

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121211

Docket: A-482-11

Citation: 2012 FCA 328

**CORAM: BLAIS C.J.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

STÉPHANE GAGNON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Québec, Quebec, on December 10, 2012.

Judgment delivered at Québec, Quebec, on December 11, 2012.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**BLAIS C.J.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

TRUDEL J.A.

[1] Mr. Gagnon is appealing a decision of the Tax Court of Canada (2011 TCC 480) allowing in part his appeals against reassessments for his 2003 and 2004 taxation years. The judge referred the reassessments back to the Minister for reconsideration and reassessment on the basis that the business income determined by the net worth method is \$28,561.69 for 2003 and \$22,478.24 for 2004 and that the penalties must be adjusted accordingly.

[2] Mr. Gagnon submits that the judgment under appeal contains errors. First, the net worth method was not necessary in the present case because all the documents needed in order to assess by the direct method, that is, by analyzing his business income less expenses, had been provided to the auditor. According to Mr. Gagnon, the auditor did in fact apply the direct method, as she reviewed all of the bank accounts and the transactions on those accounts, but she then applied the net worth method to the resulting data.

[3] According to Mr. Gagnon, it was not even necessary to assess his credibility in order to accept his argument, since the facts put in evidence by the respondent were sufficient proof that it was well-founded. Accordingly, the judge should have found that Mr. Gagnon had demolished the Minister's assumptions of fact and thus reversed the burden of proof.

[4] Finally, Mr. Gagnon submits that the judge erred in basing his decision on an assumption of fact different from the assumptions of the Minister. In this regard, he points to paragraph 33 of the judge's reasons.

[5] I am of the view that this appeal cannot succeed. The evidence adduced was such as to enable the judge to accept the net worth method and find that Mr. Gagnon had not discharged his burden of proof. I also note that the judge was satisfied both that the audit had been properly performed and that Mr. Gagnon had been treated fairly in the investigation process.

[6] Despite the judge's sketchy reasons and the sustained efforts of Mr. Gagnon's counsel to convince us otherwise, I have not been persuaded that the judge erred in principle or committed any other error justifying the intervention of this Court.

[7] Accordingly, I would dismiss this appeal with costs.

“Johanne Trudel”

J.A.

“I agree.

Pierre Blais C.J.”

“I agree.

Denis Pelletier J.A.”

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-482-11

STYLE OF CAUSE: STÉPHANE GAGNON v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: December 10, 2012

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: BLAIS C.J.
PELLETIER J.A.

DATED: December 11, 2012

APPEARANCES:

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Simon-Nicolas Crépin FOR THE RESPONDENT

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