

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170516

Docket: A-320-16

Citation: 2017 FCA 103

[ENGLISH TRANSLATION]

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

BETWEEN:

HERMAN TURGEON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montreal, Quebec, on May 16, 2017.

Judgment delivered from the bench at Montreal, Quebec, on May 16, 2017.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montreal, Quebec, on May 16, 2017.)

BOIVIN J.A.

[1] Herman Turgeon (the appellant) is appealing from the decision of Justice D'Auray of the Tax Court of Canada (the judge) dated June 14, 2016 (2016 TCC 154). The judge dismissed the appellant's appeal from the assessment made by the Minister of National Revenue disallowing a capital gains deduction set out in subsection 110.6(2.1) of the *Income Tax Act*, R.S.C. 1985, c. 1

(5th Supp.) (the Act) on the ground that there was a non-arm's length relationship in the context of the sale of Class D shares.

[2] The only issue is whether the judge erred in determining that the appellant did not deal at arm's length with Gestion Hélie within the meaning of paragraph 251(1)(c) of the Act. The question on appeal is a one of mixed fact and law, and the standard of review to be applied in this case to the judge's findings is the standard of palpable and overriding error (*Housen v. Nikolaisen*, [2002] 2 S.C.R. 235) 2002 SCC 33.

[3] The judge analyzed the overall context of the reorganization of the corporate structure of the share ownership of Les Constructions de l'Amiante inc., which the sale of the shares at issue was a part of, and followed the principles stated by the Supreme Court of Canada on the subject, in particular in *Canada v. McLarty*, [2008] 2 S.C.R. 79, 2008 SCC 26 (judge's decision at paragraphs 63–65).

[4] In this case, despite the skilled representation by counsel for the appellant, we were not satisfied that the judge committed a palpable and overriding error in her assessment of the relevant facts when she found that section 84.1 of the Act applied.

[5] As a result, the appeal will be dismissed with costs.

“Richard Boivin”

J.A.

Certified true translation,
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-320-16

STYLE OF CAUSE: HERMAN TURGEON v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: MAY 16, 2017

REASONS FOR JUDGMENT BY: SCOTT J.A.
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DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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