Federal Court of Appeal | Cour d'appel fédérale

Date: 20141203

Docket: A-155-14

Citation: 2014 FCA 283

CORAM: **DAWSON J.A.**
WEBB J.A.
SCOTT J.A.

BETWEEN:

MICHELLE COLEEN CONNOLLY

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Halifax, Nova Scotia, on November 6, 2014.

Judgment delivered at Ottawa, Ontario, on December 3, 2014.

REASONS FOR JUDGMENT BY: SCOTT J.A.

CONCURRED IN BY: DAWSON J.A.
WEBB J.A.

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] Subsection 160(1) of the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.) (Act) renders a taxpayer liable for income taxes owed by a non-arms length person if property is transferred to the taxpayer from the tax debtor for proceeds less than the fair market value of the transferred property.

[2] The Minister of National Revenue assessed the appellant pursuant to subsection 160(1) of the Act in respect of cheques totalling $76,884.17 she received during the 2003 taxation year from her common law spouse while he was a tax debtor. The appellant appealed the assessment to the Tax Court of Canada. For reasons cited as 2014 TCC 55, [2014] T.C.J. No.42, a judge of the Tax Court dismissed the appeal. This is an appeal from that judgment.

[3] Before the Tax Court, the appellant argued that she did not receive any benefit as a result of receiving the cheques in issue. Once the appellant cashed the cheques, the proceeds were either applied to reduce the common law spouse's indebtedness to the appellant or were given to her common law spouse.

[4] The Judge rejected this explanation. In her view, the appellant was not credible (reasons, at paragraph 36). The first reason given by the Judge for this credibility finding was that the appellant's explanation to the Canada Revenue Agency about the cheques in issue changed. According to the Judge, when the appellant was first contacted in November 2007, she advised the Canada Revenue Agency that the funds were immediately withdrawn and given to the common law spouse. The Judge went on to conclude that it was only at the objection stage that the appellant alleged that she made loans to her common law spouse and that the cheque proceeds represented payments of those loans (reasons, at paragraph 37).

[5] As conceded by counsel for the respondent at the hearing of this appeal, this was a finding that the appellant had, at the objection stage, fabricated a new explanation. This finding

was therefore the lens through which all of the evidence was assessed by the Judge. As such, this finding was essentially dispositive of the issue of the appellant's credibility.

[6] In fact, the appellant's explanation was not a recent fabrication made at the objection stage.

[7] On April 4, 2004, in response to an inquiry from the Canada Revenue Agency with respect to a cheque deposited into the appellant's account on November 7, 2003, the appellant stated, in the closing paragraph of her response, that:

> "As I stated on the telephone, I did not keep and nor do I have any of this money therefore I have not benefit from this cheque. The only money that has passed from Mr. MacVicar to myself are amounts that were owing to me as a result of incurring living expenses and his borrowing money from me." (Appeal Book volume 1, Tab 18)

[8] The finding of recent fabrication was therefore based upon a misunderstanding of the evidence, and constituted a palpable and overriding error.

[9] In the result, I would allow the appeal and remit the appeal of the assessment to the Tax Court for redetermination by a different judge. The appellant is entitled to her disbursements in this Court and to her costs in the Tax Court (where she was represented by counsel).

[10] I also find that it is not necessary to deal with the two other grounds of appeal raised by the appellant namely that counsel for the respondent committed fraud or perjury and that the Judge was biased, as both are clearly unfounded. I believe the appellant must be cautioned from

making bold assertions that have no foundation whatsoever and that can tarnish the reputation of officers of the Court if left unchallenged. Perjury and bias are defined terms they should never be used lightly.

[11] In view of this decision it is not necessary to consider the appellant's motion for leave to adduce new evidence. It will be for the Tax Court to determine whether the document at issue is admissible as a business record.

"A.F. Scott"
J.A.

"I agree
Eleanor R. Dawson J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-155-14
STYLE OF CAUSE:	MICHELLE COLEEN CONNOLLY v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HALIFAX, NOVA SCOTIA
DATE OF HEARING:	NOVEMBER 6, 2014
REASONS FOR JUDGMENT BY:	SCOTT J.A.
CONCURRED IN BY:	DAWSON J.A. WEBB J.A.
DATED:	DECEMBER 3, 2014

APPEARANCES:

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Michelle Coleen Connolly (On her own behalf)	FOR THE APPELLANT MICHELLE COLEEN CONNOLLY

SOLICITORS OF RECORD:

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	FOR THE APPELLANT MICHELLE COLEEN CONNOLLY