

Federal Court



Cour fédérale

Date: 20100827

Docket: T-515-10

Citation: 2010 FC 858

Vancouver, British Columbia, August 27, 2010

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**MOIRA EILEEN DROSDOVECH
BRIAN WALTER DROSDOVECH**

Applicants

and

**MR. KEITH ASHFIELD
THE MINISTER OF NATIONAL REVENUE
MRS. LINDA LIZOTTE-MACPHERSON
COMMISSION AND CHIEF EXECUTIVE OFFICER OF CRA
CANADA REVENUE AGENCY ET AL
LANCE VAILLANCOURT
RICHARD ANDREWS
MR. RICHARD WAUGH, CEO BANK OF NOVA SCOTIA
THE BANK OF NOVA SCOTIA ET AL**

Respondents

REASONS FOR ORDER AND ORDER

[1] The issue in the motions before me to have the Drosdovechs' application for judicial review dismissed is whether the Minister of National Revenue agreed not to act on Notices of

Reassessment and in particular not to seize a bank account in the hands of the Bank of Nova Scotia. In my opinion, not only has the application absolutely no chance of success, it is also frivolous, vexatious and an abuse of the process of this Court. The Notice of Application is struck in its entirety and the case is dismissed, without leave to amend.

I. Background

[2] It all began when the Drosdovechs, husband and wife, and self-represented in this Court, objected to reassessments of their 1996-2000 taxation years. An appeals officer at the Canada Revenue Agency made each of them a without prejudice settlement offer in which, in consideration of waiving rights of objections or appeals with respect to the notices of reassessment, the Canada Revenue Agency would reassess their income tax returns by confirming certain disallowances, waiving gross negligence penalties and reducing net business income. It was stipulated that the offer was to be accepted by signing and faxing a copy of the waiver attached to the offer.

[3] The reply, as per a letter by Mrs. Drosdovech, was “I find that your claim is unsubstantiated. Once I hear back from you inclusive of what you are relying on as proof of claim, I will be more than happy to consider signing the provided waiver.” The Drosdovechs choose to say that they had conditionally accepted the Agency’s offer.

[4] The Agency responded by providing them with a copy of an auditor’s report. In turn the Drosdovechs sent something titled “Notice of Default and Opportunity to Cure”. Among other things, the appeals officer at the Agency was called upon to state facts and law, disclose evidence,

and provide a sworn affidavit. Mrs. Drosdovech said: “I hereby conditionally accept the claims and jurisdiction of Canada Revenue Agency upon verified proof of claims, supported by evidence, made under oath, full commercial liability and penalty of perjury.” The Agency was called upon to rebut the statements, which the Drosdovechs chose to call a contract, and that failure to respond constituted an agreement to all the terms and conditions of the so-called contract, and that if no response was forthcoming it was agreed that the Agency was forever estopped from collecting taxes allegedly owed.

[5] The Minister did not do what the Drosdovechs told him to do. He responded with a Notice of Confirmation of the assessments for the years in question.

[6] The Drosdovechs had 90 days to appeal the assessments to the Tax Court of Canada in accordance with s. 169 of the *Income Tax Act*. They did not. Thereafter, the Agency commenced collection proceedings. It issued a requirement to pay to the Bank of Nova Scotia by way of garnishment under s. 224 of the *Income Tax Act* and registered certificates with this Court in February 2010 in respect of the tax liabilities of both applicants. The Bank paid.

[7] Other steps which were taken included registering charges against their residence and issuing requirements to pay to others.

II. Proceedings before this Court

[8] The Drosdovechs then filed an application for judicial review in this Court. They titled it “Notice of Application for Judicial Review of Administrative Process”. The respondents include the Minister of National Revenue, Canada Revenue Agency, the Bank of Nova Scotia and individuals associated with one or other of those organisations. The “*et al*”s are their doing.

[9] They also brought on an application for an interlocutory injunction to have undone the collection efforts of the Agency and to have the money seized in the hands of the Bank of Nova Scotia returned to them.

[10] The Bank, the Minister and the Agency moved to have the pleadings struck and the entire case dismissed for failing to disclose a cause of action and on the grounds that it is frivolous, vexatious and an abuse of process. I grant the two motions for the following reasons.

