

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20090608**

**Docket: A-156-08**

**Citation: 2009 FCA 194**

**CORAM: SHARLOW J.A.  
RYER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**725685 ALBERTA LTD.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Edmonton, Alberta, on June 8, 2009.

Judgment delivered from the Bench at Edmonton, Alberta, on June 8, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Edmonton, Alberta, on June 8, 2009)**

**RYER J.A.**

[1] This is an appeal from a decision of Paris J. of the Tax Court of Canada (2008 TCC 301) dated June 5, 2008, dismissing an appeal by 725685 Alberta Ltd. from a reassessment of its 2002 taxation year in which the Minister of National Revenue disallowed deductions totalling \$62,723 that the appellant claimed as bad debt expenses under paragraph 20(1)(p) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) (the “ITA”).

[2] At the hearing in the Tax Court of Canada, the appellant conceded that the amount of the indebtedness in issue was \$57,573 (the “indebtedness”), which arose out of advances made by the appellant to 609574 BC Limited (“609574 BC”) in 2000 and 2001, and the Crown conceded that the indebtedness had become uncollectible in the appellant’s 2002 taxation year.

[3] In this appeal, it is common ground that the appellant will not be entitled to a deduction in respect of the indebtedness unless the appellant can establish that it meets the conditions of paragraph 20(1)(p) of the ITA. That provisions reads as follows:

20.(1) – Notwithstanding paragraphs 18(1)(a), (b) and (h), In computing a taxpayer’s income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

...

(p) the total of

- (i) all debts owing to the taxpayer that are established by the taxpayer to have become bad debts in the year and that have been included in computing the taxpayer’s income for the year or a proceeding taxation year, and
- (ii) all amounts each of which is that part of the amortized cost to the taxpayer at the end of the year of a loan or lending asset (other than a mark-to-market property, as defined in subsection 142.2(1)) that is established in the year by the

20(1) Malgré les alinéas 18(1)a), b) et h), sont déductibles dans le calcul du revenu tiré par un contribuable d’une entreprise ou d’un bien pour une année d’imposition celles des sommes suivantes qui se rapportent entièrement à cette source du revenus ou la partie des sommes suivantes qu’il est raisonnable de considérer comme s’y rapportant :

[...]

p) Créances irrécouvrables – le total des montants suivants:

- (i) les créances du contribuable qu’il a établies comme étant devenues irrécouvrables au cours de l’année et qui sont incluses dans le calcul de son revenu pour l’année ou pour une année d’imposition antérieure,
- (ii) les montants représentant chacun le partie du coût amorti, pour le contribuable à la fin de l’année, d’un prêt ou d’un titre de crédit (sauf un bien évalué à la valeur du marché, au sens du paragraphe 142.2(1) que le contribuable a établie, au course de l’année, comme étant devenues

- |   |   |
|---|---|
| <p>taxpayer to have become uncollectible and that,</p> <p>(A) where the taxpayer whose ordinary business includes the lending of money, was made or acquired in the ordinary course of the taxpayer's business of insurance or the lending of money, or</p> <p>(B) where the taxpayer is a financial institution (as defined in subsection 142.2(1)) in the year, is a specified debt obligation (as defined in that subsection) of the taxpayer;</p> | <p>irrécouvrable, lequel prêt ou titre, selon le cas :</p> <p>(A) si le contribuable est un assureur ou si son activité d'entreprise habituelle consiste en tout ou en partie à prêter de l'argent, a été consenti ou acquis dans le cours normal des activités de son entreprise d'assurance ou de prêt d'argent,</p> <p>(B) si le contribuable est un institution financière au sens du paragraphe 142.2(1) au cours de l'année compte parmi ses titres de créance déterminés au sens de ce paragraphe;</p> |
|---|---|

[4] It is clear that subparagraph 20(1)(p)(i) of the ITA is inapplicable because the amount of indebtedness has never been included in the appellant's income for any taxation year. Thus, to succeed in this appeal, the appellant must demonstrate that the indebtedness falls within subparagraph 20(1)(p)(ii) of the ITA. In the circumstances, this requires the appellant to demonstrate that its ordinary business includes the lending of money and that the indebtedness is a loan or lending asset that the appellant acquired in the ordinary course of its money lending business.

[5] The Tax Court Judge found that the appellant's ordinary business in the years under consideration did not include money lending. In reaching this conclusion, the Tax Court Judge found that the appellant had no demonstrable pattern of lending money as a business in the taxation years in which the indebtedness arose and that prior to the end of its 2002 taxation year, the appellant had made only a small number of loans. He also accepted the evidence of Mr. Ted

Stephen, a director of the appellant, to the effect that the business of the appellant was oil field and pipeline business inspection. As a result of these findings, the Tax Court Judge concluded that the appellant was not entitled to a deduction under paragraph 20(1)(p) of the ITA of the amount of the indebtedness that had become uncollectible in its 2002 taxation year.

[6] Whether the appellant's ordinary business included money lending, at the time that the indebtedness arose out of the advances made to 609574 BC, is a question of mixed fact and law that is reviewable on a standard of palpable and overriding error, except where the question contains an extricable legal issue, which is not the case in the present circumstances. (See *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235.) Here, the question is largely factual in nature.

[7] Having regard to the evidence that was before the Tax Court Judge, it was open to him to conclude that the appellant's ordinary business did not include money lending in the taxation years in which the indebtedness arose and in doing so, we are of the view that the Tax Court Judge did not commit any palpable and overriding error.

[8] For the foregoing reasons, the appeal will be dismissed, with costs.

"C. Michael Ryer"  
J.A.

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-156-08

**(APPEAL FROM A DECISION OF PARIS J. OF THE TAX COURT OF CANADA  
(2008 TCC 301) DATED JUNE 5, 2008)**

**STYLE OF CAUSE:** 725685 ALBERTA LTD.  
v.  
HER MAJESTY THE QUEEN

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** JUNE 8, 2009

**REASONS FOR JUDGMENT OF  
THE COURT:** (SHARLOW, RYER, TRUDEL JJ.A.)

**DELIVERED FROM THE BENCH BY:** RYER J.A.

**APPEARANCES:**

Edmund Albert Stephan SELF-REPRESENTED APPELLANT

Daniel Segal FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT