

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161114

Docket: A-387-15

Citation: 2016 FCA 281

**CORAM: PELLETIER J.A.
STRATAS J.A.
WEBB J.A.**

BETWEEN:

DENNIS A. KEAY

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Halifax, Nova Scotia, on November 10, 2016.

Judgment delivered at Ottawa, Ontario, on November 14, 2016.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

**PELLETIER J.A.
WEBB J.A.**

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] Mr. Keay appeals from the judgment dated June 9, 2015 of the Federal Court (*per* Boswell J.) dismissing his action for damages arising from alleged errors and omissions by the Canada Revenue Agency: 2015 FC 724.

[2] In its reasons, the Federal Court pointed out that the onus of proving the allegations in support of any of the causes of action pleaded by Mr. Keay rested upon Mr. Keay. Further, those allegations had to be proven on the balance of probabilities. This had not been done and so the Federal Court dismissed the action.

[3] The Federal Court stated that it had not been “provide[d] sufficient facts or evidence to show, on a balance of probabilities, that the [Canada Revenue Agency] and its officials misconducted themselves as alleged...or that they violated [Mr. Keay’s] Charter rights in any way” (at para. 15). The Federal Court added that Mr. Keay had “not established that the conduct of the [Canada Revenue Agency] and its officials was unconstitutional, unlawful, negligent or otherwise tortious in any way whatsoever” but rather had offered only “bald assertions without any factual foundation capable of proving the causes of action alleged” (at para. 16). According to the Federal Court, “he just repeated allegations stated in [his pleading]” (at para. 7). The Federal Court also added that, to some extent, he was relitigating earlier tax proceedings in the Tax Court and this Court that were decided against him.

[4] Mr. Keay now appeals to this Court.

[5] As an appellate court, this Court does not retry cases. Rather, it is restricted to reviewing judgments for errors of law, errors in legal principle, or palpable and overriding errors.

[6] A palpable and overriding error has been described in this way:

Palpable and overriding error is a highly deferential standard of review
“Palpable” means an error that is obvious. “Overriding” means an error that goes

to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.

(*Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286 at para. 46, cited in *Benhaim v. St. Germain*, 2016 SCC 48 at para. 38.) This is a high standard.

[7] Mr. Keay has not convinced me that there are any errors upon which the Federal Court's judgment can be reversed.

[8] Therefore, I would dismiss the appeal with costs.

“David Stratas”

J.A.

“I agree
J.D. Denis Pelletier J.A.”

“I agree
Wyman W. Webb J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-387-15

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BOSWELL
DATED JUNE 9, 2015, NO. T-1693-13**

STYLE OF CAUSE: DENNIS A. KEAY v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: NOVEMBER 10, 2016

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: PELLETIER J.A.
WEBB J.A.

DATED: NOVEMBER 14, 2016

APPEARANCES:

Dennis A. Keay ON HIS OWN BEHALF

Stan W. McDonald FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada