

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160817

Docket: A-39-15

Citation: 2016 FCA 205

**CORAM: PELLETIER J.A.
WEBB J.A.
DE MONTIGNY J.A.**

BETWEEN:

JOHN CHARLES BEIMA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Edmonton, Alberta, on May 11, 2016.

Judgment delivered at Ottawa, Ontario, on August 17, 2016.

REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**PELLETIER J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

WEBB J.A.

[1] Mr. Beima has appealed the Order dated February 5, 2015 of D'Arcy J. of the Tax Court of Canada (Tax Court of Canada docket: 2013-3832(GST)I) quashing his appeal under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act) with respect to:

- the reporting periods between January 1, 2006 and December 31, 2009; and
- the reporting period from January 1, 2012 to December 31, 2012.

[2] For the reasons that follow, I would dismiss his appeal.

I. Background

[3] Mr. Beima is carrying on business as a sole proprietor. He was initially assessed under the Act for the following reporting periods:

Reporting Periods	Date of Assessment
January 1, 2006 to December 31, 2008	May 31, 2010
January 1, 2009 to December 31, 2009	September 8, 2010
January 1, 2010 to December 31, 2011	January 18, 2013

[4] Mr. Beima did not file a notice of objection in relation to any of these assessments within the time period for doing so as set out in section 306 of the Act but he did write to the Minister of National Revenue (the Minister) on June 24, 2013 to request an extension of time to file a notice of objection. This request was granted but only for the reporting periods between January 1, 2010 and December 31, 2011.

[5] Returns under the Act were filed on August 7, 2013 for the reporting periods between January 1, 2006 and December 31, 2012. On September 3, 2013, Mr. Beima was reassessed for the reporting periods between January 1, 2006 and December 31, 2011 and assessed for the reporting period of January 1, 2012 to December 31, 2012.

[6] On October 10, 2013, Mr. Beima filed a notice of appeal to the Tax Court of Canada.

[7] The Tax Court Judge quashed his appeal with respect to the reporting periods between January 1, 2006 and December 31, 2009 and from January 1, 2012 to December 31, 2012 because Mr. Beima had not filed a notice of objection for these reporting periods. The appeal related to the reporting periods between January 1, 2010 and December 31, 2011 was not quashed and is not in issue in this appeal.

II. Issue

[8] The only issue raised by Mr. Beima in his notice of appeal and addressed by him at the hearing of his appeal was whether the Tax Court Judge erred in quashing his appeal for the reporting periods noted above.

III. Analysis

[9] Mr. Beima acknowledges that he did not file any notice of objection for any of the reporting periods in issue in this appeal.

[10] He argues that he was appealing the assessments dated September 3, 2013 to the Tax Court of Canada and not the assessments that had been issued earlier. He also argues that he had been informed by an employee of the Canada Revenue Agency that, with respect to these assessments, he could either file a notice of objection with the Minister or appeal these to the Tax Court of Canada. Mr. Beima, in his memorandum, referred to the letter dated September 19, 2013 from Ms. Major as the source of this information. However, the reference line of this letter indicates that it is addressing the reporting periods from January 1, 2010 to December 31, 2011. This short letter also states that:

Your return for the period January 1, 2010 to December 31, 2011 was reassessed September 3, 2013. This subsequent reassessment invalidates your notice of objection.

If the subsequent reassessment has not resolved the issue, you may either file a second notice of objection or appeal directly to the Tax Court of Canada. Information on how to file an appeal is enclosed.

[11] It is clear that the letter is only addressing the reporting periods from January 1, 2010 to December 31, 2011 for which the Minister had accepted his request for an extension of time to file a notice of objection. Under section 302 of the Act, Mr. Beima did have the right to appeal the September 3, 2013 reassessment of these reporting periods to the Tax Court of Canada. The issue in this appeal is not whether he could appeal the reassessment of these reporting periods but rather whether he could file an appeal to the Tax Court of Canada in relation to the other reporting periods – between January 1, 2006 and December 31, 2009 and from January 1, 2012 to December 31, 2012.

[12] Mr. Beima, following the September 3, 2013 assessments, did not file any notice of objection with the Minister in relation to these assessments – he only filed the notice of appeal to the Tax Court of Canada. Therefore, no notice of objection has been validly filed for the September 3, 2013 assessments of the reporting periods between January 1, 2006 and December 31, 2009 or for the reporting period from January 1, 2012 to December 31, 2012.

