

Date: 20080617

Docket: A-523-07

Citation: 2008 FCA 211

[ENGLISH TRANSLATION]

Present: NOËL J.A.

BETWEEN:

ANDRÉ LAVERDIÈRE

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Motion dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, June 17, 2008.

REASONS FOR ORDER:

NOËL J.A.

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REASONS FOR ORDER

NOËL J.A.

[1] The appellant, who was and continues to be represented by counsel before the Tax Court of Canada, is seeking leave to adduce new evidence. Adducing new evidence in an appeal is an exceptional measure since the role of an appellate court is to assess the merits of the impugned decision based on the record as it stands before the trial judge.

[2] This is why appellate courts refuse to allow fresh evidence to be adduced unless the individual making the request can establish, among other things, that he or she was unable to adduce this fresh evidence during the trial through reasonable diligence (*Public School Boards' Assn. Of*

Alberta v. Alberta (Attorney General), 2000 SCC 2, [2000] 1 S.C.R. 44). However, according to the appellant himself, the evidence in question, which takes the form of amended financial statements, could have been adduced but was not done due to a mere question of cost (Moving Party's Affidavit, Motion Record, para. 6). This decision proved fatal because the trial judge relied on the financial statements that were adduced in evidence to decide the outcome of the appeal (Reasons, para. 25) :

I do not believe that the accountant Lévesque made a mistake in preparing the bar's financial statements for the year 2002. It should be noted that in spite of Ms. Simard's comments to the effect that the 2002 financial statements were not accurate and did not reflect reality, the accountant Lévesque did not have the presentation of the bar's operating results for the years 2002 and 2003 changed. I conclude that that the bar's financial statements for the years 2002 and 2003 did indeed reflect the existing relationship between Mr. Laverdière and Robert Dumas and were in compliance with the parties' intentions.

[3] It was up to the appellant, who had the burden of proof, to prove his case during the trial. An appeal does not give a party who fails to adduce the best evidence during the trial, while in a position to do so, the chance to start over again.

[4] The motion for adducing fresh evidence will therefore be dismissed.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-523-07

STYLE OF CAUSE: ANDRÉ LAVERDIÈRE and
MINISTER OF NATIONAL
REVENUE

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: NOËL J.A.

DATED: June 17, 2008

WRITTEN SUBMISSIONS:

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Marie-Claude Landry FOR THE RESPONDENT

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