Federal Court  Cour fédérale

Date: 20150715

Docket: T-2305-14

Citation: 2015 FC 869

Ottawa, Ontario, July 15, 2015

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

HAROLD COOMBS

Applicant

and

(CANADA) MINISTER OF NATIONAL REVENUE & CANADA REVENUE AGENCY

Respondents

JUDGMENT AND REASONS

I. Overview

[1] Over the past eight years, Mr. Coombs and other individuals and corporate entities related to him have been battling against a search and seizure of documents and records conducted by the Canada Revenue Agency [the CRA] back in September 2006. Concerned with the legality, propriety and execution of the search warrants, Mr. Coombs has brought forth

multiple applications, motions and actions before this Court challenging the September 2006 seizure, and requesting the return of documents and records that Mr. Coombs firmly believes were illegally taken away and hidden by the CRA.

[1] The proceedings commenced and filed by Mr. Coombs against the federal government now add up to more than 20. They have taken various forms and raised various grounds of challenge over the years, but they all arise from the same basic set of facts and the same recurring theme: Mr. Coombs remains convinced that, during the September 2006 seizure, documents were seized by a certain CRA official named John Legros, and have since then been kept by the CRA.

[2] This application for judicial review is the latest incarnation of Mr. Coombs' repeated attempts to challenge the September 2006 seizure.

[3] While Mr. Coombs' proceedings were arguably not all identical over the years, they all led to a similar result: besides the few that were discontinued by Mr. Coombs himself, they have all been consistently struck down or dismissed by this Court, usually either because they were not within the jurisdiction of the Court or because they had already been decided. As the years went by, this Court has gradually found that the escalation of proceedings launched by Mr. Coombs had all the attributes of an abuse of process.

[4] In this application, Mr. Coombs now seeks an order in the nature of mandamus, requiring the Minister of National Revenue to properly administer, and strictly comply with, section 231.3

of the *Income Tax Act*, RSC 1985, c 1(5th Supp) governing the conduct of searches and seizures by the CRA. He also asks the Court, once again, to order the Minister to provide the documents and records allegedly seized by Mr. Legros in September 2006.

[5] The Minister contends that this most recent application for judicial review is yet again based on the same set of events and seeks similar relief as in the previous proceedings brought by Mr. Coombs before this Court. The Minister further affirms that, as such, it constitutes an abuse of process: the Court has repeatedly found that Mr. Legros never seized any documents in September 2006, and the present application is a vexatious attempt to re-litigate questions already found by this Court to be without merit. The Minister also submits that Mr. Coombs' application is moot as the CRA has obtained an order to return the documents seized in September 2006 and Mr. Coombs has been contacted to arrange for the return of the seized items.

[6] For his part, Mr. Coombs contends that he is raising new grounds of action in this application. Mr. Coombs is asking the Court to compel the Minister to comply with the *Income Tax Act* and to recognize his right to a fair hearing, a request he claims he has never brought in any previous applications. Mr. Coombs takes the position that the Minister acted beyond his statutory powers during the September 2006 seizure and violated the relevant provisions of the *Income Tax Act*; he submits that Mr. Legros also violated the Act in failing to record and return the documents Mr. Coombs persists to believe he seized.

[7] Not only am I unconvinced that this application by Mr. Coombs is any different from the unsuccessful ones he has brought up over the years, but I am also of the view that the arguments made by Mr. Coombs or otherwise raised in his written and oral submissions are without merit. No matter how Mr. Coombs tries to portray it, when distilled, his application boils down to a repackaging and variation on issues already decided by the courts. For the reasons detailed hereafter, Mr. Coombs' application for judicial review is dismissed as I conclude that there is no basis to deliver the mandamus sought by Mr. Coombs, that the issue of the validity of the search and seizure has already been decided and confirmed in many previous decisions, and that the Court has no jurisdiction to order the return of the seized documents. I further find that this application for judicial review by Mr. Coombs constitutes an abuse of the Court process.