[13] Subsection 12(1) of the *Tax Court of Canada Act*, R.S.C., 1985, c. T-2, provides that the Tax Court of Canada has the jurisdiction to hear and determine appeals under the Act. However, the appeal must be an appeal that is made in accordance with the provisions of the Act. Section 306 of the Act provides that a “person who has filed a notice of objection to an assessment under

this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made...”. Therefore, before a person can file an appeal to the Tax Court of Canada, the person must first have filed a notice of objection to the assessment in issue. Failing to file a notice of objection to a particular assessment will result in the person not having the right to appeal that assessment to the Tax Court of Canada. Since Mr. Beima did not file a notice of objection in relation to the assessments issued on September 3, 2013, he did not have the right to file a notice of appeal in relation to these assessments for the reporting periods between January 1, 2006 and December 31, 2009 and from January 1, 2012 to December 31, 2012.

[14] Mr. Beima referred to subsection 305(1) of the Act which allows a person to apply for an extension of time to file an appeal to the Tax Court of Canada. However, the concern in this matter is not that he was late in filing his notice of appeal but rather that he was premature because he had not satisfied the condition precedent that would have entitled him to file the notice of appeal. Since Mr. Beima had not filed a notice of objection to the assessments issued on September 3, 2013, the time period within which an appeal could have been filed under section 306 of the Act had not commenced. An extension of time is not available if the time period has not commenced.

[15] Mr. Beima also referred to section 307 of the Act which relates to the manner in which certain appeals are to be instituted. However, this section applies to an appeal “other than one referred to in section 18.3001 of the *Tax Court of Canada Act*”. Since Mr. Beima’s attempted appeal was under the informal procedure, it was an appeal under section 18.3001 of the *Tax Court of Canada Act*. Hence, section 307 of the Act is not applicable.

[16] At the hearing of the appeal, Mr. Beima referred to subsection 301(4) of the Act which allows the Minister to confirm an assessment without reconsideration. This subsection, however, only applies where a person has made this request in a notice of objection. Since no notice of objection was filed by Mr. Beima, this section does not apply.

[17] In his memorandum, Mr. Beima also requested an order allowing him to refile affidavits that had been struck from the record. These affidavits were part of 97 pages that had been attached to Mr. Beima's two page notice of appeal. As noted by the Tax Court Judge, evidence is to be introduced at the hearing of the appeal and not as part of the notice of appeal. In *Zelinski v. The Queen*, [2001] T.C.J. No. 774, 2002 D.T.C. 1204, Bowie J. noted that:

4 The purpose of pleadings is to define the issues in dispute between the parties for the purposes of production, discovery and trial. What is required of a party pleading is to set forth a concise statement of the material facts upon which she relies. Material facts are those facts which, if established at the trial, will tend to show that the party pleading is entitled to the relief sought. Amendments to pleadings should generally be permitted, so long as that can be done without causing prejudice to the opposing party that cannot be compensated by an award of costs or other terms, as the purpose of the Rules is to ensure, so far as possible, a fair trial of the real issues in dispute between the parties.

5 The applicable principle is stated in [*Holmsted and Watson Ontario Civil Procedure*, Vol. 3, pages 25-20 to 25-21]:

This is the rule of pleading: all of the other pleading rules are essentially corollaries or qualifications to this basic rule that the pleader must state the material facts relied upon for his or her claim or defence. The rule involves four separate elements: (1) every pleading must state facts, not mere conclusions of law; (2) it must state material facts and not include facts which are immaterial; (3) it must state facts and not the evidence by which they are to be proved; (4) it must state facts concisely in a summary form.

[18] As pleadings are to state material facts and not the evidence by which such facts would be proven, the Tax Court Judge did not commit any error in striking the schedules to the notice of appeal, including the affidavits that Mr. Beima is seeking to reinstate. At his hearing before the Tax Court of Canada in relation to the reporting periods between January 1, 2010 and December 31, 2011, Mr. Beima can submit such documents as he believes are relevant. At such hearing, the presiding judge can determine the admissibility of such documents, if admissibility is in issue.

[19] In his notice of appeal to this Court Mr. Beima had also requested “the addition of the taxation year of 2005” to his appeal before the Tax Court of Canada. There is no indication of when or even if there is an assessment or reassessment for the reporting period from January 1, 2005 to December 31, 2005. Since the matter before this Court is an appeal from the Order of the Tax Court of Canada quashing the appeals in relation to the reporting periods referred to above and since the reporting period for January 1, 2005 to December 31, 2005 was not before the Tax Court, there is no authority for this Court to add this reporting period to Mr. Beima’s appeal to the Tax Court of Canada.

[20] As a result, I would dismiss Mr. Beima’s appeal, with costs, fixed in the amount of \$1,500.

“Wyman W. Webb”

J.A.

“I agree.
J.D. Denis Pelletier J.A.”

“I agree.
Yves de Montigny J.A.”

Appendix

Statutory Provisions

Tax Court of Canada Act:

12 (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Air Travellers Security Charge Act*, the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part V.1 of the *Customs Act*, the *Employment Insurance Act*, the *Excise Act, 2001*, Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Old Age Security Act*, the *Petroleum and Gas Revenue Tax Act* and the *Softwood Lumber Products Export Charge Act, 2006* when references or appeals to the Court are provided for in those Acts.

12 (1) La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, du *Régime de pensions du Canada*, de la *Loi sur l'exportation et l'importation de biens culturels*, de la partie V.1 de la *Loi sur les douanes*, de la *Loi sur l'assurance-emploi*, de la *Loi de 2001 sur l'accise*, de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur la sécurité de la vieillesse*, de la *Loi de l'impôt sur les revenus pétroliers* et de la *Loi de 2006 sur les droits d'exportation de produits de bois d'oeuvre*, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.

Excise Tax Act:

301 (4) Where, in a notice of objection, a person who wishes to appeal directly to the Tax Court requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

...

302 Where a person files a notice of objection to an assessment and the Minister sends to the person a notice of a reassessment or an additional

301 (4) Le ministre peut confirmer une cotisation sans l'examiner de nouveau sur demande de la personne qui lui fait part, dans son avis d'opposition, de son intention d'appeler directement à la Cour canadienne de l'impôt.

[...]

302 La personne, ayant présenté un avis d'opposition à une cotisation, à qui le ministre a envoyé un avis de nouvelle cotisation ou de cotisation

assessment, in respect of any matter dealt with in the notice of objection, the person may, within ninety days after the day the notice of reassessment or additional assessment was sent by the Minister,

(a) appeal therefrom to the Tax Court; or

(b) where an appeal has already been instituted in respect of the matter, amend the appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms as the Tax Court directs.

...

305 (1) Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

...

306 A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either

(a) the Minister has confirmed the assessment or has reassessed, or

(b) one hundred and eighty days have

supplémentaire concernant l'objet de l'avis d'opposition peut, dans les 90 jours suivant cet envoi :

a) interjeter appel devant la Cour canadienne de l'impôt;

b) si un appel a déjà été interjeté, modifier cet appel en y joignant un appel concernant la nouvelle cotisation ou la cotisation supplémentaire, en la forme et selon les modalités fixées par cette cour.

[...]

305 (1) La personne qui n'a pas interjeté appel en application de l'article 306 dans le délai imparti peut présenter à la Cour canadienne de l'impôt une demande de prorogation du délai pour interjeter appel. Cette cour peut faire droit à la demande et imposer les conditions qu'elle estime justes.

[...]

306 La personne qui a produit un avis d'opposition à une cotisation aux termes de la présente sous-section peut interjeter appel à la Cour canadienne de l'impôt pour faire annuler la cotisation ou en faire établir une nouvelle lorsque, selon le cas :

a) la cotisation est confirmée par le ministre ou une nouvelle cotisation est établie;

b) un délai de 180 jours suivant la production de l'avis est expiré sans

elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,

but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.

...

307 An appeal to the Tax Court under this Act, other than one referred to in section 18.3001 of the *Tax Court of Canada Act*, shall be instituted in the manner set out in that Act or in any rules made under that Act.

que le ministre n'ait notifié la personne du fait qu'il a annulé ou confirmé la cotisation ou procédé à une nouvelle cotisation.

Toutefois, nul appel ne peut être interjeté après l'expiration d'un délai de 90 jours suivant l'envoi à la personne, aux termes de l'article 301, d'un avis portant que le ministre a confirmé la cotisation ou procédé à une nouvelle cotisation.

[...]

307 Un appel à la Cour canadienne de l'impôt est interjeté selon les modalités indiquées dans la *Loi sur la Cour canadienne de l'impôt* ou ses règlements d'application, sauf s'il s'agit d'un appel visé à l'article 18.3001 de cette loi.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-39-15

(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE D'ARCY OF THE TAX COURT OF CANADA DATED FEBRUARY 5, 2015, DOCKET NUMBER 2013-38329(GST)I)

STYLE OF CAUSE: JOHN CHARLES BEIMA v. HER MAJESTY THE QUEEN

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: MAY 11, 2016

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: PELLETIER J.A.
DE MONTIGNY J.A.

DATED: AUGUST 17, 2016

APPEARANCES:

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