

Citation: 2007TCC218
Date: 20070420
Docket: 2006-1183(OAS)

BETWEEN:

SALVATORE GRAMAGLIA,

Applicant,

and

CANADA (MINISTER OF HUMAN
RESOURCES AND SOCIAL DEVELOPMENT),

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on March 6, 2007 at Calgary, Alberta.)

Beaubier, J.

[1] This is a reference under section 18 of the *Old Age Security Act* by the Commissioner of Review Tribunals relating to the determination of income of the Appellant pursuant to subsection 28(2) of the *Old Age Security Act*. The Appellant was the only witness.

[2] Three matters were raised in the course of the hearing for rulings by the Court:

1. The Charter – However, the Appellant had not served the necessary notices on third parties to proceed with the Charter argument and, therefore, the Court denied an argument on that matter.

2. The fact that the Reply was filed in Court on February 27, 2007, and served on the Appellant in the period February 27 to March 2. The Rules set no time limit in which to file or serve the Reply in this case. The Court offered the Appellant an adjournment of 24 hours respecting his objection because the issues and legal

implications respecting this matter had been canvassed thoroughly before by the Appellant by the time of this objection. The Appellant elected to proceed.

3. The fact that this is a referral from the Tribunal and that the Appellant had not had a hearing before the Tribunal prior to this hearing. That objection was denied on the basis that the reference has proceeded according to the statutory authority and direction.

[3] Paragraphs 15 and 16 of the Reply read as follows:

Assumptions Relied On

15. In calculating the Appellant's GIS benefit, the Minister relied on the following assumptions of fact:

- a) The Appellant is a resident of Canada;
- b) The Appellant is a single person;
- c) When applying in 2005 for his Guaranteed Income Supplement, the Appellant:
 - i) declared his 2004 income to be \$1,716.00, an amount received from his German disability pension; and
 - ii) failed to declare the amount of \$800 with respect to his RRSP income (Home Buyers' Plan);
- d) The Appellant's 2004 income under the *Income Tax Act* was \$2,516.00, including:
 - i) \$1,716.00 from his German disability pension pursuant to subparagraph 56(1)(a)(i) of the *Income Tax Act*; and
 - ii) \$800.00 in RRSP income (Home Buyer's Plan) pursuant to subsection 146.01(4) and paragraph 56(1)(h.1) of the *Income Tax Act*;
- e) With respect to the Appellant's RRSP income (Home Buyer's Plan):

- i) On May 10, 1993 the Appellant borrowed \$12,000.00 from his RRSP under the 'Home Buyers' Plan' for the purchase of a home;
 - ii) Under the Home Buyers' Plan, the Appellant was required to pay back into his RRSP \$800 per year for 15 years; and
 - iii) In 2004 the Appellant failed to pay \$800, or any amount, into his RRSP as required.
- f) Based on the Appellant's actual income of \$2,516.00 for 2004, the Appellant was entitled to a GIS amount of \$489.97 per month as outlined in Schedules A and B attached hereto to this Reply; and
- g) The Appellant's GIS entitlement is based on amounts for a single person.

B. ISSUES TO BE DECIDED

16. The issues are:

- a) Whether the Tax Court of Canada received from the Review Tribunal, and accepted, a referral of the Appellant's appeal of the Minister's decision dated June 9, 2006 pursuant to subsection 28(2) of the *OAS Act*; and
- b) Whether the Minister correctly determined the Appellant's income for the purpose of calculating his GIS entitlement for the Payment Period, and specifically, whether the Minister was correct in including as income for the purposes of calculating the GIS:
 - i) the Appellant's German disability pension in the amount of \$1,716.00, and
 - ii) Subject to the determination of issue (a) above, the income from the RRSP Home Buyers' Plan in the amount of \$800.00.

[4] Subparagraphs 15(a), (c), (d), (e) and (f) were established in evidence. Subparagraphs 15(b) and (g) were not disputed by the Appellant.

[5] The Court received the referral of this appeal from the Minister's decision of June 9, 2006, and the parties were so informed by the Court. The Appellant filed documents respecting that appeal for this hearing, as had the Respondent.

[6] With respect to the Appellant's appeal of the inclusion of his German disability pension in his "income" for the purposes of calculating his Guaranteed Income Supplement and Old Age Security under the *Old Age Security Act*:

1. That amount is included in the Appellant's "income" for that purpose pursuant to section 2 of the *Old Age Security Act* and by paragraph 56(1)(a) of the *Income Tax Act*, all as determined by the Federal Court of Appeal and the Supreme Court of Canada in *Swantje v. Canada* [1994] 2 C.T.C. 382 and 1996 1 C.T.C. 355, which is directly applicable to this case.

2. Therefore, the appeal is dismissed on this issue.

[7] The sum of \$800, which the Appellant was required to pay into his RRSP in 2004 and which he did not pay, is also to be included in his income by virtue of the directed calculations contained in subsection 146.01(4) of the *Income Tax Act*. Simply described, the principle of this subsection is that the Appellant was able to reduce his taxable income when he contributed to his RRSP. He was not taxed when he withdrew proceeds from his RRSP to purchase a home. Therefore, he must be taxed on those proceeds at some time. If he failed to repay the withdrawn proceeds into his RRSP, he is taxed on the amount of proceeds that he was required to pay in 2004 as so determined.

[8] As a result, the appeal is dismissed in its entirety.

Signed at Vancouver, British Columbia this 20th day of April, 2007.

"D.W. Beaubier"

Beaubier, J.

CITATION: 2007TCC218

COURT FILE NO.: 2006-1183(OAS)

STYLE OF CAUSE: Salvatore Gramaglia v. Canada
(Minister of Human Resources
and Social Development)

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: March 5, 2007

ORAL REASONS
FOR JUDGEMENT BY: The Honourable Justice Beaubier

DATE OF ORAL REASONS
FOR JUDGMENT: April 20, 2007

APPEARANCES:

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