II. Background

[8] In September 2006, the CRA conducted a search at 660 Eglinton Avenue East, Toronto, Ontario, and seized documents and property, including documents belonging to some of Mr. Coombs' clients. At that time, the officer in control of the search requested Mr. Legros, a CRA officer not named in the search warrant, to bring a van to the location to load the boxes. Mr. Legros assisted in the search and seizure by physically moving boxes, but did not seize anything. Ever since the search and seizure, Mr. Coombs has maintained that Mr. Legros did not record the documents he seized, that the boxes he seized were never returned to him, and that Mr. Legros concealed or destroyed evidence to prejudice Mr. Coombs' cases before the Tax Court of Canada.

[9] As early as April 2007, Mr. Coombs filed the application T-742-07 before this Court seeking to quash the search warrant and regain possession of the seized documents. Prothonotary Aalto struck the application in June 2007, on the grounds that the Court had no jurisdiction to set aside an order of the Ontario Superior Court of Justice or to order the return of any materials seized pursuant to it.

[10] In May 2008, the Tax Court dealt with the appeals of tax assessments made by Mr. Coombs and specifically rejected the notion that an official from the CRA had been hiding documents (*Coombs v Canada*, 2008 TCC 289). The Tax Court further confirmed that the September 2006 seizure was not illegal even if someone not named in the warrant was invited to participate by the officer in charge. This decision was affirmed by the Federal Court of Appeal (*Coombs v Canada*, 2009 FCA 74).

[11] In two concurrent and related decisions issued by this Court in March 2014, Justice Kane reviewed in detail the long procedural history of Mr. Coombs' multiple applications (*Coombs v Canada (Attorney General)*, 2014 FC 232; *Coombs v Canada (Attorney General)*, 2014 FC 233). There is no need to repeat this analysis here. Suffice it to say that Justice Kane reiterated the following points in her decisions:

- The legality of the September 2006 seizure has been adjudicated by the Tax Court in 2008 (and confirmed by the Federal Court of Appeal as well as by the Supreme Court of Canada jurisprudence on searches and seizures);

- This Court does not have the jurisdiction to order the return of the allegedly missing documents from the September 2006 seizure;

- Notices of application attempting to re-litigate the issues relating to the September 2006 search warrant and the allegedly illegal seizure by Mr. Legros amount to an abuse of process and are frivolous and vexatious applications;

- The circumstances relied upon by Mr. Coombs are similar to those previously considered by the Tax Court, where the Court rejected the bald allegations that a CRA official was hiding documents;

- The multiplicity of proceedings brought by Mr. Coombs arose from the same set of facts with various nuances and amounted to "repackaging or re-characterizing the same application time and time again with the same allegations that have previously been adjudicated upon", in an attempt to open up new avenues of relief or yield a different result (*Coombs v Canada (Attorney General)*, 2014 FC 232 at para 53).

[12] In *Coombs v Canada (Attorney General)*, 2014 FC 233, Justice Kane concluded with the following warning addressed to Mr. Coombs, at paras 75 and 79:

> [75] The applicants remain of the view that their rights have been breached and that allegedly missing documents have been withheld. However, there is no evidence to support this view and the Courts have so found.
>
> […]
>
> [79] I recognise that the applicants hold the belief that some of their documents are missing and unaccounted for and that they are without any remedy to have the allegedly missing documents returned. However, these issues have been repeatedly decided by the various Courts and have all the hallmarks of proceedings that are vexatious and an abuse of process.

[13] These two decisions were confirmed and upheld by the Federal Court of Appeal (*Coombs v Canada (Attorney General),* 2014 FCA 222).

[14] Despite Justice Kane's clear remarks, Mr. Coombs brought the present application to the Court a few months later, in November 2014, seeking remedies which Mr. Coombs claims are different from previous proceedings. I observe however that, in support of his application, Mr. Coombs has filed an affidavit he had sworn more than a year before, on October 28, 2013; this affidavit happens to bear the exact same date as both affidavits that Mr. Coombs had submitted in support of his applicant's and motion records filed in the two cases that were dismissed by Justice Kane in March 2014.

