Federal Court of Appeal  Cour d'appel fédérale

Date: 20190522

Docket: A-58-18

Citation: 2019 FCA 155

CORAM: **DAWSON J.A.**
GAUTHIER J.A.
RIVOALEN J.A.

BETWEEN:

RANDY WILSON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Calgary, Alberta, on May 9, 2019.

Judgment delivered at Ottawa, Ontario, on May 22, 2019.

REASONS FOR JUDGMENT BY: THE COURT

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REASONS FOR JUDGMENT OF THE COURT

[1] The Minister of National Revenue reassessed the appellant to deny business losses claimed for the 2007 and 2010 taxation years, and to impose gross negligence penalties under subsection 163(2) of the *Income Tax Act* (R.S.C. 1985, c. 1 (5th Supp.)). The appellant appealed the reassessment imposing gross negligence penalties to the Tax Court of Canada. After the respondent filed a reply to the notice of appeal, a case management judge was assigned to manage the appeal.

[2] The respondent then moved to strike a number of paragraphs contained in the appellant's notice of appeal, without leave to amend. By order dated February 13, 2017, the case management judge struck specific portions of the appellant's notice of appeal. The February 13, 2017, order granted the appellant 60 days to file an amended notice of appeal and specified that the amended notice of appeal contain "the statutory provisions relied on and relief sought as required by the *Tax Court of Canada Rules (General Procedure)* and no other amendments."

[3] The appellant failed to do so. By order dated July 17, 2017, the case management judge ordered the appellant to file and serve an amended notice of appeal "that is in compliance with the order dated February 13, 2017 within 60 days of the date of this order, failing which the appeal is dismissed."

[4] No appeal was taken from either order.

[5] The appellant then filed an amended notice of appeal dated September 14, 2017.

[6] In the view of the Tax Court, the amended notice of appeal failed to comply with the orders of February 13, 2017 and July 17, 2017. Accordingly, by order dated January 15, 2018, the Tax Court dismissed the appellant's appeal with costs.

[7] This is an appeal from the judgment of the Tax Court dismissing the appellant's appeal.

Preliminary matter

[8] Before turning to the merits of the appeal it is necessary to explain a procedural matter.

[9] By order dated March 29, 2019, this matter was set down for hearing in Calgary, on Thursday, May 9, 2019, commencing at 9:30 a.m. On April 25, 2019, the appellant wrote to the Court requesting that the appeal be adjourned until the Fall Sittings of the Court. On April 26, 2019, counsel for the respondent wrote to the Court advising that the respondent opposed the request for an adjournment. On April 29, 2019, the Court issued a direction advising that if the appellant wished to request an adjournment of the hearing he must file a notice of motion, affidavit and written submissions detailing the reasons for the request.

[10] On May 6, 2019, the appellant filed a motion record seeking an adjournment of the hearing scheduled for May 9, 2019. In his written representations the appellant argued that: the Tax Court had no jurisdiction “in the case of enforcement of an alleged claim that is not an income tax debt or liability.”; counsel for the respondent “is involved and complicit in this attempted enforcement of a liability that is totally unrelated to any taxable income in dispute”; counsel for the respondent had not complied with the “mandatory Fairness and Disclosure Duties of Crown Counsel.”; in another case, the Crown consented to judgment allowing the appeal in full “on issues identical to the ones before this Court.”; in another case, counsel for the respondent had stated “that there was no legal basis for an alleged penalty liability based on identical situations to the one claimed by [the Canada Revenue Agency] in this Appeal.”; the respondent had “failed to notify the Court that since there was no taxable income in dispute in a

refund request, no penalties could ever have been applied to expense claims sent in for review and the only proper response of [the Canada Revenue Agency] was acceptance or rejection of those expenses sent in."; other taxpayers were not penalized but instead received letters from [the Canada Revenue Agency] "politely declining to accept the expense claims sent in first for review"; in this circumstance it "would be unheard of under OECD Rules" that other taxpayers "be illegally profiled in Breach of the Criminal Anti-Profiling Provisions of the Canadian Criminal Code"; and, failure by this Court "to rectify this scandal will have destructive consequences, both Nationally and Internationally, for Canada since both the OECD and the UN Watchdog for Government Crimes have sent threatening letters to the current Federal Government regarding the poisonous breaches of the Rule of Law by the current Government regarding the SNC-Lavilin [sic], Wilson-Raybould scandal."

[11] On May 7, 2019 the respondent served and filed responding submissions opposing the request for an adjournment.

[12] On May 8, 2019, the appellant filed his reply to the respondent's submissions.

