Federal Court of Appeal | Cour d'appel fédérale

Date: 20141007

Dockets: A-147-14
A-148-14

Citation: 2014 FCA 222

CORAM: **TRUDEL J.A.**
WEBB J.A.
BOIVIN J.A.

Docket: A-147-14

BETWEEN:

HAROLD COOMBS &
JOAN COOMBS &
PERCY G. MOSSOP

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: A-148-14

AND BETWEEN:

HAROLD COOMBS &
JOAN COOMBS &
JOHN F. COOMBS &
OLEG VOLOCHKOV &
ANNE VOLOCHKOV

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on October 6, 2014.

Judgment delivered at Toronto, Ontario, on October 7, 2014

REASONS FOR JUDGMENT BY:	BOIVIN J.A.
CONCURRED IN BY:	TRUDEL J.A. WEBB J.A.

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] This is an appeal from two decisions of Madam Justice Kane (the Judge) of the Federal Court, both dated March 10, 2014.

[2] Both decisions arise from the same set of facts, are related and were heard together.

[3] In file A-147-14, the appellants appeal the Judge's decision upholding Prothonotary Aalto's decision of July 2, 2013 to strike one of the appellants' applications for judicial review as frivolous, vexatious, and an abuse of process.

[4] At issue before the Prothonotary was an allegedly illegal search and seizure conducted by officials of the Canada Revenue Agency (CRA), pursuant to a warrant issued by the Ontario Court of Justice. The appellants claimed that the seizure resulted in a denial of fundamental justice at a 2008 hearing at the Tax Court of Canada (TCC) (2008 TCC 289, 2008 DTC 4004) and that it violated their rights under section 7, 8 and 15 of the *Canadian Charter of Rights and Freedom*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (U.K.),

1982, c. 11 (the Charter). They sought both declaratory relief and an unspecified remedy under subsection 24(1) of the Charter.

[5] Before the Prothonotary, the appellants did not challenge the legality or the validity of the search warrant but rather the actions of the CRA officials who executed it. The Prothonotary found that the appellants' claim amounted to a collateral attack on the decision of the TCC rendered in 2008 and therefore fell outside the jurisdiction of the Federal Court. He further noted that all issues relating to the search warrant had previously been determined and thus that the "notice of application amounts to an abuse of process and is a frivolous and vexatious application" and is "bereft of any chance of success" (Prothonotary's Order at page 5).

[6] The appellants appealed the Prothonotary's Order to the Federal Court under Rule 51 of the *Federal Courts Rules*, SOR/98-106. The Federal Court dismissed the appeal, holding that the appellants failed to show that the Prothonotary relied on an improper principle or fundamentally misapprehended the facts within the meaning of *Canada v. Aqua-Gem Investments Ltd.*, [1993] 2 F.C. 425 at pages 462-63 (FCA), 149 N.R. 273; *Merck & Co v Apotex Inc*, 2003 FCA 488, [2004] 2 F.C.R. 459.

[7] The standard of review to be applied by this Court on appeal from a judge sitting on appeal from a Prothonotary's decision was laid out by the Supreme Court in *Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, [2003] 1 S.C.R. 450 at paragraph 18:

> …An appellate court may interfere with the decision of a motions judge where the motions judge had no grounds to interfere with the prothonotary's decision or, in the event such grounds existed, if the decision of the motions judge was arrived at on a wrong basis or was plainly wrong: *Jian Sheng Co. v. Great Tempo S.A.*,

[1998] 3 F.C. 418 (C.A.), *per* Décary J.A., at pp. 427-28, leave to appeal refused, [1998] 3 S.C.R. vi.

[8] In this Court, the appellants have not persuaded me that the Judge erred in any way. The same issues raised by the appellants before the Prothonotary, were fully considered by the Judge and, as such, the appellants were provided with a *de novo* review. While it is true that applications for judicial review may be struck only in exceptional circumstances, the appellants had brought fourteen applications and two actions as of March 10, 2014, based on the same facts and alleging much the same violations (Judge's reasons at paragraph 3). The Judge found that this multiplicity of proceedings, including five proceedings previously dismissed, falls within "exceptional circumstances" and justifies that the application be struck (Judge's reasons at paragraph 49). I agree.

