Citation: 2013 TCC 255
Date: 20130815
Docket: 2011-4074(IT)G

BETWEEN:

RENÉ KÉROUAC,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

MUNICIPALITY OF LAROUCHE,

Applicant.

[OFFICIAL ENGLISH TRANSLATION]

ORDER AND REASONS FOR ORDER

(disposed of upon consideration of written representations)

[1] The applicant, the Municipality of Larouche, submitted a motion seeking leave to intervene and make representations at the hearing of the appeal under section 28 of *the Tax Court of Canada Rules (General Procedure)*[1] (Rules).

[2] The dispute between the appellant and the respondent relates to a donation claimed by the appellant, or transferred to his spouse, for the purpose of calculating the charitable tax credit. According to the notice of appeal, the appellant allegedly made a donation of $2 million to the Municipality of Larouche and this donation is apparently eligible for the purpose of calculating the charitable tax credit.[2]

[1] At first, the applicant requested that his motion be decided on the basis of written submissions and without the appearance of the parties, and the appellant objected and asked that a hearing be scheduled. It became necessary to adjourn the hearing scheduled for January 30, 2013, and the parties agreed that it should all be decided on the basis of written submissions. The applicant and the respondent each filed written submissions; the appellant informed the Court that he had no intention to produce written submissions and that he would defer to the Court's decision.

[2] Section 118.1 of the *Income Tax Act*

[3] The Minister of National Revenue assessed the appellant on the basis that the appellant's charitable donation for the purpose of calculating the charitable tax credit was only $1 million. The Minister raised various arguments including the absence of donative intent (*animus donandi*) required and the doctrine of sham.

[4] Penalties were imposed under subsection 163(2) of the *Income Tax Act* and the assessments in question are outside the normal period for new assessments.

[5] The appellant sued the Municipality in the Superior Court and requested, among other things, the revocation or cancellation of the donation, the reimbursement of $2 million by the Municipality and damages. Among the appellant's claims, he alleged that the Municipality intentionally took part in the implementation of a tax plan that proved to be highly prejudicial to the donor or that, at least, the Municipality had shown gross negligence amounting to wilful blindness.[3]

[6] Section 28 provides as follows:

LEAVE TO INTERVENE

28(1) Where it is claimed by a person who is not a party to a proceeding

(*a*) that such person has an interest in the subject matter of the proceeding,

(*b*) that such person may be adversely affected by a judgment in the proceeding, or

(*c*) that there exists between such person and any one or more parties to the proceeding a question of law or fact or mixed law and fact in common with one or more of the questions in issue in the proceeding,

such person may move for leave to intervene.

(2) On the motion, the Court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding, and the Court may,

(*a*) allow the person to intervene as a friend of the Court and without being a party to the proceeding, for the purpose of rendering assistance to the Court by way of evidence or argument, and

(*b*) give such direction for pleadings, discovery or costs as is just.

[3] See paragraph 5 of the amended motion to institute proceedings before the Quebec Superior Court (Exhibit R-1 of the Notice of Motion).

[7] The Municipality is in no way subject to a tax assessment related to the one at issue in this appeal and the judgment in this appeal cannot have a financial impact on the Municipality.

[8] The Municipality argued that it has an interest under paragraph 28(1)(*a*) of the Rules. This interest allegedly comes from the fact that the Municipality is a legal person with a juridical personality and that it has the right to the safeguard of its dignity, honour and reputation under sections 3, 4, 35, 298 and 303 of the *Civil Code of Quebec*.

[9] According to the Municipality, several allegations in this appeal make reference to his participation in a "fraudulent scheme".[4]

[10] The Municipality submits that there is a risk of potential evidence in this appeal that jeopardizes the safeguard of its dignity, honour and reputation and, consequently, it claims to have an interest within the meaning of section 28 in this case.

[11] In support, the Municipality cites *Droit de la famille-1549*[5] in which the Quebec Court of Appeal stated:

> [TRANSLATION]
> Indeed, the impleaded party, who is not a party to the litigation but whose rights may be affected by the judicial decision, has the absolute right to intervene and be heard. This is a fundamental rule of natural justice.

[12] The Municipality also cites *Gauvin c. Belhumeur*,[6] a decision of the Superior Court of Quebec that allowed a doctor to intervene in defence of his professional integrity.

[13] *Droit de la famille-1549* concerned a dispute relating to child care and the "impleaded party" was the children.

[14] In *Gauvin*, the applicants sued several doctors, a hospital centre and an insurer for professional liability. The applicants alleged that the respondent, a doctor,

---

[4] I note that in the notice of appeal and the amended reply to the notice of appeal, I read the words "scheme" and "sham", but I did not see "fraud" or "fraudulent".
[5] 1992 CanLII 2860 (QCCA).
[6] [1999] J.Q. n° 1797 (QL).

committed a fault that contributed to the damages, but they had merely sued the respondent's insurer as permitted by the *Civil Code of Quebec* without suing the respondent.

[15] The interest of the "impleaded parties" in both decisions is direct and immediate; furthermore, these are situations where the respondents are not really impleaded parties. The children in *Droit de la famille-1549* had to live with the consequences of the custody order. In *Gauvin*, to determine the liability of the insurer, the panel necessarily had to establish whether the respondent doctor was liable in tort.

[16] The circumstances here cannot be compared.

[17] While the Municipality's role will probably be referred to in evidence and, in establishing the facts, the Court may incidentally make a determination on certain aspects of this role, the Municipality's role is not at the heart of this dispute.

[18] A court may be required to review facts related to what impleaded parties have done and draw findings of fact relating to these impleaded parties. The possibility that there would incidentally be such findings and that these findings may be negative for these impleaded parties is not an interest that would constitute a basis of intervention under paragraph 28(1)(*a*) of the Rules.[7]

[19] I note in passing that, in the proceedings between the Municipality and the appellant in the Superior Court, the Municipality will have the opportunity to fully defend his reputation, honour and dignity.