[13] By order dated May 8, 2019, the request for an adjournment was dismissed. The recitals to the order dismissing the motion for an adjournment noted that no explanation had been given for why an adjournment was needed, the sole issue on the appeal was whether the Tax Court erred in dismissing the appeal due to the asserted failure of the appellant to file an amended notice of appeal in proper form within the time specified by the Tax Court and the appellant's submissions on the motion to adjourn were not relevant to that issue, and the interests of justice

did not require the appeal to be adjourned. Due to the timing of the appellant's motion to adjourn, a motion brought three days before the appeal was scheduled to be heard, the respondent was required to file her responding submissions and the appellant was required to file his reply submissions in a compressed time frame. Once the reply submissions were received the Court prioritized the issuance of its order so that the parties, who would have to travel to Calgary from Sundre and Edmonton, would receive as much notice as possible about whether the appeal was proceeding as scheduled.

[14] Having dealt with this preliminary, procedural matter, we now turn to the appeal.

The hearing of the appeal

[15] On the morning of May 9, 2019, the appellant wrote to the Court advising that he would not attend at the hearing of the appeal. Accordingly, Court was opened and counsel for the respondent was advised that, in accordance with the Court's practice, the Court would determine the appeal on the basis of the written record, subject to asking questions of counsel for the respondent to clarify submissions made in his memorandum of fact and law. Specifically, counsel for the respondent was asked to provide particulars of the allegation in the respondent's memorandum that the amended notice of appeal did not comply with the February 2017, order but instead "included a number of amendments which the Appellant was prohibited from making." Counsel responded to that issue and judgment was reserved.

The merits of the appeal

[16] We begin by stating that this Court may interfere with the judgment under appeal only if the Tax Court incorrectly decided a question of law or made a palpable and overriding error of fact or mixed fact and law (*Hospira Healthcare Corporation* v. *Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331, at paragraphs 64-66 and 69).

[17] In our view, the Tax Court made no error that would warrant interference with its judgment. We reach this conclusion for the following reasons.

[18] As stated above, no appeal was taken from either the order of February 13, 2017, or the order of July 17, 2017. Accordingly, the appellant was obliged to file an amended pleading within 60 days of July 17, 2017, that specified the statutory provisions relied on and the relief sought "and no other amendments." If the appellant failed to comply with its orders the Tax Court possessed jurisdiction to address any abuse of process in the conduct of proceedings before it (see, for example, *Lynch* v. *Canada*, 2017 FCA 248, 2018 D.T.C. 5004, at paragraph 18).

[19] We are satisfied that the appellant failed to comply with the applicable orders of the Tax Court. Contrary to the applicable orders, the amended notice of appeal contained new facts and allegations that were materially different from the facts and allegations originally set out in the notice of appeal, deleted paragraphs the Tax Court did not strike and repeated assertions previously struck by the Tax Court.

[20] To illustrate, in the original notice of appeal the appellant alleged in paragraph 3 that he used a service provider "to file the 2007 and 2010 income tax returns with the understanding it was to utilize business losses using a the [sic] definition of interest that comes from the Criminal Code Definitions (Section 347(2))." Paragraph 3 of the amended notice of appeal alleged that the appellant used a service provider "to file the 2007 and 2010 income tax returns with the understanding they would provide a proper return."

[21] A further illustration is the addition of a new paragraph, paragraph 9 in the amended notice of appeal, that asserts that a November 17, 2014 letter queried why penalties been imposed in circumstances where "the losses were never assessed or reassessed".

[22] The amended notice of appeal deleted paragraph 4 of the original notice of appeal which had not been struck by the Tax Court. Paragraph 4 alleged that the service provider "said the process was legal and showed that other clients [sic] returns had been accepted."

[23] With respect to the requirement that the amended notice of appeal specify the statutory provisions relied upon, the amended notice of appeal omitted a paragraph which the Tax Court had not struck that made certain allegations about the methodology of subsection 163(2) of the Act. In its stead paragraph 18 of the amended notice of appeal simply stated "Section 163 ITA based on income."

[24] With respect to the requirement that the amended notice of appeal specify the relief sought, in paragraph 38 of the amended notice of appeal the appellant requested "a Remission

Order pertaining to the Penalties." and that "the penalties be removed." The request for a remission order had previously been properly struck out by the Tax Court. The Tax Court has no jurisdiction to order any remission of penalties.

[25] We acknowledge that the dismissal of an appeal on procedural grounds is a severe remedy. However, we see no palpable and overriding error of fact or mixed fact and law and no error of law by the Tax Court. The Tax Court gave the appellant ample opportunity to comply with its orders and warned of the consequences if the appellant failed to comply.

[26] It follows that the appeal will be dismissed with costs.

"Eleanor R. Dawson"
J.A.

"Johanne Gauthier"
J.A.

"Marianne Rivoalen"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-58-18
STYLE OF CAUSE:	RANDY WILSON v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	MAY 9, 2019
REASONS FOR JUDGMENT OF THE COURT:	DAWSON J.A. GAUTHIER J.A. RIVOALEN J.A.
REASONS DATED	MAY 22, 2019

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