Federal Court  Cour fédérale

Date: 20201015

Docket: T-467-20

Citation: 2020 FC 973

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 15, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

PIERRE BARBE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT

UPON the motion of the Attorney General of Canada (the respondent) filed on July 24, 2020, pursuant to rule 369 of the *Federal Courts Rules*, SOR/98-106 [Rules], to strike the application at issue here;

CONSIDERING the evidence that the application was served on the applicant on July 24, 2020;

CONSIDERING that the applicant has not filed a reply to the motion and the time for doing so has expired;

UPON READING the respondent's written submissions;

CONSIDERING that:

[1] The background of the present matter is as follows:

- The applicant worked for Latulippe & associés consultants inc. (Latulippe) for the period between April 24, 2017, and February 8, 2018;
- The applicant requested a ruling from the Canada Revenue Agency (CRA) to determine whether he was working for Latulippe in insurable employment under the *Employment Insurance Act*, SC 1996, c 23. On May 8, 2018, the CRA Rulings Division determined that the applicant was rendering services as an employee of Latulippe;
- The Minister of National Revenue (Minister) confirmed this determination in a decision dated August 21, 2018. Latulippe appealed that decision to the Tax Court of Canada, but withdrew the appeal on October 16, 2019, thereby confirming the applicant's status as an insurable employee;
- On December 5, 2018, and May 16, 2019, a CRA officer issued T4 slips for the 2017 and 2018 taxation years that showed the amount of employment income earned by the applicant, and that did not show any amount of tax withheld at source;
- On May 9, 2019, and July 25, 2019, the Minister issued notices of reassessment for the 2017 and 2018 taxation years on the basis that this employment income had not been reported by the applicant;

- The applicant filed a Notice of Objection, but on March 16, 2020, an appeals officer at the CRA denied it, as the applicant did not dispute the amounts of income, but did dispute the amounts of tax withheld at source and the employee's contributions to the Quebec Pension Plan;
- On April 14, 2020, the applicant filed a notice of application for judicial review of this decision of the appeals officer;
- On April 27, 2020, the applicant filed a motion to extend the time limit for filing the notice of application for judicial review. On August 12, 2020, the Court dismissed his application on the basis that the applicant had in fact filed his application within the time limit;
- On July 24, 2020, the respondent filed a motion to strike the application; the applicant did not file a reply to this motion.

[2] The issue before me is whether the notice of application for judicial review was "so clearly improper as to be bereft of any possibility of success" (*David Bull Laboratories (Canada) Inc. v Pharmacia Inc*, [1995] 1 FC 588 (FCA) at page 10 [*David Bull Laboratories*]), considering that the striking of an application for judicial review "must be very exceptional and cannot include cases . . . where there is simply a debatable issue as to the adequacy of the allegations in the notice of motion" (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 at paras 47–48 [*JP Morgan*], citing *David Bull Laboratories* at p 10).

[3] In its analysis of this type of issue, the Court "must gain 'a realistic appreciation' of the application's 'essential character' by reading it holistically and practically without fastening onto

matters of form" [*JP Morgan* at para 50]. In *JP Morgan* at paragraph 66, the Federal Court of Appeal pointed out that the following elements qualify as obvious, fatal flaws that warrant the striking of a notice of application:

> (1) the notice of application fails to state a cognizable administrative law claim which can be brought in the Federal Court;
>
> (2) the Federal Court is not able to deal with the administrative law claim by virtue of section 18.5 of the *Federal Courts Act* or some other legal principle; or
>
> (3) the Federal Court cannot grant the relief sought.

[4] For the reasons that follow, the application to strike is allowed.

[5] In his notice of application for judicial review, the applicant stated the purpose of his application:

> [TRANSLATION]
>
> The Purpose of this application is to have the Honourable Federal Court order:
>
> 1. The Canada Revenue Agency's Western Quebec Tax Services Office, Laval, QC, to require the employer LATULIPPE & ASSOCIÉS CONSULTANTS INC. to produce the 2017 and 2018 T4 statements reflecting his status as an insurable salaried employee with all his rights and privileges (employee contribution to the Quebec Pension Plan and taxes);
>
> 2. That the taxes and contributions to the Régie [sic] des Rentes du Québec (RRQ) be recovered from the employer;
>
> 3. To cancel the recovery action issued by the National Verification and Collection Centre (NVCC) of Shawinigan against the applicant;

[6] The respondent submits that the notice of application does not disclose any action that is admissible in administrative law, because the applicant is [TRANSLATION] "indirectly seeking to

have Latulippe pay the unpaid taxes and assessments for which he is currently liable". The respondent asserts that the applicant does not dispute the amounts of employment income that were added to his income. However, his claim focuses on the taxes that were not deducted at source, as well as the contributions to the Quebec Pension Plan.

[7] The origin of the issue for the applicant is that Latulippe considered him to be self-employed and that the employer was not obliged to deduct amounts at source from amounts paid to a self-employed person. It appears that the applicant received the amounts without deduction, and that the reassessments were issued as a result of the determination that he was an employee of Latulippe and required him to pay taxes on employment income that had not been reported.

[8] I am persuaded that the conclusions sought in this proceeding cannot be granted by way of judicial review. The notice of application filed by the applicant opposes the decision of the CRA appeals officer, but the applicant does not seek to have that decision set aside.

[9] With respect to the first request in the notice of application (see above), the respondent argues that the applicant is seeking to compel Latulippe to produce his employee T4. This is not possible in the context of an application for judicial review of a decision of a CRA appeals officer.

[10] As for the second request, regarding the income tax and contributions to the Quebec Pension Plan, it is not a request to a federal board, commission or tribunal. Contributions to the Quebec Pension Plan are a provincial matter and must be remitted to the Quebec Revenue Agency. The Attorney General of Canada has no jurisdiction to recover these amounts.

[11] With respect to the third request, to discontinue the recovery action issued by the National Verification and Collections Centre in Shawinigan, this is not supported by the evidence on the record. The decision of the CRA appeals officer on which the application for judicial review is focused is not aimed at the recovery of the amounts per se. If there are collection efforts by the CRA against the applicant, he can determine how he will respond at that time.

[12] For all these reasons, I am persuaded that the motion to strike is justified, because the notice of application for judicial review is "so clearly improper as to be bereft of any possibility of success" (*David Bull Laboratories* at p 10). Given the issues identified above, it would not be appropriate to allow the applicant to have the opportunity to amend his notice of application.

[13] In light of all of the circumstances, and considering the discretion conferred upon me pursuant to rule 400 of the Rules, it would not be appropriate to order the applicant to pay the respondent's costs. Each party shall bear their own costs.

THIS COURT'S JUDGMENT is as follows:

1. The motion to strike the notice of application for judicial review is allowed without leave to amend.

2. Without costs.

"William F. Pentney"
Judge

Certified true translation

Johanna Kratz