[9] In file A-148-14, the appellants appeal the Judge's decision dismissing one application for judicial review as frivolous, vexatious and an abuse of process and granting the motions of the respondent to strike two other applications for judicial review as they are "so clearly improper as to be bereft of any possibility of success" (Judge's reasons at paragraph 78, citation omitted).

[10] The appellants reassert substantially the same arguments made with respect to file A-147-14. They also, however, attack the Judge's finding that there exists "no reasonable apprehension of bias" against the Prothonotary (Judge's reasons at paragraph 24). They contend that the Judge "misconstrued or misunderstood" the Prothonotary's direction dated February 13, 2014, (appellants' memorandum of fact and law at paragraphs 48, 50, 70 and 71) in which he

orally directed the following through the Registry: "All motions are to go before Justice Kane – Crown should bring motions to dismiss as they intend in the additional two being added to her list".

[11] The appellants also submit that Prothonotaries cannot perform functions of judges in the Federal Court (appellants' memorandum of fact and law at paragraph 56). They further contend that the judge "fiercely defended" the allegedly improper behaviour by the Prothonotary and that the hearing atmosphere was hence "not conducive to a fair hearing because of confrontational dialogue between the judge and the appellant" (appellants' memorandum of fact and law at paragraphs 76-77).

[12] The parties do not dispute that the standard of review for alleged apprehension of bias is correctness.

[13] After careful review of the parties' written and oral arguments, I am of the view that a reasonable person, fully informed and understanding the issues before the Court, would not conclude that there was bias (*R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193). Indeed, the Prothonotary's direction, dated February 13, 2014, follows the letter sent by the respondent on January 9, 2014 regarding the Court's process. In that context, and properly read, I do not read the use of the word "should" in the direction to encourage the Crown to bring motions to strike, but rather to direct before whom the motions ought to be brought - i.e. the Judge.

[14] Further, the appellants repeatedly attack the integrity of the Prothonotary, of the Judge and of the Federal Court (appellants' memorandum of fact and law in file A-148-14 at paragraphs 28, 34-46, 50, 54, 56, 60, 63-65, 69, and 72-79; appellants' memorandum of fact and law in file A-147-14 at paragraphs 48, 77 and 78). The appellant's allegations are most serious, and such a step should not be undertaken lightly. Indeed, an allegation of bias engages the very foundation of our judicial system. The appellants' allegations call into question not only the personal integrity of the Prothonotary and of the Judge, but the integrity of the entire administration of justice (*R. v. S. (R.D.), supra* at paragraph 113).

[15] On the basis of the record before the Court, the appellants' serious allegations are not only inappropriate and unnecessary, but also unsupported by evidence and completely lacking in merit.

[16] For the foregoing reasons, I propose to dismiss the appeal in file A-147-14 without costs and I propose to dismiss the appeal in file A-148-14 with costs. A copy of these reasons shall be placed in each of those files.

"Richard Boivin"

J.A.

"I agree
Johanne Trudel J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-147-14
STYLE OF CAUSE:	HAROLD COOMBS & JOAN COOMBS & PERCY G. MOSSOP v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 6, 2014
REASONS FOR JUDGMENT BY:	BOIVIN J.A.
CONCURRED IN BY:	TRUDEL J.A. WEBB J.A.
DATED:	OCTOBER 7, 2014

APPEARANCES:

Harold Coombs	SELF-LITIGANT
Sonia Singh	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA

FEDERAL COURT OF APPEAL

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DOCKET:	A-148-14
STYLE OF CAUSE:	HAROLD COOMBS & JOAN COOMBS & JOHN F. COOMBS & OLEG VOLOCHKOV & ANNE VOLOCHKOV v. ATTORNEY GENERAL OF CANADA
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