Federal Court  Cour fédérale

Date: 20150223

Docket: T-1206-14

Citation: 2015 FC 222

Vancouver, British Columbia, February 23, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

COLIN G. MCCARTIE

Applicant

and

CANADA REVENUE AGENCY
(ATTORNEY GENERAL OF CANADA)

Respondent

JUDGMENT AND REASONS

[1] Canada Revenue Agency [CRA] assessed and reassessed Colin G. McCartie under the *Excise Tax Act*, RSC 1985 c E-15 [*ETA*]. Mr. McCartie filed this application for judicial review in respect of:

> The Decision by Canada Revenue Agency ("CRA"), on May 5, 2014, to administer and enforce the terms of the Excise Tax Act ("ETA") upon the applicant for an alleged GST liability of $33,497.31 plus penalties and interest, under factual circumstances where the applicant, at all material times during the period of the

> (re)assessment, was not a GST registrant, and where the applicant had not made an application for registration.
>
> The decision, as well as other prior decisions by CRA to administer and enforce the provisions of the ETA against the applicant, who is not a registrant, form part of a continuing course of conduct by CRA, which have caused harm and injury to the applicant.

[2] In the application, Mr. McCartie seeks various forms of relief which I would summarize, in part, as follows:

1. An order staying the enforcement of the alleged GST debt until his objection to the assessment is heard by the Tax Court of Canada, and all appeals are exhausted. Mr. McCartie has placed his objection on hold pending the outcome of criminal charges against him involving tax evasion.

2. An order upholding that his property rights cannot be impacted without due process until his objection to the assessment is heard by the Tax Court of Canada, and all appeals are exhausted. By this I take him to mean that CRA would be prevented from enforcing and collecting on the alleged GST debt.

3. A response to the constitutional question set out in Appendix A which, he submits, is not within the jurisdiction of the Tax Court of Canada.

Background

[3] There is a long history of events between these parties. The following, which includes the relevant events, can only provide a flavour of that history.

[4] In February of 2010, CRA activated a previously closed GST registration number of Mr. McCartie in order to raise a GST assessment against him. Mr. McCartie commenced a judicial review proceeding for this action on April 6, 2010. The account was closed on May 26, 2010, and CRA was granted a motion dismissing the application on July 12, 2010.

[5] On March 23, 2011, the GST account was reopened. Mr. McCartie again filed an application for judicial review but later withdrew the application.

[6] In May 2011, the applicant was employed by Pattison Outdoor Advertising LLP [Pattison]. The CRA issued a Requirement to Pay to Pattison [Pattison RTP] at a rate of 60% of the applicant's salary.

[7] After some negotiations between the CRA and Mr. McCartie, the Pattison RTP was decreased to 30% on July 5, 2011, provided that Mr. McCartie made certain disclosures and a written statement that his only household income was his T4 earnings and his only active bank accounts are those shared with his spouse.

[8] It appears that Mr. McCartie failed to provide requested documents and the Pattison RTP was increased to 45% on September 13, 2011.

[9] On January 25, 2012, Mr. McCartie notified the CRA that he was looking for work and that he was living off of credit cards and charity of friends and family. He had also applied for Employment Insurance [EI].

[10] On June 27, 2012, the CRA issued Requests for Information [RFI] to CIBC, Bank of Montreal and TD Canada Trust. It was determined that the applicant was earning income on a monthly basis above and beyond his EI and failed to notify the CRA.

[11] On August 21, 2012, the CRA sent a Statutory Set Off [SSO] notice at 40% to the agency in charge of EI. It was subsequently withdrawn on September 27, 2012.

[12] On August 22, 2012, the CRA sent a RTP to TD Canada Trust.

[13] In August 2012, the CRA and Mr. McCartie reached some agreement with respect to his GST debt. In a letter dated September 20, 2012, Mr. McCartie described that agreement, as follows:

> You have agreed to postpone further collection action against Annie and I in lieu of the post-dated payments in your possession [of $100 per month], until such time as the current criminal proceedings against my wife and I are concluded. [emphasis added.]

The CRA agreed on the condition that Mr. McCartie provided full and frank disclosure of his income and assets. The CRA states that they did not agree to refrain from continuing investigation into the applicant. It distinguishes between investigation and collection – Mr. McCartie does not.

[14] On September 20, 2013, Mr. McCartie swore an affidavit that he was not an employee but was working in a non-commercial activity with no intent to profit. He was paid about $3400 a month. The CRA obtained bank statements that it says show that he channelled funds through Pacesetter Trading Company Ltd. [Pacesetter] to his personal account and that Mr. McCartie did not disclose this information.

[15] The CRA also says that Mr. McCartie opened a new bank account under a numbered company with a corporate income tax account but no GST/HST account. It says that money was also channelled from Pacesetter to this numbered company.

[16] On May 5, 2014, the CRA sent Pacesetter a RFI pursuant to subsection 289(1) of the *ETA* [the Pacesetter RFI]. This was the event that caused Mr. McCartie to file this application.

[17] As noted earlier, Mr. McCartie has filed objections to the assessments in question and the objections are currently being held in abeyance pending the criminal proceeding for tax evasion.

Position of the Applicant

[18] Mr. McCartie alleges that the May 5, 2014 RFI is part of a series of events relating to the assessments at issue. He argues that the CRA does not have the authority to unilaterally register an individual involuntarily for GST and he asserts that this violates natural justice, due process of law and procedural fairness.

