

Federal Court of Appeal



Cour d'appel fédérale

Date: 20171215

Docket: A-455-16

Citation: 2017 FCA 248

**CORAM: WEBB J.A.
NEAR J.A.
LASKIN J.A.**

BETWEEN:

MARK LYNCH

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Edmonton, Alberta, on December 4, 2017.

Judgment delivered at Ottawa, Ontario, on December 15, 2017.

REASONS FOR JUDGMENT BY:

LASKIN J.A.

CONCURRED IN BY:

**WEBB J.A.
NEAR J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20171215

Docket: A-455-16

Citation: 2017 FCA 248

**CORAM: WEBB J.A.
NEAR J.A.
LASKIN J.A.**

BETWEEN:

MARK LYNCH

Appellant

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

LASKIN J.A.

[1] Mark Lynch appeals from a judgment of Justice Lafleur of the Tax Court of Canada dated September 15, 2016, dismissing, based on the doctrine of abuse of process, Mr. Lynch's appeal to the Tax Court from a reassessment for his 2009 taxation year.

[2] Mr. Lynch commenced the appeal to the Tax Court in July 2014. In July 2015 the Tax Court judge made an order, on the agreement of the parties, establishing a timetable for the

conduct of the appeal. It called among other things for the parties each to serve written discovery questions by January 15, 2016, and to serve written answers by February 15, 2016.

[3] The Crown served its written questions in compliance with the order. Mr. Lynch did not. On February 7, 2016 Mr. Lynch wrote to counsel for the Crown advising that he was in a position to reply to the Crown's questions, but would not do so unless his questions (as yet unserved) were answered first.

[4] Counsel for the Crown responded by letter dated February 10, 2016. The letter reminded Mr. Lynch of the deadlines set by the July 2015 order. It advised that if he did not provide his answers by the applicable deadline, counsel would write to the Court seeking case management. It also advised that since the time for him to serve his discovery questions had expired, it would be necessary for him to bring a motion for an extension if he wished to extend that deadline.

[5] When Mr. Lynch failed to provide his answers by the date fixed in the order, counsel for the Crown wrote to the Court on February 16, 2016 explaining what had occurred and requesting case management or other appropriate direction. Mr. Lynch then also wrote to the Court, on February 26, 2016, referring to "the deadline dates that were allegedly missed." He advised the Court that "[t]he dates only appeared as guidelines" and that he was under the impression that he had until February 15, 2016 to submit his questions. He suggested that there had been "intentional prosecutorial misconduct" in relation to his request to have his questions answered first. He invoked his "reciprocal charter right to question whomever raised the assessment."

[6] The Court convened a case management conference on March 15, 2016 before Justice Lafleur. The Tax Court judge told Mr. Lynch that the dates set out in the July 2015 order were not guidelines, but dates to be followed, and that extensions were not automatic. She advised that if he submitted a letter entitled “Notice of Motion” setting out a request for an extension together with the reasons why he was not able to comply with the agreed-upon dates, she would be able to issue a new order setting up new dates. She added the following warning:

And I will not issue costs on this, but I want to let you know that [...] if you do not follow the next order, the next dates, then we will have to discuss that more seriously because as I said, it’s not guidelines, it’s dates that must be followed by the parties.

[7] On March 23, 2016, Mr. Lynch sent a letter to the Court headed “Notice of Motion.” In it he accused the Crown of acting unfairly. He reiterated his position that he would not answer discovery questions unless his questions were answered first. To be required to do so, he stated, would be prejudicial,

as there would appear to be a breach of fundamental justice insofar as that there is not full disclosure of [his] right under international covenants and the inherent jurisdiction of the court and the courts [*sic*] ability to hear non statutory arguments.

[8] He went on later in the letter to demand that the court provide him, “the man, specific remedy for a constitutional violation,” and to suggest that the *Income Tax Act* “may be the wrong governing statute for the administration of justice in a court of inherent jurisdiction (Tax Court), in the province of Alberta as it applies to a private business, private man.”

[9] The Court requested a response from the Crown. Counsel for the Crown responded on April 22, 2016. She advised that the Crown would not oppose a motion by Mr. Lynch for an

extension of time to serve written discovery questions, but that it would be appropriate for any new scheduling order to provide for answers to discovery questions by a common deadline, as is the ordinary practice.

[10] A second case management conference was held before Justice Lafleur on June 1, 2016. The Tax Court judge advised Mr. Lynch that the letter he had sent to the Court was not what she had asked for. She was nonetheless prepared to grant an extension to June 15, 2016 for Mr. Lynch to serve his discovery questions, and to July 22, 2016 for the parties to serve responses. Her order also provided dates for the subsequent steps leading up to the hearing of the appeal. During the conference, the Tax Court judge told Mr. Lynch that she was giving him “a last chance,” and warned him that if he failed to comply with the order, the Court would dismiss his appeal without the need for the Crown to file a motion.

[11] When the Tax Court judge asked Mr. Lynch if he had any comments on the proposed dates, he asked to address the Court. He stated his belief that he owed no obligation to answer any questions or any other obligations under the *Income Tax Act*. The Act, he stated, applies only to “an officer who operates within the confines of the Corporate Body of Canada,” and he was before the Court not in that capacity but in his “full legal capacity as a man.” He added that the *Income Tax Act* violated his “Constitutional rights as a human being.” He proceeded to question the motivation of both counsel for the Crown and the Tax Court judge. When the judge sought to end the case conference, and advised that she would shortly issue an order that she was asking him to follow strictly, he objected to her making any order, on the basis that it too would be “a clear violation of [his] constitutional rights as a human being.”

