

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230621

Docket: A-47-22

Citation: 2023 FCA 145

**CORAM: WOODS J.A.
LOCKE J.A.
LEBLANC J.A.**

BETWEEN:

**BONNYBROOK PARK INDUSTRIAL
DEVELOPMENT CO. LTD.**

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Toronto, Ontario, on June 21, 2023.

Judgment delivered from the Bench at Toronto, Ontario, on June 21, 2023.

REASONS FOR JUDGMENT BY:

WOODS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 21, 2023).

WOODS J.A.

[1] Bonnybrook Park Industrial Development Co. Ltd. appeals from a judgment of the Federal Court written by Justice Sadrehashemi and reported as 2022 FC 103.

[2] The judgment under appeal concerns a judicial review application filed by Bonnybrook relating to a decision of the Minister of National Revenue. The Minister denied relief that was

requested by Bonnybrook under taxpayer relief provisions in the *Income Tax Act*. The Federal Court dismissed the application. By way of context, the Minister's decision was a reconsideration of a decision dated October 12, 2016 that was set aside by this Court for reasons cited as 2018 FCA 136.

[3] As explained below, we are of the view that the appeal should be dismissed.

[4] Bonnybrook is a private corporation that earns rental income. The income tax payable by Bonnybrook on this type of income is partially refunded as dividends are paid by the corporation. The legislative purpose is to achieve integration and avoid double taxation.

[5] In order to be entitled to a dividend refund, the taxpayer is required to file a corporate tax return within three years after the year in which the dividend is paid.

[6] For many years, Bonnybrook did not file corporate tax returns. As a consequence, it was not entitled to receive dividend refunds. Bonnybrook seeks taxpayer relief from the filing requirement in order to obtain the dividend refunds. It also seeks relief from interest and penalties.

[7] Bonnybrook's application for taxpayer relief was sent to the Minister on May 6, 2016. The basis for the relief sought is that the sole director of Bonnybrook had serious health issues for many years. The application suggested that since the director had previously been compliant with filing obligations, the change was due to the health problems. The application also

submitted that the Minister should consider the severe tax consequences of not filing the returns, which results in punitive double tax. It was suggested that this was a factor that should be taken into account in considering the health issues.

[8] In 2019, the Minister requested that Bonnybrook provide details of the director's health problems and supporting documentation. A detailed response was provided in a timely manner.

[9] In the reconsideration decision at issue, it appears that the Minister carefully considered the information provided by Bonnybrook. The Minister acknowledged that the health issues were serious. However, the Minister concluded that taxpayer relief was not warranted because the director was capable of arranging for assistance in filing the returns and should have done so if she was not capable of preparing the returns herself.

[10] The Federal Court determined that this decision was reasonable and dismissed the application for judicial review.

[11] In this appeal, the Court is to step into the shoes of the Federal Court. This means that this Court is to perform a *de novo* review (*Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10). In undertaking this review, a key question for this Court is whether the Minister's decision is reasonable. The Supreme Court of Canada has provided instructions on reasonableness review in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Bonnybrook also raises issues of procedural fairness.

[12] In order for the Minister's decision to be reasonable, the outcome should be considered in light of the underlying rationale to ensure that the decision as a whole is transparent, intelligible and justified (*Vavilov* at para. 15). In our view, the decision satisfies these requirements and there is no reason for this Court to intervene.

[13] Bonnybrook raises several arguments in this appeal. We would comment on four of them. It is worth mentioning that many of the arguments did not have a sufficient record to support them. For example, in its submissions Bonnybrook noted that the director did seek help with tax filings. However, at the hearing Bonnybrook acknowledged that the material does not provide a timeline for this help. This timeline is important because the failure to file returns extended for a very long time – from 2003 to 2015.

[14] At the hearing, Bonnybrook submitted that the Minister merely found that the director had health issues, and did not really grapple with the material which demonstrated that the director's health problems were very serious. We do not agree that the Minister failed to grapple with the material. In the decision, the Minister found that the director was "dealing with multiple, at times severe, medical issues." The Minister also found that "until only recently, [the director] was the sole individual responsible for managing the company which involves multiple rental properties." This supports the Minister's conclusion that the director could have arranged for the corporate tax returns to be filed.

[15] Second, Bonnybrook submits that the Minister's decision is unreasonable because the issue of punitive taxation was not discussed. We disagree. Bonnybrook's submissions on the

harshness of the legislation were not presented as a stand alone reason to grant taxpayer relief. Instead, it was submitted that this was a factor to be considered in the context of the health situation. The fact that the Minister did not discuss the harshness of the tax result does not mean that it was not considered and does not render the decision unreasonable.

[16] Third, Bonnybrook submits that it has been prejudiced by the Minister's delay in asking for additional health information and supporting documents. Bonnybrook submits that due to the lapse of time it was not possible to obtain all relevant medical records. This is an issue of procedural fairness that is to be reviewed on a correctness standard (*Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at para. 28).

[17] In our view, Bonnybrook has not demonstrated that there has actually been prejudice. Bonnybrook stated that although the medical information provided is not complete it does support Bonnybrook's position. Importantly, in the decision at issue the Minister accepted the evidence that the health issues were serious. Prejudice has not been shown.

[18] Finally, Bonnybrook submits that the Minister breached procedural fairness because its request to file further submissions was not granted by the Minister. In our view, this was not a breach of procedural fairness because Bonnybrook was given a sufficient opportunity to be heard. Bonnybrook had an opportunity to present its case in 2016 in the application for taxpayer relief and it did so. Then, in 2019 the Minister invited Bonnybrook to elaborate on the health problems and provide supporting documentation. Extensive submissions were made by Bonnybrook in response. There was no breach of procedural fairness.

[19] In conclusion, we are of the view that there are no reasonable grounds to interfere with the decision of the Minister. Accordingly, the appeal from the decision of the Federal Court will be dismissed with costs.

“Judith Woods”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-47-22

STYLE OF CAUSE: BONNYBROOK PARK
INDUSTRIAL DEVELOPMENT
CO. LTD. v. MINISTER OF
NATIONAL REVENUE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 21, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** WOODS J.A.
LOCKE J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: WOODS J.A.

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