Federal Court of Appeal | Cour d'appel fédérale

CANADA

Date: 20110117

Docket: A-89-10

Citation: 2011 FCA 15

CORAM: **LÉTOURNEAU J.A.**
NADON J.A.
MAINVILLE J.A.

BETWEEN:

MICHEL TREMBLAY

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Hearing held at Québec, Quebec, on January 12, 2011.

Judgment delivered at Ottawa, Ontario, on January 17, 2011.

REASONS FOR JUDGMENT BY: LÉTOURNEAU J.A.

CONCURRED IN BY: NADON J.A.
MAINVILLE J.A.

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.

[1] At the hearing, the appellant, who was self-represented, moved to stay the appeal proceedings. Following the objection by counsel for the respondent, the Court dismissed the appellant's motion and held the hearing on the merits.

[2] The appellant is appealing the decision of Justice Bédard of the Tax Court of Canada (the judge), dated February 9, 2010, in file 2007-4950(IT)G. After analyzing the evidence and the law, the judge dismissed the appellant's appeal of a reassessment by the Minister of National Revenue for the 1999 taxation year. This assessment added, among other things, a taxable capital gain of $200,901 to the appellant's income.

[3] In the Tax Court of Canada, the debate focused solely on the fair market value of the property giving rise to the dispute. It was a debate between experts, both of whom arrived at different figures using the same valuation method, that is, the direct comparison method, which "essentially consists in using as a reference point the selling prices of properties that have similar characteristics, are located as close as possible to the property to be appraised, and are sold as close as possible to the relevant appraisal date": see paragraph 11 of the judge's reasons for his decision.

[4] The judge provided an abundance of reasons for preferring the expert opinion of the respondent's witness. Central to this choice was the judge's finding that the expert opinion of the appellant's witness was not credible. At paragraph 12 of the reasons for his decision, the judge worded as follows his reasons for finding that the analysis and conclusions of Mr. Ruest, the expert retained by the appellant, did not seem credible to him:

> [12] In my opinion, the two experts used the right valuation method to determine the Property's FMV given the circumstances. Moreover, I note immediately that, for the reasons set out below, I do not find Mr. Ruest's analysis and conclusions credible:

(i) First of all, as we have seen, Mr. Ruest's report (Exhibit A-1) determines the FMV of the Property as at February 1, 2001, not March 31, 1999. Mr. Ruest explained that this fact is not relevant in the case at bar because the market conditions in 2001 were the same as they were in 1999. Even as an expert, Mr. Ruest could not hope to convince me of this fact simply by stating it. Indeed, it would have been very interesting to know the basis for his assertion in that regard.

(ii) The Appellant must understand that, in applying the direct comparison method, the greater the difference between the characteristics of the property to be appraised and the similar property, and the farther removed one gets from the appraised property or from the appraisal date, the more open to doubt the appraisal becomes. Conversely, the more similar the characteristics, and the closer together the properties and the closer the dates, the easier it is to estimate the value of the subject property. In the case at bar, I am of the opinion that the characteristics of the properties that Mr. Ruest selected for his analysis were too different from those of the Property. Indeed, buildings 1, 2, 3, 4, 5, 6, 8, 9 and 11 (see paragraph 6), which have four units, eight units, four units, 11 units, eight units, six units, 10 units, 13 units and 12 units respectively, are not, in my opinion, similar to the Property, which, as we have seen, has 32 units. The market for those buildings is not the same market as for the Property. The number of buyers for 32-unit buildings is more limited than the number of buyers for four-, six- or eight-unit buildings. In addition, buyers of 32-unit buildings are usually better informed and are therefore harder negotiators than buyers of buildings with a small number of units. Lastly, buildings 7, 8, 10 and 11 are too far from the Property to be valid comparables: they are located in cities other than Saguenay, where the Property is situated. In my opinion, properties in a city neighbouring the city in which the Property is located can also be valid comparables, provided satisfactory proof is provided of the market conditions in each city. Here, the Appellant's evidence in this regard was based solely on the testimony of Mr. Ruest, who claims that the market conditions in Chicoutimi were the same as those in Alma and Jonquière. Once again, even as an expert, Mr. Ruest could not hope to convince me of this merely by making an assertion that it was so. Lastly, all of the 11 real estate transactions that Mr. Ruest selected for his analysis took place after March 31, 1999, and on dates that were considerably later than that date. A transaction subsequent to the appraisal date, and even relatively distant in time

> from the appraisal date, can be taken into account when using the direct comparison method, if the extent to which the market evolved between the appraisal and transaction dates can be satisfactorily shown, in which case one will usually need to make adjustments to take any market changes into account. Here, the Appellant's evidence in this regard rested solely on the testimony of Mr. Ruest, who claims that the market conditions in 2002, 2004 and even 2005 were the same as in 1999. Once again, even as an expert, he could not hope to convince me of this merely by making an assertion that it was so. Indeed, it would have been very interesting to know the basis for his assertion in that regard.

[5] In his memorandum of fact and law, the appellant raises a number of issues that are irrelevant to the resolution of the dispute. Essentially, however, what he is seeking is to have the opinion of his expert accepted and the decision of the Tax Court of Canada set aside.

[6] In the absence of a palpable and overriding error by the judge, this Court has no power to interfere with his findings of fact made on the basis of the credibility of witnesses: *F.H. v. McDougall*, [2008] 3 S.C.R. 41; *H.L. v. Canada*, [2005] 1 S.C.R. 401, at page 421; *Nash v. Canada*, [2005] F.C.J. No. 1921, at paragraphs 9 and 10. The appellant has not demonstrated any error of fact or law that would warrant this Court's interference.

[7] The appellant also alleged that the April 19, 2004, assessment was time-based because it had been made outside the normal assessment period. This allegation has no merit because the assessment was made within the three-year time limit following the initial assessment, which was made on July 6, 2001.

[8] For these reasons, I would dismiss the appeal with costs.

"Gilles Létourneau"
J.A.

"I agree.
M. Nadon J.A."

"I agree.
Robert M. Mainville J.A."

Certified true translation
Sarah Burns

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-89-10
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PLACE OF HEARING:	Québec, Quebec
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DATED:	January 17, 2011

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