

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170425

Docket: A-406-15

Citation: 2017 FCA 85

**CORAM: STRATAS J.A.
NEAR J.A.
DE MONTIGNY J.A.**

BETWEEN:

JOHN CHARLES BEIMA

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Heard at Edmonton, Alberta, on April 25, 2017.
Judgment delivered from the Bench at Edmonton, Alberta, on April 25, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

NEAR J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Edmonton, Alberta, on April 25, 2017).

NEAR J.A.

[1] The appellant, John Charles Beima, appeals from the August 12, 2015 order of the Federal Court (T-2047-14), in which the Judge, on motion by the respondent, the Minister of National Revenue, ordered the appellant to provide information and documents pursuant to section 231.7 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) (ITA).

[2] On April 16, 2014, the Canada Revenue Agency (CRA) advised the appellant, by letter, that his income tax returns for the 2006 to 2010 taxation years, which were under objection, and his returns for the 2011 and 2012 taxation years, which had not yet been assessed, were under review. CRA listed the specific records it required to carry out the audit.

[3] The parties agreed to commence the audit on May 6, 2014. The assigned auditor gave evidence that, when she, a second auditor, and her Team Leader arrived at the agreed upon location, the appellant stated that he would only allow one auditor to enter the premises and no other person. He also stated that he intended to videotape the audit process. CRA decided not to proceed with the audit at that time as it was not confident that the appellant would allow the audit to proceed without interference.

[4] On May 28, 2014, CRA notified the appellant, by letter, that section 231.1 of the ITA provided it with the authority to inspect the requested records and that the appellant had failed to comply with CRA's request to submit the records. CRA advised that a failure to submit the requested records by the specified date would result in CRA seeking a compliance order pursuant to section 231.7 of the ITA.

[5] When the requested records were not received, the Department of Justice (DOJ) informed the appellant, by letter, that CRA had asked it to obtain a compliance order and requested that the appellant provide the records by a specified date. The appellant replied to DOJ after the specified date denying that he had withheld access to the requested records and alleging that CRA had refused to conduct the audit. The appellant indicated that CRA was welcome to perform the audit

but he would not give CRA his consent to copy the records. As the appellant did not provide the requested records, CRA sought a compliance order.

[6] Pursuant to paragraph 231.7(1)(a) of the ITA, on summary application by the respondent, a judge may order a person to provide any access, assistance, information or document sought by the respondent under sections 231.1 or 231.2 if the judge is satisfied that the person was required under sections 231.1 or 231.2 to provide the access, assistance, information or document and did not do so.

[7] On appeal of a compliance order, questions of law are reviewable on the basis of correctness and questions of fact or mixed fact and law are reviewable on the basis of palpable and overriding error absent an extricable question of law: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *BP Canada Energy Company v. Canada (National Revenue)*, 2017 FCA 61 at paragraph 56.

[8] We see no reviewable error in the Judge's finding that the appellant did not provide the required access, assistance or information sought by the respondent under section 231.1 of the ITA. The Judge found that, contrary to the appellant's understanding, CRA did not require the appellant's consent to copy his records: reasons at paragraphs 22-23. The Judge also found that the appellant, as a taxpayer, could not dictate how CRA conducts an audit or frustrate the respondent's ability to carry out its statutory duties by refusing entry to a second auditor or insisting on videotaping an audit process: reasons at paragraphs 21, 23. We are unable to identify any reviewable error in the Judge's findings. As such, we see no grounds upon which the compliance order under section 231.7 of the ITA should be set aside.

[9] The appellant also takes issue with the Federal Court directing, prior to the hearing of the application for the compliance order, that his proposed motion be treated as additional responding submissions to the application as opposed to a separate motion. The appellant sought to move to strike the application for the compliance order, strike the affidavit of a CRA auditor, and adjourn the application on the basis that the audit was commenced for an improper purpose. The Judge considered these submissions and, in our view, made no reviewable error in dismissing the appellant's requested relief: reasons at paragraphs 12, 25.

[10] Even treating the motion on its own, we see no grounds upon which the application should have been struck. As the Judge found at paragraphs 19-24 of her reasons, the prerequisites for the making of a compliance order under section 231.7 were met.

[11] The appeal is dismissed with costs.

“D. G. Near”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-406-15

APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE STRICKLAND OF THE FEDERAL COURT, DATED AUGUST 12, 2015, COURT FILE NO. T-2047-14.

STYLE OF CAUSE: JOHN CHARLES BEIMA v. THE MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: APRIL 25, 2017

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
NEAR J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: NEAR J.A.

APPEARANCES:

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