

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150421

Dockets: A-238-14

A-239-14

A-240-14

A-241-14

Citation: 2015 FCA 102

**CORAM: STRATAS J.A.
RYER J.A.
NEAR J.A.**

BETWEEN:

KIN FONG

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on April 21, 2015.
Judgment delivered from the Bench at Ottawa, Ontario, on April 21, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on April 21, 2015).

STRATAS J.A.

[1] Before the Court are four appeals from four orders made by the Tax Court of Canada (*per* Justice Woods) on April 24, 2014. These are the Court's reasons in the four appeals. We direct that a copy of these reasons be placed in each appeal file.

[2] Each of the orders dismisses motions brought by the appellant within two appeals pending in the Tax Court of Canada (nos. 2012-5133(IT)G and 2013-3233(IT)G). Taken together, those appeals challenge the Minister's reassessments for the 2001-2009 taxation years.

[3] Appeal A-239-14 concerns the scheduling of one of the appeals for January 2015. That appeal did not proceed as scheduled. In response to questioning from the panel, the appellant accepts that this appeal is now moot. Therefore, we shall dismiss it on that basis.

[4] In the three remaining orders under appeal, the Tax Court dealt with a number of matters. These fall within two categories:

- Requests for discretionary relief, such as a production order against the Canada Revenue Agency, an amendment to an earlier order, scheduling issues concerning a motion to strike and other matters; and
- Requests for legal relief on the grounds that the Minister does not have authority to make the assessments in issue, the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) is constitutionally invalid because, among other things, the federal government cannot share its tax revenues with the provinces, and the non-distinction between a flesh and blood living man and a legal person is constitutionally invalid.

[5] The first category concerns interlocutory, discretionary matters of a procedural nature. In its memorandum, the Crown submits that this Court will only intervene in such matters where there is an error of law, a misapprehension of facts, a failure to give appropriate weight to all relevant factors or an obvious injustice. Recently, this Court clarified the standard of appeal for discretionary orders: *Imperial Manufacturing Group Inc. v. Decor Grates Inc.*, 2015 FCA 100. The standard of review for discretionary matters, matters of mixed fact and law, is governed by *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, and is palpable and overriding error. Under that standard, we do not reweigh and substitute our discretion for the one under appeal.

[6] We are not persuaded that palpable and overriding error is present in any of the decisions falling under the first category. In fact, the Tax Court's discretionary decisions are amply supported by the record before it.

[7] In the second category, the Tax Court did not err in law. It identified subsection 152(4) of the *Income Tax Act* as the statutory source for the Minister's authority to issue the assessments. The appellant has supplied no viable constitutional basis for invalidating the section or the Act. In particular, the federal government may share its tax revenues with provinces: *Guillemette v. The Queen* (1999), 240 N.R. 384, 63 C.R.R. (2d) 364 at paragraph 3 (Fed. C.A.). The constitutional argument about the non-distinction between a flesh and blood living man and a legal person has been rejected repeatedly by this Court and has no basis whatsoever.

[8] We shall dismiss the appeals. Costs will be fixed in the total amount of \$2,000 for all appeals, all inclusive.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-238-14, A-239-14, A-240-14 and
A-241-14

**APPEAL FROM THE ORDERS OF THE HONOURABLE MADAM JUSTICE WOODS
DATED APRIL 24, 2014, DOCKET NOS. 2012-5153(IT)G AND 2013-3233(IT)G**

STYLE OF CAUSE: KIN FONG v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: APRIL 21, 2015

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
RYER J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Kin Fong ON HIS OWN BEHALF

Frédéric Morand FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada