

**Date: 20061023**

**Docket: A-493-05**

**Citation: 2006 FCA 346**

**CORAM: NOËL J.A.  
EVANS J.A.  
MALONE J.A.**

**BETWEEN:**

**PAUL HOUWELING**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Vancouver, British Columbia, on October 23, 2006.

Judgment delivered at Vancouver, British Columbia, on October 23, 2006.

**REASONS FOR JUDGMENT BY:**

Malone J.A.

**CONCURRED IN BY:**

Noël J.A.  
Evans J.A.

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**BETWEEN:**

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**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR JUDGMENT**

**MALONE J.A.**

[1] This is an appeal of a judgment of Bowman C.J. dated September 19, 2005 (reported at [2005] T.C.J. No. 638), in which he concluded that the Minister of National Revenue had correctly assessed the appellant under the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp) (*Act*) for capital gains of \$5,745,847.00 and \$369,701.00 in the 1997 and 1998 taxation years.

[2] I am satisfied that the Judge committed no reviewable errors that warrant the intervention of this Court. While Mr. Houweling raises a number of issues over which this Court has no jurisdiction, the sole issue is whether Bowman C.J. correctly determined that the assessments under appeal were correct.

[3] The dispute dates to August of 1997 when Mr. Houweling signed an agreement to separate his business interests from those of his brother. Through a sale of his shares in Houweling Nurseries Ltd. (HNL) to Amethyst Greenhouse Ltd. (Amethyst) he received consideration of \$6,116,051.00. Mr. Houweling was the sole shareholder of Amethyst.

[4] On the sale of the HNL shares, Mr. Houweling realized a capital gain for the 1997 taxation year. A further gain was realized during his 1998 taxation year by reason of an upward adjustment to the selling price of the shares. He was required to include the taxable portions of those gains in his income unless he filed an election under section 85 of the *Act* to defer their recognition. This he failed to do.

[5] During the course of the trial, Bowman C.J. extended to Mr. Houweling every opportunity to abandon his irrelevant assertions regarding a purported fraud (over which the Tax Court of Canada had no jurisdiction) and to focus on the section 85 election and assessment issues. This he also failed to do. In

the end, Mr. Houweling admitted during his examination-in-chief that the assessments under appeal were correct.

[6] Accordingly, assessing all of the evidence, including the Minister's factual assumptions which were not rebutted, the Judge concluded, on a balance of probabilities, that the assessments under appeal were proper.

[7] The appeal should be dismissed with costs.

"B. Malone"

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J.A.

"I agree.

Marc Noël, J.A."

"I agree.

John M. Evans, J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

<b>DOCKET:</b>	A-493-05
<b>STYLE OF CAUSE:</b>	Paul Houweling v. Her Majesty The Queen
<b>PLACE OF HEARING:</b>	Vancouver, British Columbia
<b>DATE OF HEARING:</b>	October 23, 2006
<b>REASONS FOR JUDGEMENT OF THE COURT:</b>	No , J.A. Evans, J.A. Malone, J.A.
<b>REASONS FOR JUDGMENT:</b>	Malone, J.A.

**APPEARANCES:**

Paul Houweling

ON HIS OWN BEHALF

Ron D. F. Wilhelm

David Everett

FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

John H. Sims, Q.C.

FOR THE RESPONDENT

Deputy Attorney General of Canada