

[1] This is an appeal by Mr. John Robertson (the Appellant) against a judgment of the Tax Court of Canada (TCC) rendered by Boccock J. (the Judge) on October 21, 2015 (2015 TCC 246). The Judge found that the Appellant's failure to report \$102,600 and \$508,658 of stock options benefits from private companies in the United States in the 2006 and 2007 taxation years was a misrepresentation attributable to neglect, carelessness. He therefore confirmed the Minister of

National Revenue's (the Minister) reassessments beyond the normal reassessment period pursuant to subparagraph 152(4) (a) (1) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) (the Act). In view of that conclusion, the Judge did not deal with the issue of whether the 2007 reassessment was actually sent on June 8, 2011.

[2] The sole issue raised by this appeal is whether the Minister could reassess the Appellant's 2006 and 2007 taxation years beyond the normal reassessment period.

[3] It is well established in the jurisprudence that this Court cannot interfere with a decision of the TCC on questions of fact or mixed fact and law unless the Judge made an overriding and palpable error. (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8).

[4] Having read the Judge's decision, the underlying materials and heard the able representations of counsel for the Appellant, we have not been convinced that this Court should intervene.

[5] The Appellant challenges the Judge's decision arguing that he erred when he determined that the Appellant never questioned his accountant on the taxation of the benefits derived from the US stock options. The Appellant conceded at trial and in his factum that he committed a misrepresentation by omitting to declare his general income from stock option benefits in 2006 and 2007. He also acknowledged that he could not recall whether he had discussed the taxation of these benefits with his accountant. The Judge described this error as an honest and inadvertent lapse of attention committed by the Appellant whilst reviewing the tax returns that had been

prepared by the accountant. The Appellant assigns part of the blame on his flawed, but nonetheless firm belief at the time that these benefits were not taxable in Canada because they were generated in the United States.

[6] It was open to the Judge to draw an inference of negligence and carelessness from the Appellant's omission to verify the validity of his belief that the US stock options he exercised were not taxable as Canadian income. Our role is not to reweigh the evidence but to ensure that it can support the Judge's inferences of fact. In the present case it supports his determination of negligence and the consequent reassessments further to the application of subparagraph 152(4) (a) of the *Act*.

[7] The appeal will therefore be dismissed with costs.

“A.F. Scott”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-504-15

STYLE OF CAUSE: JOHN ROBERTSON v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: NOVEMBER 28, 2016

REASONS FOR JUDGMENT OF THE COURT BY: PELLETIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: SCOTT J.A.

APPEARANCES:

Gavin Laird FOR THE APPELLANT
JOHN ROBERTSON

Robin S. Whittaker FOR THE RESPONDENT
HER MAJESTY THE QUEEN

SOLICITORS OF RECORD:

Laird & Company FOR THE APPELLANT
Barristers and Solicitors JOHN ROBERTSON
Pitt Meadows, British Columbia

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada HER MAJESTY THE QUEEN