

Date: 20080916

Docket: A-291-07

Citation: 2008 FCA 261

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

BETWEEN:

HOLLY WILLISTON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on September 11, 2008.

Judgment delivered at Ottawa, Ontario, on September 16, 2008.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
NOËL J.A.**

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REASONS FOR JUDGMENT

TRUDEL J.A.

[1] This is an appeal from a judgment of McArthur J. of the Tax Court of Canada (2007 TCC 412) (the Judge) adjudicating on Ms. Williston's appeals for the taxation years 1997 through 2005, inclusively.

[2] The questions raised in this Court and the Court below most notably pertain to:

- (a) The inadmissibility of the appeals for the taxation years 1997, 2004 and 2005;
- (b) The statute-barred reassessment for the taxation year 1998;

- (c) The income determination for the taxation years 2000, 2001, 2002;
- (d) The disallowance of expenses related to the appellant's home office for the taxation years 1998-1999;
- (e) The late filing penalties for the taxations years 1998, 1999, 2000, 2001, 2002 and 2003;
- (f) The gross negligence penalties for the same years as in sub-paragraph (e).

[3] I do not consider it necessary to discuss these issues and the arguments in detail because I am in substantial agreement with the decision of McArthur J. and with his reasons.

[4] This case rests mostly on findings of fact and factual inferences drawn by the Judge. To succeed in her appeal, the appellant had to show that the trial judge made a palpable and overriding error in assessing the set of facts presented to him and in concluding as he did (*Housen v. Nikolaisen*, 2002 SCC 33).

[5] Keeping in mind the trial Judge's privileged position, "owing to his extensive exposure to the evidence, the advantage of hearing testimony *viva voce*, and the Judge's familiarity with the case as a whole" (*Ibid.* at paragraph 18), I find that the appellant has shown no such palpable and overriding error on the part of McArthur J. that would justify the intervention of this Court.

[6] McArthur J. was presiding over an informal procedure appeal with "voluminous documents and oral evidence" being provided by the parties (at paragraph 11 of his reasons).

[7] He adopted the thesis of neither party and formed his own opinion, as he was entitled to do, assessing the credibility of the parties and witnesses and the probative value of the exhibits filed on record.

[8] Referring to the appellant, he said that she "was basically honest although misguided" (at paragraph 13 of his reasons). He also found no evidence of harassment or denial of rights on the part of the Canadian Revenue Agency (CRA), and more particularly on the part of the auditor appointed to this case, towards the appellant.

[9] This should be enough to dispose of this appeal but before concluding, I intend to discuss allegations made by the appellant at the hearing of the appeal before us.

[10] As she had done before the Tax Court, the appellant raised again her claim of harassment by the CRA alleging, without an iota of evidence, that the CRA forged a 2003 bank account statement by adding the appellant's name to the bank account of her common-law spouse (AB, Vol.1, p. 68). According to her, the CRA would have done so to conveniently make that account look like a joint account, thereby covering any impropriety regarding her common-law spouse's right to privacy following unauthorized communications between the CRA and the financial institution.

[11] The appellant also contends that our Court denied her permission to include in the appeal book copy of a letter from the bank filed at trial which would have proven this allegation.

[12] The record does not support these overbroad assertions. Through a motion presented under Rule 369, the appellant requested that the Court determine the content of the appeal book seeking the exclusion of portions of exhibits R-14, R-15, R-16 and R-20. There is no mention whatsoever of said letter in that motion.

[13] Moreover, the table of contents for the appeal books shows that all of the appellant's exhibits at trial had been made part of the appeal book except for exhibits A-7, A-9, A-10 and A-22. The last one, A-22, is the only exhibit which is not described in the list of exhibits prompting the appellant to suggest that it surely is the letter from the Bank stating that she did not become a co-signer on her spouse's bank account before 2005. The Court examined exhibit A-22. The record shows that it is a publication downloaded from the CRA website regarding tax audits.

[14] A careful examination of the record leads to a single conclusion: the appellant's assertion is grossly erroneous. The so-called «missing document» was obviously not tendered in evidence. In any event, the appellant chose not to file the transcript of the trial below (see Order of Décary J.A., December 21, 2007).

[15] In view of the respondent's consent to judgment with regard to the gross negligence penalties for the 1998 and 1999 taxation years, I would allow this appeal for the sole purpose of

deleting gross negligence penalties for those taxation years. I would dismiss the appeal on all other grounds with costs in favour of the respondent.

"Johanne Trudel"

J.A.

"I agree.
Gilles Létourneau J.A."

"I agree.
Marc Noël J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-291-07

**APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA (2007TCC412)
DATED AUGUST 15, 2007, DOCKET NUMBER 2006-2126(IT)I**

STYLE OF CAUSE: Holly Williston v. Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 11, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (LÉTOURNEAU, NOËL, TRUDEL JJ.A)

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

APPEARANCES:

HOLLY WILLISTON SELF-REPRESENTED
APPELLANT

SIMON PETIT FOR THE RESPONDENT

SOLICITORS OF RECORD:

HOLLY WILLISTON SELF-REPRESENTED
Lasalle, Quebec APPELLANT

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Deputy Attorney General of Canada