[15] In June 2014, the Ontario Superior Court of Justice issued an order allowing the return of the items seized in September 2006, and permitting the CRA to destroy the seized items if Mr. Coombs did not accept them. The inventory of the seized items included the name of the person who seized each item, but the list did not include Mr. Legros. Mr. Coombs remains of the opinion that the inventory of the records seized is deficient, inaccurate and incomplete, as the evidence and documents allegedly seized by Mr. Legros were not reported. Counsel for the CRA wrote to Mr. Coombs in February 2015, asking if he would accept the return of the seized items. Mr. Coombs has not responded to the letter. At the oral hearing of this application, Mr. Coombs indicated that he did not want to accept the return of the seized items as he continues to believe they are deficient and incomplete.

[16] I pause to note that Mr. Coombs has questioned the admissibility and validity of the affidavit of Lynn Watson filed by the Minister in support of his position, on the ground that it did not comply with the requirements of the *Federal Courts Rules*, SOR/98-106. Upon review of the evidence, I am satisfied that this affidavit follows the requirements of the Federal Court Rules, and in particular Rules 81 and 82, as it is based on the personal knowledge of the deponent and, where some portions are made on information and belief, it is properly stated. The Rules and the case law are clear that such affidavits are not improper.

III. Analysis

A. *The conditions for the issuance of a mandamus against the Minister are not met*

[17] Mr. Coombs contends that the Minister acted beyond his statutory powers during the September 2006 seizure and violated section 231.3 of the *Income Tax Act* by denying him access to the seized documents. Mr. Coombs makes a number of general submissions around this general proposition in support of his request for a writ of mandamus, but the gist of his argument remains that the CRA failed to record and return the documents allegedly seized by Mr. Legros in September 2006. Mr. Coombs points out that without these seized documents, he is denied the right to provide a full and complete defence on the appeals of the tax assessments issued by the CRA further to the September 2006 seizure. In terms of relief, Mr. Coombs seeks an order requiring the Minister to return the documents seized by Mr. Legros during the September 2006 seizure.

[18] I find that Mr. Coombs' arguments are without merit and unsupported by credible evidence, and that they fail to meet the strict requirements established by the jurisprudence for the issuance of a writ of mandamus.

[19] A mandamus is an extraordinary remedy. The basic principal requirements for the issuance of a writ of mandamus are well settled and have been outlined in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 at para 55, aff'd [1994] 3 SCR 110. These conditions are cumulative and they must all be satisfied before this Court can consider issuing a writ of mandamus (*Rocky Mountain Ecosystem Coalition v Canada (National Energy Board)* (1999), 174 FTR 17 at para 16 (FCTD)). They include the existence of a public legal duty to act owed to the applicant, a clear right of the applicant to the performance of that duty, and the fact that the order will have some practical value and effect.

[20] These conditions are not met in this case. In light of the previous decisions issued by this Court and by other courts on the legality of the September 2006 seizure, the Minister does not owe Mr. Coombs a public legal duty to act in relation to this seizure; in addition, Mr. Coombs has no clear right to the performance of any action that the Minister has not already accomplished with respect to this seizure. More specifically, it has already been decided by the courts that:

- The September 2006 seizure conducted by the CRA was legal and valid;
- The seizure was not illegal even if someone not named in the warrant was invited to participate by the officer in charge;
- No CRA official has hidden documents obtained from the seizure;

- Repeated applications by Mr. Coombs attempting to litigate over and over the issues relating to the seizure and the allegedly illegal seizure made by Mr. Legros amount to an abuse of process;

- Factual events and circumstances surrounding the seizure have been considered and previously determined by the Tax Court and this Court, and confirmed by the Federal Court of Appeal;

- This Court does not have the jurisdiction to order the return of the documents allegedly missing from the seizure.

