

Date: 20090302

Docket: A-99-07

Citation: 2009 FCA 64

**CORAM: EVANS J.A.
PELLETIER J.A.
RYER J.A.**

BETWEEN:

MELVIN EDWARD DEFOREST

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Saskatoon, Saskatchewan, on March 2, 2009.

Judgment delivered from the Bench at Saskatoon, Saskatchewan, on March 2, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Saskatoon, Saskatchewan, on March 2, 2009)

RYER J.A.

[1] Mr. Melvin E. DeForest challenges a decision of Justice Sheridan of the Tax Court of Canada (2007 TCC 26), dated January 19, 2007. Justice Sheridan upheld a reassessment under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “ITA”) of Mr. DeForest’s 2003 taxation year that denied his claim for a terminal loss as a result of a sale of a hotel in Yellow Creek, Saskatchewan, that occurred in 2003.

[2] The Tax Court Judge held that before Mr. DeForest could be entitled to deduct the amount claimed as a terminal loss, he was required to establish that his cost, for the purpose of the capital cost allowance provisions of the ITA, of the depreciable property component of the hotel that was allegedly sold at a loss, was \$30,000. She found that despite the ample opportunities that Mr. DeForest was given and the co-operation extended by Crown counsel, he was unable to establish as a matter of fact that his depreciable properties cost him \$30,000. As a result, the Tax Court Judge dismissed the appeal.

[3] While we are sympathetic to Mr. DeForest's situation, we are bound to confirm the decision of the Tax Court Judge since, on the evidence before her, she could come to no other conclusion. Accordingly, the appeal will be dismissed, with costs.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-99-07

(APPEAL FROM A JUDGMENT OF JUSTICE SHERIDAN (2007 TCC 26) OF THE TAX COURT OF CANADA, DATED JANUARY 19, 2007, DOCKET NO.2006-558(IT)I)

STYLE OF CAUSE: MELVIN EDWARD DEFOREST v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: SASKATOON, SASKATCHEWAN

DATE OF HEARING: MARCH 2, 2009

**REASONS FOR JUDGMENT OF
THE COURT BY:** (EVANS, PELLETIER and RYER
J.J.A.)

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

Self-represented FOR THE APPELLANT

Anne Jinnouchi FOR THE RESPONDENT

SOLICITORS OF RECORD:

FOR THE APPELLANT

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