

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151028

Docket: A-493-14

Citation: 2015 FCA 231

**CORAM: DAWSON J.A.
STRATAS J.A.
DE MONTIGNY J.A.**

BETWEEN:

0742443 BC LTD

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on October 28, 2015.

Judgment delivered from the Bench at Toronto, Ontario, on October 28, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on October 28, 2015).

DAWSON J.A.

[1] The appellant, formerly R-Xtra Storage Centre Ltd., carried on a business throughout the 2006, 2007, 2008 and 2009 taxation years. The Minister of National Revenue assessed R-Xtra on the basis it was carrying on a specified investment business. In the Minister's view, the principal purpose of the appellant was to derive income from property as a mini-storage business. It followed that the appellant was not entitled to claim the small business deduction.

[2] In careful and thorough reasons cited as 2014 TCC 301, a judge of the Tax Court of Canada dismissed the appellant's appeals from the assessments. This is an appeal from the judgment of the Tax Court.

[3] In dismissing the appellant's appeals the Judge found:

[4] The small business deduction applies to income earned from an active business carried on by a corporation. "Active business carried on by a corporation" is defined by subsection 125(7) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) to mean "any business carried on by the corporation other than a specified investment business...". In turn, "[s]pecified investment business" is defined in the same subsection as "a business [...] the principal purpose of which is to derive income (including interest, dividends, rents and royalties) from property ..." (reasons at paragraph 14).

- i) The phrase "principal purpose of which is to derive income [...] from property" is not ambiguous as the appellant contended (reasons at paragraph 31).
- ii) To determine the "principal purpose" of the appellant's business, the Judge was required to determine on an objective basis what the appellant's customers paid for (reasons at paragraph 26).
- iii) The appellant's customers bought storage space and this is what they paid for (reasons at paragraph 30).
- iv) In the Judge's view, services provided to the appellant's customers such as snow removal were requisite support for property income (reasons at paragraph 20).

v) It followed that the character of the income earned by the business was rental income from property (reasons at paragraphs 29 and 30).

[5] It further followed that the appellant's business was a specified investment business.

[6] On this appeal, despite the able submissions of Mr. Sorensen, the appellant has not demonstrated any error of law in the Judge's analysis or any palpable and overriding error of fact. Rather, in large part the appellant has simply re-argued the case lost before the Tax Court.

[7] On this appeal, the appellant also argues that it was deprived of procedural fairness because the Judge ignored deficiencies in the Minister's assumptions of fact set out in her reply.

[8] As the Judge noted, before trial the appellant moved unsuccessfully to strike the impugned assumptions. No appeal was taken from the order dismissing the appellant's motion. Thus, the appellant had the opportunity to challenge the Minister's assumptions and failed. The issue could not be re-litigated at trial. Moreover, we agree with the Judge's conclusion that the reply permitted the appellant to know the case it was required to meet.

[9] For these reasons, the appeal will be dismissed with costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-493-14

STYLE OF CAUSE: 0742443 BC LTD v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: OCTOBER 28, 2015

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STRATAS J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

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