[12] Following the case conference, on June, 1, 2016, the Tax Court judge issued an order setting out the dates that had been discussed. Mr. Lynch served his questions by the deadline, on June 15, 2016. Most of his 19 questions cited case law, statute, or the Constitution and in form, at least, amounted to questions of law pursuing the theme of alleged violation of his constitutional rights and rights under international law, largely on the basis that he was being “forced to play a role of an officer in the corporate body called Canada.” Others included questions such as whether Mr. Lynch, “or any derivative thereof, [was] rendered to be an officer holding an office by appointment in the body corporate of Canada,” and whether he was an “officer of the geographical unit of Alberta.”

[13] The Crown responded to these questions within the time fixed by the June 1, 2016 order. The Crown objected to almost all of them on the ground that they were irrelevant and improperly sought opinions on questions of law.

[14] On July 22, 2016, Mr. Lynch sent an affidavit to counsel for the Crown criticizing the Crown’s answers to his questions as arbitrary and “an excuse not to provide answers sought.” He went on to state that without the answers to his questions, he was unable to answer “any questions relating to, or asked under of, [sic] the authority of the Income Tax Act,” because answering “may improperly deem [him] to be a legal class of person of a taxpayer, which could violate (or force [him] to surrender) [his] constitutionally protected fundamental human rights and freedoms.” He provided no further response to the Crown’s questions.

[15] Counsel for the Crown wrote to apprise the Court of what had occurred and to seek direction as to appropriate next steps. She submitted that in accordance with what the Tax Court judge had stated at the June 1, 2016 case conference, the appeal should be summarily dismissed.

[16] The Tax Court judge granted judgment dismissing the appeal with costs. The judgment recited among other things the two case management conferences, the extension that had been granted, the warning provided to Mr. Lynch that if he did not answer the Crown's questions the appeal could be dismissed without further formality, his refusal to answer the Crown's questions, and the grounds for the refusal that he provided. The recitals also referred to the inherent jurisdiction of the Tax Court to control its own process and prevent abuse. It is from this judgment that Mr. Lynch now appeals.

[17] The judgment of the Tax Court is a discretionary order. This Court may therefore interfere only if the judge incorrectly decided a question of law or made a palpable and overriding error of fact (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331 at paras. 64-66, 69, 72; *Paletta v. Canada*, 2017 FCA 33, 2017 DTC 5039 at para. 4). In my view the Tax Court judge made neither category of error that would warrant interfering with her decision.

[18] First, she made no error of law. The Tax Court of Canada, like other courts, has jurisdiction to address an abuse of process in the conduct of proceedings before it (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77 at para. 35; *Main Rehabilitation Co. v. Canada*, 2004 FCA 403, [2005] 1 C.T.C. 212 at para. 7). Abuse of process is a flexible doctrine,

based on the idea that a court has an inherent discretion to terminate litigation at the preliminary stage in order to prevent abusive proceedings that bring the administration of justice into disrepute (*Timm v. Canada*, 2014 FCA 8, [2014] F.C.J. No. 61 at para. 30). Both the taking of positions like those Mr. Lynch adopted here and conduct that frustrates the discovery process have been characterized as abusive in this sense (*Cassa v. R.*, 2013 TCC 43, 2013 DTC 1060 at para. 14; *Fafard v. Canada*, 1999 CanLII 9103, [2000] 2 C.T.C. 362 (F.C.A.) at paras. 5-6). Here the Tax Court judge could also have relied on paragraph 116(4)(a) of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a, which expressly authorizes dismissal of an appeal where the appellant refuses or fails to answer a proper question on a written examination, and paragraph 126(4)(b), by which a case management judge may dismiss an appeal where the appellant fails to comply with the time requirements set out in a case management timetable. They too demonstrate the potential seriousness of obstructing litigation in the Tax Court.

[19] Second, while the summary dismissal of an appeal is a drastic remedy, I also see no palpable and overriding error of fact in the exercise of the Tax Court judge's discretion. She gave Mr. Lynch ample opportunity to comply with her orders. She expressly warned him of the consequences if he failed again to comply. As another Tax Court judge observed in *Cassa*, above, behaviours such as those in which Mr. Lynch engaged "hinder and limit the availability of Court resources for those self-represented litigants who are making an honest attempt to advance their appeals through the Court system in a timely manner" (at para. 14).

[20] I would therefore dismiss the appeal. Since counsel for the Crown advised at the hearing that if the Crown was successful he would not be seeking costs, I would do so without costs.

“J.B. Laskin”

J.A.

“I agree.

Wyman W. Webb J.A.”

“I agree.

D. G. Near J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-455-16

STYLE OF CAUSE: MARK LYNCH v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: DECEMBER 4, 2017

REASONS FOR JUDGMENT BY: LASKIN J.A.

CONCURRED IN BY: WEBB J.A.
NEAR J.A.

DATED: DECEMBER 15, 2017

APPEARANCES:

Mark Lynch FOR THE APPELLANT
(on his own behalf)

Mark Heseltine FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada