Federal Court of Appeal

Cour d'appel fédérale

CORAM: SEXTON J.A.
          EVANS J.A.
          PELLETIER J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

RONALD ROBERTSON

Respondent

Heard at Ottawa, Ontario, on January 24, 2007.

Judgment delivered from the Bench at Ottawa, Ontario, on January 24, 2007.

REASONS FOR JUDGMENT OF THE COURT BY: EVANS J.A.

Jeberal Court of Appeal

Cour d'appel féderale

CORAM: SEXTON J.A.
               EVANS J.A.
               PELLETIER J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

RONALD ROBERTSON

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on January 24, 2007)

EVANS J.A.

[1]   This is an appeal from a decision of Justice Woods of the Tax Court of Canada, dated March 8, 2006, denying a motion brought by the appellant pursuant to the *Tax Court of Canada Rules (General Procedure)*, rules 53(*b*) and (*c*) (frivolous or vexatious, and abuse of process), and 58(1)(*b*) (no reasonable grounds for appeal).

[2]   The appellant sought to strike the portion of the respondent's notice of appeal relating to the

respondent's allegation that he is exempt from income tax on the income earned in his exercise of

an aboriginal and/or treaty right to fish commercially in Lake Winnipeg. The Judge's decision is

reported as *Robertson v. Canada*, 2006 TCC 147, [2006] 3 C.T.C. 2022.

[3]   The motion arose from an appeal by Mr Robertson, who is a status Indian, a member of the

Norway House Band, and resident on the Reserve, against the assessments of tax in respect of his

fishing income and employment insurance benefits in the taxation years 1999-2002 inclusive.

[4]   It is conceded that, in considering whether the pleading should be struck, the Judge applied

the correct legal test, namely, whether it was plain and obvious that this portion of the notice of

appeal had no chance of success: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959. Hence, in order

to warrant the intervention of this Court, the appellant must demonstrate that, in making this

discretionary interlocutory order, the Judge committed a palpable and overriding error in her

application of the law to the facts, or made some error of law.

[5]   We are not persuaded that she did so err. In our opinion, it was reasonably open to the Judge

to conclude that it was not plain and obvious that the impugned portion of the pleading was bound

to fail. In other words, it is arguable that, in subjecting aboriginal and/or treaty rights to fish

commercially to the game laws in force in the province, section 13 of the Manitoba *Natural

Resources Transfer Agreement, 1930*, did not thereby totally extinguish the rights in question.

[6]   Nor are we persuaded that the Judge misinterpreted this portion of the respondent's pleading. In our opinion, when her reasons are read as a whole, she did not interpret the pleadings as claiming a free-standing aboriginal right to be exempt from income tax. In our opinion, she understood the pleading correctly as claiming a right to be exempt from tax in respect of income earned in the exercise of an aboriginal and/or treaty right, namely, in this case, the claimed right to fish commercially subject to laws respecting game.

[7]   For these reasons, the appeal will be dismissed with costs.

"John M. Evans"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-112-06

Appeal from an Order of Justice Woods of the Tax Court of Canada dated March 8, 2006 in file 2004-3651 (IT) G

STYLE OF CAUSE: HER MAJESTY THE QUEEN
                                                            v.
                                                            RONALD ROBERTSON

PLACE OF HEARING: Ottawa

DATE OF HEARING: January 24, 2007

REASONS FOR JUDGMENT OF THE COURT BY: Sexton, Evans and Pelletier JJ.A.

DELIVERED FROM THE BENCH BY: Evans J.A.

APPEARANCES:

Mr. Gérald L. Chartier   FOR THE APPELLANT

Mr. J.R. Norman Boudreau   FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C.   FOR THE APPELLANT
Deputy Attorney General of Canada
Booth Dennehy LLP   FOR THE RESPONDENT
Winnipeg, Manitoba