Date: 20070517

Docket: A-649-05

Citation: 2007 FCA 196

CORAM: **LÉTOURNEAU J.A.**
NOËL J.A.
PELLETIER J.A.

BETWEEN:

MICHELINE BRUNET

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held at Montréal, Quebec, on May 16, 2007.

Judgment delivered at Montréal, Quebec, on May 17, 2007.

REASONS FOR JUDGMENT BY THE COURT

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REASONS FOR JUDGMENT

BY THE COURT

[1] We have before us an appeal from a decision of a judge of the Tax Court of Canada dismissing the appellant's appeal for two reasons.

[2] First, the judge said that, in his opinion, the Court did not have jurisdiction to amend the assessments made for the 1993 to 2000 taxation years because the appellant had not filed a notice of

objection as required under section 169 of the *Income Tax Act* (ITA). We find no reviewable error in this decision.

[3] With regard to the 2001 and 2002 taxation years, the judge found that the Minister was justified in disallowing the deduction of the expenses claimed by the appellant in computing her income because the business proposed by the appellant and her spouse had simply not started up, according to the admission of the appellant's spouse, who designed the project. Consequently, there was no source of income.

[4] Moreover, the judge reasoned that, even if the business had started up, a number of the expenses claimed were capital in nature.

[5] Once again, the appellant's written representations, and the representations made orally at the hearing by her spouse, have not convinced us that the judge's findings contain errors of law or of mixed fact and law that warrant our intervention.

[6] However, at the hearing, the appellant stressed the fact that, despite repeated requests, unconditionally supported by the respondent's counsel, she was refused a copy of the reasons for judgment of the Tax Court of Canada rendered orally at the hearing. Instead, she received the reasons for judgment signed almost seven months later, which are intended to be the reasons for judgment delivered orally at the hearing of November 23, 2005, but which have been [TRANSLATION] "amended for greater clarity and precision".

[7] She alleges herself to be aggrieved by these reasons which, she says, do not correspond to those given at the hearing in which, again according to her, the judge granted her certain deductions. The reasons seem to have been amended and improved to her detriment.

[8] This refusal to remit a copy of the reasons for judgment rendered orally at the hearing is simply unacceptable. Aside from the feelings of injustice and mistrust it engenders in the taxpayer, it prevents the Court of Appeal from exercising its power of review because it cannot verify the merits of the appellant's allegations and the scope of the amendments made seven months later to the judgment already rendered. The reasons given at the hearing are the reasons for judgment and the parties are entitled to receive a copy of the complete transcript upon request.

[9] In *Breslaw v. Canada*, 2005 FCA 355, our Court considered what appears to be the practice occasionally adopted by the Tax Court of Canada of amending reasons given orally at the hearing. In this case, our Court recognized the right to edit the reasons delivered at the hearing for grammar and style, but not the right to modify their substance. At paragraphs 24 and 25, Mr. Justice Pelletier wrote the following:

> [24] The difficulty arises when the edited version of the oral reasons does not accord with the original reasons, as recorded in the transcript. While an appeal is taken from the judgment of the Court and not from its reasons, the parties nonetheless rely upon the Court's reasons to frame their appeal. As a result, substantive differences between the reasons given in open court, and the edited version of those reasons are to be discouraged. A judge is entitled to edit his reasons for grammar and style so that they read correctly and fluently. But the addition of topics not raised at the time the oral reasons were delivered, or the subtraction of topics which were, goes beyond mere editing for grammar and style. One can readily appreciate that a judge reviewing his oral reasons after the fact may well feel that they are not the best statement of

> his reasoning process. But those are the reasons which were given to the parties, and it is unfair to them to modify their substance after the fact.
>
> [25] This is all the more true where the notice of appeal has been filed before the edited version of the reasons is released. A litigant who sees matters raised for the first time in the edited version of the oral reasons may well wonder whether the reasons are a response to the notice of appeal.

[10] In response to the appellant's unsuccessful requests to receive a copy of the complete transcript of the reasons given orally at the hearing, the clerk of the Tax Court of Canada provided the following explanation in a letter dated July 25, 2006:

> [TRANSLATION]
>
> Dear Ms. Brunet,
>
> I am writing further to your fax of July 6, 2006.
>
> Please be advised that, in accordance with its policy, the Tax Court of Canada provides only the certified transcript of the reasons given orally at the hearing.
>
> All the reasons given orally at the hearing are sent to the presiding judge for review and certification. In this way, the judge may revise and correct clerical errors before the reasons are given to the parties.
>
> Our contracts with the court reporting firm stipulate that the transcripts requested must be remitted to the Court.
>
> (Emphasis added.)

[11] Two important facts emerge from this letter.

[12] First, the appellant's request was refused because the reasons were sent to the judge [TRANSLATION] "for review and certification". It is not the judge's responsibility to certify the transcript of the reasons given at the hearing. As in the case of witness depositions (see, for example, article 327 of the *Code of Civil Procedure*), it is the court reporter's responsibility to certify, in accordance with the law, the transcript of the recording tapes of the hearing. That is what

the court reporter, Jean Larose, did in this case, with the exception however of the reasons for judgment rendered at the hearing which were unjustifiably omitted from the transcript and therefore not included in his certification.

[13] Second, the clerk's letter indicates that the reasons were sent to the judge to "correct clerical errors before the reasons are given to the parties." This letter and this Court's case law do not allow a judge to rewrite or improve his or her reasons. Nor is the Court allowed to refuse to provide a copy of the reasons as they were given at the hearing, which must be certified by the court reporter as being a true copy of what was said at the hearing.

[14] Even if we do not believe it is necessary to make it clear, we will do so so that there is no ambiguity. If the situation in this case should reoccur, our Court, which is deprived in part of the power to effectively exercise its appellate jurisdiction, will not hesitate to intervene.

[15] The appeal will be dismissed, but without costs in the circumstances.

"Gilles Létourneau"
J.A.

"Marc Noël"
J.A.

"J.D. Denis Pelletier"
J.A.

Certified true translation
Susan Deichert, LLB

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-649-05
(APPEAL FROM AN ORDER OF MR. JUSTICE ARCHAMBAULT OF THE TAX COURT OF CANADA DATED DECEMBER 1, 2005, DOCKET 2005-312(IT)I)	
STYLE OF CAUSE:	Micheline Brunet v. Her Majesty the Queen
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 16, 2007
REASONS FOR JUDGMENT BY:	THE COURT
DATED:	May 17, 2007

APPEARANCES:

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Claude Lamoureux	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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