

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190222

Docket: A-59-18

Citation: 2019 FCA 36

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

BETWEEN:

**FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU QUÉBEC
(F.T.Q.)**

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held at Montréal, Quebec, February 21, 2019.

Judgment delivered at Ottawa, Ontario, on February 22, 2019.

REASONS FOR JUDGMENT BY:

RIVOALEN J.A.

CONCURRED IN BY:

**BOIVIN J.A.
DE MONTIGNY J.A.**

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[ENGLISH TRANSLATION]

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REASONS FOR JUDGMENT

RIVOALEN J.A.

[1] The Appellant is appealing the judgment rendered by Justice Ouimet (the Judge) of the Tax Court of Canada on January 15, 2018 (2018 TCC 3) in which the Judge found that the amounts paid by the Appellant to the town of Chandler (the Town) during the years 2008 and

2010 were not a gift and had not been paid for the purpose of gaining income from a business. Therefore, those amounts were not deductible as business expenses. Before this Court, the Appellant is not questioning the Judge's finding on the gift issue.

[2] The determination whether the Appellant had paid the amounts in question to the Town for the purpose of gaining income from a business or property is a question of mixed fact and law, and the applicable standard of review is palpable and overriding error: (see *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[3] The Appellant submits that the Judge erred and that the amounts paid to the Town were an expense made or incurred for the purpose of gaining income from a business as contemplated by subsection 9(1) and paragraph 18(1)(a) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). According to the Appellant, the evidence shows that the amounts were paid in the carrying on of the business and its activities, which consist in making regular investments across Quebec in a variety of sectors of activity in order to promote economic development and job creation, often doing so through a limited partnership.

[4] I am of the opinion that the Appellant has failed to demonstrate that the Judge committed a reviewable error in finding, on a balance of probabilities, that the amounts paid to the Town by the Appellant in 2008 and 2010 were not paid for the purpose of gaining income from a business.

[5] I therefore propose that the appeal be dismissed with costs.

“Marianne Rivoalen”

J.A.

“I agree.

Richard Boivin J.A.”

“I agree.

Yves de Montigny J.A.”

Certified true translation

Erich Klein

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-59-18

STYLE OF CAUSE: FONDS DE SOLIDARITÉ DES
TRAVAILLEURS DU QUÉBEC
(F.T.Q.) v. HER MAJESTY THE
QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 21, 2019

REASONS FOR JUDGMENT BY: RIVOALEN J.A.

CONCURRED IN BY: BOIVIN J.A.
DE MONTIGNY J.A.

DATED: FEBRUARY 22, 2019

APPEARANCES:

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