

Docket: 2012-208(IT)I

BETWEEN:

ESTATE OF THE LATE CATHERINE M. ROUD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 25, 2013 at
St. John's, Newfoundland and Labrador

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: Margaret Murphy

Counsel for the Respondent: Gregory King

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* with respect to the Appellant's 2006 taxation year is dismissed, without costs, in accordance with the Reasons for Judgment attached hereto.

Signed at Ottawa, Canada this 31st day of January 2013.

"Patrick Boyle"

Boyle J.

Citation: 2013 TCC 36
Date: 20130131
Docket: 2012-208(IT)I

BETWEEN:

ESTATE OF THE LATE CATHERINE M. ROUD,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] These are my reasons in the 2006 appeal of the Estate of the Late Catherine Roud. It was heard in St. John's under the Court's Informal procedure.

[2] Catherine Roud died in August 2007. The executor of her estate is her cousin Ms. Murphy, who also held a power of attorney over Ms. Roud's affairs prior to her death.

[3] The issues to be decided are whether:

- i) Ms. Roud realized a taxable capital gain when shares owned by her were the subject of an income trust conversion in 2006; and,
- ii) Whether Ms. Roud's 2006 year was statute-barred when the Canada Revenue Agency ("CRA") reassessed her 2006 year to include the unreported gain.

[4] In 2006, Ms. Roud owned approximately 4,000 common shares of Aliant Inc., a public telephone company and successor to Newtel. Ms. Roud had worked for five decades at Newfoundland Telephone, retiring in the late 1980s.

[5] Aliant Inc. was reorganized in July 2006 to become an income trust, an entity that is not a corporation.

[6] As part of the income trust conversion, Ms. Roud's Aliant Inc. shares were converted into trust units of a commercial trust called The Bell Aliant Regional Communications Income Fund. Each corporate share of Aliant was converted into one trust unit of Bell Aliant. At that time each share, and hence each unit received, was worth about \$33 and Ms. Roud's approximately 4,000 units received were worth about \$133,000.

[7] The adjusted cost base to Ms. Roud of her Aliant shares was estimated and assumed by the CRA, as described below, to be about \$62,000.

[8] It is the Appellant's position that no capital gain should have been realized and taxed at that time because (i) the Aliant corporate shares were not sold for cash but merged into Bell Aliant Trust Units, or (ii) perhaps Aliant Inc. was merely renamed Bell Aliant.

[9] Unfortunately for Ms. Roud and for other individuals and taxable entities, income trust conversions did not qualify for tax deferred corporate rollover treatment under the *Income Tax Act* (the "*Act*") even though such a rollover would have been available had shares been converted into or exchanged for shares of another corporation as was the case when her Newtel shares were exchanged for Aliant Inc. shares. The tax treatment of corporations and their shareholders under the *Act* differs significantly from the tax treatment of trusts and their unitholders. For this reason, Ms. Murphy's argument can not succeed. Ms. Roud did dispose of her Aliant Inc. shares and received in exchange the Bell Aliant Trust units. The amount of proceeds she received for her Aliant Inc. shares is the fair market value of Bell Aliant Trust units she received. It does not matter that she did not receive cash.

[10] No amount was included in Ms. Roud's tax return in respect of her Aliant Inc. share conversion to Bell Aliant Trust units. That return was signed by Ms. Murphy as her Power of Attorney. The tax implications of the proposed trust conversion had been communicated to common shareholders of Aliant Inc. prior to the conversion. Individual shareholders of Aliant Inc. would have been made aware that this would be a taxable transaction resulting in a capital gain to individuals holding Aliant Inc. shares as capital property on the day of the conversion. Ms. Roud's Aliant Inc. shares were one of her significant assets. Dividends would have been received on them regularly.

[11] There is absolutely no suggestion that either Ms. Roud or Ms. Murphy intended to do anything wrong. Income trust conversions are complex but different from the earlier conversion of Ms. Roud's Newfoundland Telephone Newtel shares into shares of Aliant Inc. in the 1990s. However, in these circumstances, I am satisfied that the failure to include the capital gain in Ms. Roud's 2006 tax return resulted in a misrepresentation in that return attributable to neglect or carelessness. The result of this is that the normal three-year reassessment period did not apply and the 2006 year is not statute-barred with respect to this taxable capital gain.

[12] For these reasons this appeal must be dismissed. I would note as an aside that does not affect my decision that the CRA believes it overstated Ms. Roud's adjusted cost base in her shares by more than \$1,000. If so, this is to her favour as the CRA cannot seek to increase the reassessment in this appeal. Further, it appears that had Ms. Roud not exchanged her shares in 2006 for trust units, or even if there had been a tax-deferred rollover available, this capital gain would have been realized and taxable in 2007 upon her death in any event.

[13] There is no accurate available information about Ms. Roud's costs of the shares she purchased. Ms. Murphy believes her cousin probably purchased them over the 4 or 5 decades she worked at Newfoundland Telephone. Ms. Roud retired in the 1980s. Unfortunately, she left only a single share certificate issued upon the 1990's conversion of Newtel into Aliant Inc.. The cost estimated and assumed by the CRA was the value of her Newtel shares in 1994. In the circumstances, that was a reasonable, if not generous, assumption. In the absence of better evidence, the Court accepts it.

[14] This would be a compelling case for the Minister to consider relief of at least some of the interest under the so-called Fairness provisions of the *Act*. I understand that such an application has been made and would expect it to be given appropriate consideration in these circumstances.

Signed at Ottawa, Canada this 31st day of January 2013.

"Patrick Boyle"

Boyle J.

CITATION: 2013 TCC 36

COURT FILE NO.: 2012-208(IT)I

STYLE OF CAUSE: ESTATE OF THE LATE CATHERINE M.
ROUD AND HER MAJESTY THE QUEEN

PLACE OF HEARING: St John's, Newfoundland and Labrador

DATE OF HEARING: January 25, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: January 31, 2013

APPEARANCES:

Agent for the Appellant: Margaret Murphy
Counsel for the Respondent: Gregory King

COUNSEL OF RECORD:

For the Appellant:

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