

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130930

Docket: A-120-13

Citation: 2013 FCA 228

**CORAM: SHARLOW J.A.
MAINVILLE J.A.
NEAR J.A.**

BETWEEN:

ALBERT ROSS DEEP, M.D., F.R.C.P. (C)

Appellant

and

**CANADA REVENUE AGENCY (FORMERLY
CANADA CUSTOMS AND REVENUE AGENCY)
AND HER MAJESTY THE QUEEN**

Respondents

Heard at Toronto, Ontario, on September 30, 2013

Judgment delivered from the Bench at Toronto, Ontario, on September 30, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 30, 2013)

SHARLOW J.A.

[1] Dr. Deep is appealing the order of Justice Zinn of the Federal Court granting the motion of the respondents (collectively, the Crown) to strike out his statement of claim without leave to amend (2013 FC 305).

[2] It is well established in this Court that a decision by a judge to strike a statement of claim is discretionary, and must stand absent an error of law or principle, a serious misapprehension of the facts, or an obvious injustice resulting from the decision: *Apotex Inc. v. Canada (Governor in Council)*, 2007 FCA 374, 370 N.R. 336.

[3] As part of the relief sought in his statement of claim in the Federal Court, Dr. Deep is seeking the invalidation of a number of federal tax assessments relating to the 1994 to 1997 taxation years, as well as the judgment of the Tax Court of Canada in 2006 (2006 TCC 315) confirming the validity of the assessments in issue except for some minor adjustments. That judgment was substantially upheld by this Court in 2007 (2007 FCA 366). An application for leave to appeal to the Supreme Court of Canada was dismissed. The Federal Court does not have the legal authority to set aside those judgments or the tax assessments to which they relate. We agree with Justice Zinn that in so far as Dr. Deep's statement of claim seeks that relief, it cannot stand.

[4] Dr. Deep also seeks general and special damages, with interest, as a result of losses that he claims were caused by the tax assessments mentioned above and the Canada Revenue Agency audit that preceded it. He asserted a similar claim against the Crown in 2005 by way of an action in the Ontario Superior Court. At that time, Dr. Deep's appeal of the tax assessments was pending in the Tax Court.

[5] The Ontario action was stayed pending the outcome of the Tax Court proceedings, and later dismissed on the Crown's motion because it was a collateral attack on the tax assessments. The Ontario Court of Appeal upheld that judgment (2010 ONCA 678). Dr. Deep cannot succeed in an action for damages against the Crown in the Federal Court based substantially on the same allegations he made or could have made in his action in the Ontario Superior Court.

[6] Although Dr. Deep's statement of claim in the Federal Court is said to be based on newly discovered evidence, the statement of claim does not specify what the new evidence is or the basis upon which it is said to be newly discovered. The allegations specifically against officials of the Canada Revenue Agency essentially are recitations of what Dr. Deep believes to be factual misstatements and auditing errors. All of the impugned statements deal with matters that could and should have been litigated in the Tax Court. Even if the Canada Revenue Agency auditor misunderstood some facts that were relevant to the correctness of the tax assessments, the onus was on Dr. Deep to establish the actual facts by evidence in the Tax Court. Any attempt to raise these errors as the foundation of a claim for damages against the Crown in issuing tax assessments to Dr. Deep must fail as a collateral attack on the assessments.

[7] Dr. Deep characterizes the alleged errors of the Canada Revenue Agency officials as malicious, negligent, and reckless. However, those are merely bald allegations. They are supported by no factual allegations that are capable of establishing an improper motive on the part of any officials of the Canada Revenue Agency.

[8] Dr. Deep's statement of claim refers as well to losses he suffered from costly disputes between Dr. Deep and other parties, including the College of Physicians and Surgeons of Ontario and the Bank of Montreal, and significant investment losses suffered by Dr. Deep. However, Dr. Deep alleges no facts from which a court might reasonably infer that those events are relevant to the conduct of the audit by the Canada Revenue Agency or the issuance of the tax assessments that are the subject of his Federal Court action against the Crown.

[9] Having considered the arguments of Dr. Deep, we have been able to discern no error of law or principle on the part of Justice Zinn, or any other basis for reversing his decision. For that reason, this appeal will be dismissed with costs.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-120-13

**APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE ZINN OF THE
FEDERAL COURT OF CANADA DATED MARCH 25, 2013, DOCKET NO. T-208-13.**

DOCKET: A-120-13

STYLE OF CAUSE: ALBERT ROSS DEEP, M.D., F.R.C.P.
(C) v. CANADA REVENUE AGENCY
(FORMERLY CANADA CUSTOMS
AND REVENUE AGENCY) AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 30, 2013

REASONS FOR JUDGMENT OF THE COURT BY: SHARLOW J.A.
MAINVILLE J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

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