Federal Court of Appeal | Cour d'appel fédérale

Date: 20221013

Docket: A-103-21

Citation: 2022 FCA 172

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

BETWEEN:

ENID D. ODDLEIFSON

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard by online video conference hosted by the Registry on October 13, 2022.
Judgment delivered from the Bench at Ottawa, Ontario, on October 13, 2022.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on October 13, 2022).

RENNIE J.A.

[1] The Minister of National Revenue brought a motion to the Tax Court to quash the appellant's appeal from the Minister's reassessment of her donation tax credits, arguing that the appellant had waived her right to appeal. The Tax Court (2021 TCC 26, *per* Graham J.) agreed with the Minister and granted the motion. This is an appeal from that decision.

[2] By way of background, the appellant claimed donation tax credits in respect of alleged gifts to the Global Learning Gifting Initiative Donation Program (GLGI) on her 2005, 2006, 2007, 2010, and 2011 tax returns. The Minister denied the credits, and the appellant filed notices of objection in response to these reassessments. Given the number of similarly situated taxpayers, the Minister sought to bind the appellant, and others, to the final result of a single set of four identified appeals. To this end, the Minister sent the appellant a letter outlining four options available to her in resolving her objection (the Options Letter):

1) Waive her objection and appeal rights in exchange for a waiver of any interest accruing on the disallowed donation tax credits;

2) Waive her objection and appeal rights and agree to be bound by the outcome of appeals before the Tax Court involving analogous facts and issues (the lead cases);

3) Appeal directly to the Tax Court; or

4) Take no action.

[3] In the Options Letter, the Minister noted that if the appellant chose to take no action, the Minister would "request the [Tax Court] to bind [the appellant's] objection to lead cases, as permitted under the [*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act)]." I note, parenthetically, that those cases were yet to be identified.

[4] In January 2015, the appellant signed the agreement to be bound to the outcome of the group of identified appeals (the Agreement to be Bound). This agreement included a clause stating that the appellant waived "any right of objection and appeal in respect of the issue of

[her] entitlement to donation tax credit(s) claimed in respect of [her] participation in the Global Learning Gifting Initiative Donation Programs."

[5] The Tax Court subsequently dismissed the taxpayers' appeals in two of the identified appeals, and the Minister's reassessments were confirmed in *Mariano v. The Queen,* 2015 TCC 244, [2016] 1 C.T.C. 2132 at paragraph 146, one of the appeals to which the appellant expressly agreed to be bound. Pursuant to the Agreement to be Bound, the Minister confirmed her reassessment denying the appellant's donation tax credits. The appellant then appealed the reassessments to the Tax Court. The Minister moved to quash the appeal based on the waiver of her right to appeal in the Agreement to be Bound.

[6] In its consideration of the appellant's appeal, the Tax Court applied the criteria in *Abdalla v. The Queen*, 2017 TCC 222, 2017 D.T.C. 1140, aff'd 2019 FCA 5, 2019 D.T.C. 5004 (*Abdalla*). After referring to subsection 169(2.2) of the Act, which precludes an appeal where the right of appeal has been waived, and *Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co.*, [1994] 2 S.C.R. 490, 1994 CanLII 100, the Tax Court in *Abdalla* held that a taxpayer's waiver of a right of objection or appeal is valid if the waiver is in writing, the taxpayer has full knowledge of their rights, and the taxpayer has an unequivocal and conscious intention to abandon those rights.

[7] Before the Tax Court in the present matter, only the second criteria was in issue: whether the appellant had full knowledge of her rights (Reasons at paras. 20-21). The Tax Court acknowledged that the Minister bore the burden of proving the appellant's knowledge in this

regard (Reasons at para. 22). However, the Tax Court also relied on *Abdalla* to presume that a person would have full knowledge of the rights at stake upon reading the Options Letter and the Agreement to be Bound (Reasons at para. 23).

[8] The appellant's main argument before the Tax Court, and again before this Court, related to her understanding that if she chose to take no action, the Minister would certainly succeed in binding her to the cases that would be subject to the application under subsection 174 of the Act. She pointed out that, in 2019, the Minister ultimately withdrew this application which sought to bind approximately 17,000 taxpayers to the lead cases. She stressed that the Tax Court judge charged with case managing that proceeding had concluded that "[i]t should have been plain and obvious to the Minister that it would never be practical to proceed with the [a]pplication" (*M.N.R. v. McMahon*, 2020 TCC 104, 2020 D.T.C. 1075 at para. 41).

[9] In essence, the appellant argued that the Minister ought to have known that the application under subsection 174(1) of the Act was doomed to fail, and because of that, the appellant did not have full knowledge of her rights.

[10] The Tax Court did not agree with the appellant that her misunderstanding or assumption that the Minister would be successful in binding her to the lead cases negated her knowledge of her rights. Instead, the Tax Court held that the appellant's recognition of her right to take no action was sufficient to establish full knowledge (Reasons at para. 40). The Tax Court further found no evidence of bad faith on the part of the Canada Revenue Agency officials (CRA), nor did it find evidence that the CRA misled the appellant (Reasons at para. 40). To the contrary, in

making the application under subsection 174(1), the Minister did precisely what she said she would do.

[11] The appellant contends that her affidavit demonstrates her belief that the Minister would succeed in binding her to the lead cases even if she chose to take no action. She argues that the Tax Court erred in not considering that this belief led her to understand that she was not effectively giving up any rights by signing the Agreement to be Bound. The Tax Court rejected this argument, stating that "[the appellant's] conclusion that the [Minister] would be successful was her own," and that "the right that [the appellant] needed to be aware of was her right to do nothing" (Reasons at paras. 39 and 40). The Tax Court noted that the Options Letter did not state that the CRA "would" bind the appellant to the lead cases, rather the letter said that the "CRA intends to request the [Tax Court] to bind [her] objections to lead cases, as permitted under the [A]ct", a finding acknowledged by the appellant herself in her affidavit (Oddleifson affidavit at para. 22).

[12] This Court cannot allow this appeal absent an error of law or a palpable and overriding error on a question of fact or mixed fact and law (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[13] We must therefore assess whether the Tax Court judge made a palpable and overriding error of mixed fact and law in finding that the appellant had full knowledge of her rights upon signing the Agreement to be Bound, such that she waived her right to appeal her reassessments. The Court must also address whether the Tax Court erred in law in holding that a taxpayer is not

required to understand the potential factual and legal outcomes resulting from an option proposed by the Minister for there to be a valid waiver. I see no such errors.

[14] No reversible error has been demonstrated in the findings of fact or mixed fact and law. The appellant may have been dissatisfied with the events and ramifications that ended up flowing from her choice to be bound, but the evidence showed that she was aware of her choice to do nothing as well. The terms of the Options Letter were clear on their face. Nor did the Tax Court err in law in its conclusion that an incorrect assessment or prediction of future events does not vitiate a taxpayer's understanding of their rights. Full knowledge is assessed in light of the facts as they stood at the time the waiver was executed. It does not engage speculation as to how events and ramifications, whether factual or legal, might unfold in the future.

[15] The appeal will be dismissed with costs.

"Donald J. Rennie"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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