III. The Bank of Nova Scotia

[11] I began by pointing out to Mrs. Drosdovech that she was incorrect in law in asserting that the Bank had a duty to ascertain that the reassessments were correct. The Bank had no option. It was required by law to pay. It was not entitled to look behind the order and the certificate filed in this Court. As I said in *Warman v. Tremaine*, 2010 FC 679, [2010] F.C.J. No. 822 (QL) at para. 7:

Furthermore, and in any event, one must respect an unconstitutional order unless and until it is formally struck down or amended by the Court. In *Paul Magder Furs Limited v. Ontario (Attorney General)* (1991), 6 O.R. (3d) 188, Brooke J.A. of the

Ontario Court of Appeal stated that it is elementary that so long as a law or an order of the court remains in force it must be obeyed. In *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, while the majority found it unnecessary to deal with the issue, McLachlin J. said at page 974:

In my opinion, the 1979 order of the Tribunal, entered in the judgment and order book of the Federal Court in this case, continues to stand unaffected by the Charter violation until set aside. This result is as it should be. If people are free to ignore court orders because they believe that their foundation is unconstitutional, anarchy cannot be far behind. The citizens' safeguard is in seeking to have illegal orders set aside through the legal process, not in disobeying them.

Irrespective of the merits of the claim against the Minister of National Revenue and the Canada Revenue Agency, the proceedings as against the Bank of Nova Scotia and its Chief Executive Officer, Richard Waugh, must fall.

IV. The Minister of National Revenue

[12] Counsel raised some technical issues which I do not find necessary to consider. Among other things the Drosdovechs are seeking damages, which they cannot do in a judicial review, the individuals named as respondents are not federal boards or tribunals, and perhaps the Agency itself should not have been named as a party respondent. They also signed joint rather than individual affidavits.

[13] The main thrust of the submissions is that it is impossible to construe a contract between the parties by which the Minister agreed not to confirm the reassessments and not to take measures to collect monies owing thereunder. I agree.

[14] The obligation to file tax returns and to pay taxes said therein to be owed are imposed by law and have nothing to do with the consent of the taxpayer. A settlement offer was proposed. The Drosdovechs did not accept it. That is the end of the matter. They may wish to call their response a “conditional acceptance”, but the most that can be said is that it was a counter offer. The counter offer was not accepted. It is as simple as that.

[15] The Drosdovechs can speak all they like about administrative processes, their “Notice of Default and Opportunity to Cure”, settlement by silence or inertia, collateral estoppels, failure to provide *prima face* evidence and “Petition for Agreement and Harmony within the Admiralty...”, all they want. In fact and in law, they have no cause of action. These proceedings are frivolous, vexatious and an abuse of process.

[16] Taxpayers cannot claim some process by which this Court becomes involved in determining whether income tax assessments are correct. The Tax Court of Canada has exclusive jurisdiction in that area. Although they are currently out of time, and notwithstanding that they maintain the position that an administrative process parallel to the jurisdiction of the Tax Court was created, the Drosdovechs have sought an extension of time from that Court. I am told no decision has been made as yet.

[17] In accordance with the inherent right of this Court to control its own process, I strike out all the applicants' pleadings and order that the case be dismissed, without right to amend. In the circumstances, it is not necessary to consider the applicants' motion for an interlocutory injunction.

ORDER

UPON MOTIONS by the Respondents, the Minister of National Revenue, the Canada Revenue Agency, the Bank of Nova Scotia and Richard Waugh that the Notice of Application be struck in its entirety, and for costs;

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The motions are granted, without leave to amend, and the case is dismissed.
2. The Notice of Application is struck.
3. The Minister of National Revenue and the Bank of Nova Scotia are each awarded costs in the lump sum of \$1,500.

“Sean Harrington”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-515-10

STYLE OF CAUSE: MOIRA EILEEN DROSDOVECH et al. v.
MR. KEITH ASHFIELD et al.

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: August 26, 2010

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: August 27, 2010

APPEARANCES:

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Brian Drosdovech

THE APPLICANTS
on their own behalf

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and THE CANADA REVENUE AGENCY

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THE BANK OF NOVA SCOTIA and
RICHARD WAUGH

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n/a

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