[20] The Municipality also cites paragraph 28(1)(*b*) of the Rules and submits that it could be subject to prejudice within the meaning of this paragraph because the conclusions of this Court may have the authority of *res judicata* in relation to the Municipality.

[21] In support of this, the Municipality referred to *Deschênes c. Gagné*,[8] where the Quebec Court of Appeal stated that *res judicata* applies not only to the judgment, but also to its fundamental reasons, which are closely linked to the implicit *res judicata*.

---

[7] It is helpful to recall that the criteria for intervention are less liberal when it is a private interest rather than a public interest.

[8] 2007 QCCA 123, paragraphs 60, 61 and 62.

[22] This submission is without basis. One of the essential elements of *res judicata* is mutuality of the parties. Moreover, the Municipality is not a party to this appeal; in *Deschênes,* the inclusion of mutuality of the parties was not in dispute.[9]

[23] I note that a respondent under paragraph 28(2)(*b*) of the Rules does not become a party to the appeal.

[24] In sum, the Municipality is not exposed to a prejudice within the meanings of paragraph 28(1)(*b*) of the Rules.

[25] The Municipality also cited paragraph 28(1)(*c*) and claimed that this condition had been met because, factually, it is a matter of its involvement in the scheme of the appeal before this Court and the Superior Court.

[26] Paragraph 28(1)(*c*) requires that a question of law or fact or mixed law and fact be one of the issues in the dispute before this Court and also an issue disputed between the applicant and one of the parties in this appeal.[10]

[27] I do not see a question of law or fact or mixed law and fact in common.

[28] As regards the facts, it is not sufficient that there is one or certain common facts in the appeal before this Court and in the litigation between the applicant and one of the parties. They must be facts that the Court must determine for the purposes of the dispute.

[29] For example, according to the submission herein, a question of quantum arises: is the amount that the appellant paid to the Municipality of $1 million or $2 million? In making a finding on this issue, it will likely be necessary to consider a number of facts, some of which will also have to be considered in the litigation between the Municipality and the appellant, but this is not sufficient to invoke paragraph 28(1)(*c*). The same question of fact must be an issue before our Court.[11]

---

[9] See paragraph 56; further, it was not under dispute that there was identity of cause and object.

[10] It is useful to read the French and English texts together:

(*c*) that there exists between such person and any one or more parties to the proceeding a question of law or fact or mixed law and fact in common with one or more of the questions in issue in the proceeding,	*c*) que lui-même et l'une ou plusieurs des parties à l'instance sont liés par la même question de droit, la même question de fait ou la même question de droit et de fait,

[11] Part of it is distinguishing between what I will call a material fact and a relevant fact, in the usual sense of relevant, because a material fact is a relevant fact, but not all relevant facts are material. The evidence of some relevant facts may

[30] I am not persuaded that there is such a common question of fact that that the Court must determine. Therefore, the conditions of paragraph 28(1)(*c*) are not met.

[31] In view of my finding on subsection 28(1) of the Rules, it is not strictly necessary that I examine the impact of the intervention on the conduct of the appeal, as provided at the start of subsection 28(2). However, I will make the following comments.

[32] First, with respect to the relevant issues in this appeal, I am not persuaded that the Municipality can provide relevant factual evidence that the parties are not able to provide, if required, by having representatives of the Municipality testify.

[33] Second, the Municipality requests an order authorizing it to (i) be present at any examination for discovery, (ii) examine the witnesses at the appeal hearing and (iii) make representations at the hearing. In its representations, the Municipality agreed to act expeditiously in respecting the rights of the parties.

[34] However, given the action before the Superior Court by the appellant against the Municipality, there is too high a risk that the Municipality would unduly prolong and complicate the hearing of the appeal.

[35] For these reasons, the motion is dismissed without costs.

---

help in finding whether a particular material fact is true or false. This distinction is not always easy; see paragraphs 19 to 30 of *Kopstein v. The Queen*, 2010 TCC 448.

This discussion is complicated by terminological problems. The term "material facts" is often translated by "faits pertinents"; when the expression "faits pertinents" is used in this sense, it is not the usual sense of "faits pertinents" that is translated by "relevant facts".

Signed at Ottawa, Ontario, this 15th day of August, 2013.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 11th day of February 2014.

François Brunet, Revisor

CITATION:	2013 TCC 255
COURT FILE NO.:	2011-4044(IT)G
STYLE OF CAUSE:	RENÉ KÉROUAC v. HER MAJESTY THE QUEEN and the MUNICIPALITY OF LAROUCHE
REASONS FOR ORDER BY:	The Honourable Justice Gaston Jorré
DATE OF THE MOTION TO INTERVENE WITH WRITTEN SUBMISSIONS:	May 24, 2012
DATE OF WRITTEN SUBMISSIONS:	June 18, 2012
DATE OF RESPONDENT'S WRITTEN SUBMISSIONS:	March 8, 2013
DATE OF APPLICANT'S AMENDED WRITTEN SUBMISSIONS:	April 4, 2013
DATE OF ORDER:	October 15, 2013

COUNSEL FOR THE PARTIES:

Counsel for the appellant:	Michel Trudeau
Counsel for the respondent:	Marie-Aimée Cantin Marie-France Camiré Ilinca Ghibu
Counsel for the applicant:	Gaston Saucier

COUNSEL OF RECORD:

For the appellant:	Michel Trudeau Trudeau Dufresne Montréal, Quebec
For the respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Ontario
For the applicant:	Gaston Saucier Gaudreault Saucier Simard Chicoutimi, Quebec