[21] In addition, since the Ontario Superior Court of Justice has already ordered the return of the documents seized in September 2006, and that the CRA is in the process of doing so, an order of mandamus against the Minister requiring the same action would have no practical value and effect.

[22] This suffices to dismiss Mr. Coombs' request for the issuance of a mandamus in this case as the strict conditions for such an extraordinary remedy are not met.

B. ***The Court has no authority to order the return of documents***

[23] I also find that this Court does not have the authority to order the return of the documents seized in September 2006.

[24] It has already been decided, and maintained by the Federal Court of Appeal, that this Court does not have the jurisdiction to make the order sought by Mr. Coombs with respect to the return of the documents allegedly seized by Mr. Legros. This was noted not only in the recent *Coombs v Canada (Attorney General)*, 2014 FC 233 decision by Justice Kane, but eight years ago when Prothonotary Aalto struck one of the first applications brought by Mr. Coombs on the same ground in the T-742-07 matter.

[25] Mr. Coombs has not referred to any authority that would justify changing these conclusions.

C. *This application for judicial review is an abuse of process*

[26] This Court has already indicated that Mr. Coombs' applications had all the hallmarks of proceedings that constitute an abuse of process (*Coombs v Canada (Attorney General)*, 2014 FC 233 at para 79). I conclude that this latest application is indeed another abuse of the Court process on the part of Mr. Coombs.

[27] Abuse of process is a common law principle permitting courts to stop proceedings that have become unfair or oppressive. This includes situations where a party re-litigates essentially the same dispute when earlier attempts at relief have failed (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 23; *Black v NsC Diesel Power Inc. (Trustee of)* (2000), 183 FTR 301, [2000] FCJ 725 at para 11, aff'd 2003 FCA 300).

[28] The substance of the arguments raised by Mr. Coombs in this application has already been considered by this Court on numerous occasions. In all of these cases, his applications were dismissed. He was also specifically warned by Justice Kane about the abusive nature of his actions. Once again, the evidence on the record of this application reflects the propensity of Mr. Coombs to litigate matters already determined: he makes the same allegations about Mr. Legros having seized and hidden documents, about documents missing from the September 2006 seizure and being unaccounted for, and about the impropriety and illegality of the execution of the search warrants by the CRA. As explained in detail in the two March 2014 decisions of Justice Kane, the Court has already rejected these submissions and dismissed Mr. Coombs' applications arising from these facts.

[29] Mr. Coombs has brought application after application, sometimes changing the parties, sometimes changing the relief, but always on the same alleged facts and issues that have already been decided and discarded by the courts. This application is no different. In my view, it amounts to an abuse of process, an unacceptable use of the Court's time and resources, and a breach of the integrity of our system of justice. Mr. Coombs' application must also be dismissed on this ground.

D. ***No need to decide on mootness***

[30] In light of my previous conclusions, there is no need to decide the issue of mootness raised by the Minister.

IV. Conclusion

[31] For the reasons detailed above, Mr. Coombs' application for judicial review is dismissed as the Court concludes that there is no basis to issue the mandamus sought by Mr. Coombs, that the legality and validity of the September 2006 seizure has already been decided and confirmed by the courts, and that this Court has no jurisdiction to order the return of the documents allegedly seized by Mr. Legros. The Court further finds that this application for judicial review by Mr. Coombs constitutes an abuse of the Court process.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, with costs to the respondent in the amount of $1,500.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2305-14
STYLE OF CAUSE:	HAROLD COOMBS v (CANADA) MINISTER OF NATIONAL REVENUE & CANADA REVENUE AGENCY
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 3, 2015
JUDGMENT AND REASONS:	GASCON J.
DATED:	JULY 15, 2015

APPEARANCES:

Harold Coombs	FOR THE APPLICANT (On his own behalf)
Sonia Singh	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Self-Represented	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS