Federal Court of Appeal | Cour d'appel fédérale

Date: 20120523

Docket: A-204-10

Citation: 2012 FCA 148

CORAM: **NOËL J.A.**
DAWSON J.A.
BLANCHARD J.A. (*ex officio*)

BETWEEN:

TERRY E. TAYLOR

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Halifax, Nova Scotia, on May 23, 2012.

Judgment delivered from the Bench at Halifax, Nova Scotia, on May 23, 2012.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on May 23, 2012)

DAWSON J.A.

[1] This is an appeal of a decision of the Tax Court of Canada in which the Court was required to determine a question of mixed fact and law, as contemplated by section 173 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and section 310 of the *Excise Tax Act*, R.S.C. 1985, c. E-15. The question to be determined was:

> Whether the Settlement Agreement dated January 22, 2009 is valid and binding on the parties so as to prevent the Appellant from appealing the reassessments to this Court.

[2] In reasons cited as 2010 TCC 246, 2010 D.T.C. 1189, the Court answered the question in the affirmative. The appellant taxpayer now appeals from this decision.

[3] In his written materials, the appellant argues that the Tax Court Judge erred in two respects. First, he argues that the Judge erred in certain of her findings of fact. Second, he argues that the Judge applied the wrong legal test for determining whether the settlement agreement was vitiated by the conduct of employees of the Canada Revenue Agency.

[4] Turning to the first asserted error, this Court can only interfere with the Judge's findings of fact if the appellant establishes some palpable and overriding error made by the Judge (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at paragraph 10 and following).

[5] The Judge gave trenchant reasons for her findings that the settlement agreement was freely made and that no undue pressure was exerted over the appellant at the meeting in which the settlement agreement was negotiated. These findings of fact were open to the Judge on the evidence and the appellant has not demonstrated any palpable and overriding error in the Judge's appreciation of the evidence.

[6] With respect to the second asserted error, the appellant argues that the Judge directed herself to whether the taxpayer freely consented to the settlement agreement and whether he was unduly pressured. This is said to be too narrow a test. The appellant argues that the Judge should have

applied the test for economic duress as articulated in cases such as *Gordon v. Roebuck* (1992), 9 O.R. (3d) 1 (C.A.).

[7] In our view, in light of the Judge's findings of fact, there is no merit in this ground of appeal. The Judge's findings of fact included the following:

1. The appellant's testimony did not ring true and defied common sense. It was not believable that the appellant felt lost or devastated at the settlement meeting.

2. The appellant was an experienced business man with a financial background. He was knowledgeable about the tax issues under dispute and had been aware of the amounts at issue for some time.

3. The evidence of the employees of the Canada Revenue Agency was credible, and the Judge accepted their version of events of what transpired at the settlement meeting. They described the settlement meeting as being cordial and the appellant as being calm. The appellant did not ask for more time to consider the settlement offer.

4. The settlement agreement was freely made.

5. The appellant was not unduly pressured into making the settlement.

[8] These findings of fact are fatal to the appellant's position, irrespective of the legal test applied by the Judge.

[9] The appeal will, therefore, be dismissed with costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-204-10
STYLE OF CAUSE:	Terry E. Taylor v. Her Majesty the Queen
PLACE OF HEARING:	Halifax, Nova Scotia
DATE OF HEARING:	May 23, 2012
REASONS FOR JUDGMENT OF THE COURT BY:	(NOËL, DAWSON JJ.A. and BLANCHARD J.A. (*ex officio*))
DELIVERED FROM THE BENCH BY:	DAWSON J.A.

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