

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20211124**

**Docket: A-165-18**

**Citation: 2021 FCA 228**

**CORAM: STRATAS J.A.  
LOCKE J.A.  
MONAGHAN J.A.**

**BETWEEN:**

**JULIE VANDENBERG**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on November 23, 2021.  
Judgment delivered at Toronto, Ontario, on November 24, 2021.

**REASONS FOR JUDGMENT BY:**

**MONAGHAN J.A.**

**CONCURRED IN BY:**

**STRATAS J.A.  
LOCKE J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT**

**MONAGHAN J.A.**

[1] Ms. Vandenberg appeals a judgment of Tax Court of Canada (*per* Boyle J.) issued on May 8, 2018 for reasons delivered from the bench on April 13, 2018. The judgment concerns reassessments of Ms. Vandenberg's 2002 and 2003 taxation years under the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.).

[2] The Tax Court accepted Ms. Vandenberg’s evidence and submissions regarding charitable donations and certain expenses she deducted in computing income from her business as a real estate agent. As a result, the Tax Court allowed her appeal.

[3] However, the Tax Court did not accept all of the expenses Ms. Vandenberg claimed. In particular, Ms. Vandenberg claims she paid three individuals significant amounts of cash for helping her in her real estate business. The Tax Court accepted her evidence regarding a small portion of those claimed expenses, but not all. That aspect of the Tax Court’s decision gives rise to this appeal.

[4] Although Ms. Vandenberg suggests that the Tax Court made an error of law, she has not identified that error. Rather, she asks this Court to draw a different conclusion from the evidence than the Tax Court did.

[5] On appeal, this Court must treat the Tax Court’s findings of fact and the inferences drawn from those findings with a high degree of deference. This Court may interfere only if Ms. Vandenberg demonstrates the Tax Court made a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 10, 23 and 25. A palpable error is one that is obvious and plain to see: *Salomon v. Matte-Thompson*, 2019 SCC 14, [2019] 1 S.C.R. 729, at para. 33.

[6] The Tax Court is in the best position to review and assess all of the evidence, including the testimony of witnesses and the documents. The transcripts are clear—the Tax Court

carefully listened to the testimony and carefully reviewed the documentary evidence before it. It accepted Ms. Vandenberg's evidence on certain matters, but not on others, as it is entitled to do.

[7] Ms. Vandenberg argues that because the Tax Court found her to be a credible witness, and accepted that she made payments for leads, it should have made the "reasonable inference" that she "earned commission income throughout the year" and accepted that she made the payments she claimed to these individuals. I do not agree. Ms. Vandenberg seeks to equate credibility and reliability, but they are not equivalents. Credibility is concerned with honesty, while reliability concerns the accuracy of the testimony, *i.e.*, whether the witness accurately recalls and recounts the relevant events: *R. v. H.C.*, 2009 ONCA 56, 241 C.C.C. (3d) 45, at para. 41. A credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.), 97 C.C.C. (3d) 193, at 526.

[8] While the Tax Court described Ms. Vandenberg as "overall a credible witness", it also observed she was "struggling to recollect" and it did "not accept everything she said as proven". Indeed, with respect to the payments in dispute, the Tax Court had reason to doubt the reliability of Ms. Vandenberg's testimony.

[9] In addition to her difficulties recalling details, the Tax Court observed: the records she had were not very good; her bank books did not line up with the worksheet from ReMax; her testimony regarding the cash withdrawals to pay the individuals when she deposited a commission cheque was not borne out by her bank books; she was "guessing a few times"; she had no records of the payments made; the individuals she said she paid did not report the

income; and the amounts she claimed were round thousand dollar numbers which the Tax Court found a “little coincidental”, “not likely” and inconsistent with her testimony about the manner in which the amounts were determined.

[10] The Tax Court concluded it did not “have sufficient evidence to accept [Ms. Vandenberg’s] numbers” and it was not “comfortable on the evidence to extrapolate”. There are no grounds to interfere with the Tax Court's assessment of the evidence.

[11] The appellant’s name was misspelled in the notice of appeal. The style of cause on this document and in the judgment of the Court will reflect the correct spelling.

[12] Since Ms. Vandenberg has not established a palpable and overriding error, I would dismiss the appeal with costs in the amount of \$300, all inclusive.

“K.A. Siobhan Monaghan”

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J.A.

“I agree  
David Stratas J.A.”

“I agree  
George R. Locke J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**APPEAL FROM A JUDGMENT OF THE HONOURABLE PATRICK BOYLE DATED  
MAY 8, 2018, DOCKET NO. 2012-1997(IT)G.**

**DOCKET:** A-165-18

**STYLE OF CAUSE:** JULIE VANDENBERG v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** NOVEMBER 23, 2021

**REASONS FOR JUDGMENT BY:** MONAGHAN J.A.

**CONCURRED IN BY:** STRATAS J.A.  
LOCKE J.A.

**DATED:** NOVEMBER 24, 2021

**APPEARANCES:**

Julie Vandenberg FOR THE APPELLANT  
ON HER OWN BEHALF

Christian Cheong FOR THE RESPONDENT  
Donna Dorosh

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