[19] He makes *Charter* arguments under section 7, fundamental justice, and section 8, unreasonable search and seizure. He also makes a written argument under section 2(a), religious freedom, saying that the CRA in causing him to act against his will, has caused him to violate God's laws found in scripture not to covenant with an alien or foreign god, and not to walk in their ordinances.

[20] Lastly, he advances a right to property argument under the *Canadian Bill of Rights*, SC 1960 c 44.

Position of the Respondent

[21] The CRA's position is that the Pacesetter RFI is the only action that is reviewable in this application. It submits that all other actions taken by the CRA cannot be judicially reviewed as they are time-barred under subsection 18.1(2) of the *Federal Courts Act*, RSC 1985 c F-7 [*FCA*].

[22] The CRA also submits that any issues relating to whether Mr. McCartie owes a GST debt, falls within the jurisdiction of the Tax Court of Canada and says that Mr. McCartie's allegation that the CRA does not have the constitutional authority to register his GST account is a disguised attack on the validity of the GST debt. The owing of GST, it says, is by operation of the *ETA* and the registration of the GST number is just an administrative process.

Issues

[23] The issues that arise from the parties' submissions are three-fold:

1. What action(s) of the CRA can be judicially reviewed?

2. What is the jurisdiction of the Federal Court in this matter?

3. Do any constitutional issues exist?

Analysis

A. *What action(s) of the CRA can be judicially reviewed?*

[24] Rule 302 of the *Federal Court Rules*, SOR/98-106 provides that "unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought." This application seeks judicial review of the Pacesetter RFI. This is a single decision and the application was filed within the 30-day period set out in subsection 18.1(2) of the *FCA*.

[25] Mr. McCartie submits that the Pacesetter RFI is part of a continuing course of conduct, all of which is reviewable. In *Servier Canada Inc v Canada (Minister of Health)*, 2007 FC 196 at para 17, the court explained what a continuing course of conduct means:

> This being said, the case law on the issue is clear, it is a contravention of Rule 302 for an applicant to challenge two decisions within one application, unless the Court orders otherwise or the applicant can show that the decisions at issue form part of a "continuous course of conduct" (*Khadr v. Canada (Minister of Foreign Affairs)*, [2004] F.C.J. No. 1391, 2004 FC 1145; *Truehope Nutritional Support Ltd. v. Canada (Attorney General)*, [2004] F.C.J. No. 806, 2004 FC 658). In *Khadr*, above at paragraph 10, Justice von Finckenstein found that where "two sets of decisions were made at different times and involve a different focus they cannot be said to form part of a 'continuing course of conduct.'" Moreover, in *Truehope Nutritional Support Ltd*, above at paragraph 6, Justice Campbell found that:

> Continuing acts or decisions may be reviewed under s.18.1 of the Federal Court Act without offending Rule 1602(4) [now Rule 302], however the acts in question must not involve two different factual situations, two different types of relief sought, and two different decision-making bodies...

[26] I am unable to accept Mr. McCartie's submission that the numerous events he addressed in his memorandum and in his oral submissions are a continuing course of conduct as the term is used in the jurisprudence. While this ordeal deals with the same GST debt owed by him, the actions taken by the CRA were separate and distinct. The Pacesetter RFI is a different action than registering or re-activating his GST account. Moreover, Mr. McCartie himself has filed separate judicial reviews in this alleged continuing course of conduct in 2010 and 2011. The first application was dismissed and the second was withdrawn. In my view, it is not open to Mr. McCartie in this judicial review application to raise and attempt to review the actions of the CRA other than the Pacesetter RFI.

[27] I am further of the view that the one decision under review, the Pacesetter RFI, was reasonable. I am unable to agree with Mr. McCartie that it breached the terms of the agreement, which he himself described as an agreement that "further collection action" would be postponed in exchange for his monthly payments. I agree with the CRA that the Pacesetter RFI is not a collection action; rather, it is an investigation action. CRA is entitled to reasonably investigate whether Mr. McCartie has provided full and frank disclosure of his assets and income. If, as a result of its investigative action, it is ascertained that Mr. McCartie has breached their agreement, then it will be entitled to pursue further collection action.

[28] This finding is sufficient to dispose of this application.

B. *Jurisdiction of the Federal Court*

[29] This court has held that "[CRA] is empowered to assign a GST number and assess an individual, whether or not that individual has voluntarily applied for a GST number" and that any attack on that assignment is a collateral attack on the GST assessment which is exclusively within the jurisdiction of the Tax Court of Canada: *Lewry v Canada (The Minister of National Revenue)*, Court File T-1430-11, Order dated December 23, 2011.

[30] Therefore, this court has no jurisdiction to address the issues Mr. McCartie has raised concerning the involuntary assigning of a GST number or the taking of his property without due process. All of those issues belong in the Tax Court of Canada.

C. *Constitutional Question*

[31] Because this application as it relates to the Pacesetter RFI is dismissed on the merits, and the court has no jurisdiction over the remaining issues, the constitutional question Mr. McCartie has raised does not arise and needs not be answered. The question relates to the earlier GST assessment made by CRA and is part and parcel of the challenge Mr. McCartie is making as to the validity of that assessment. I agree with CRA that that issue and the constitutional question are within the jurisdiction of the Tax Court of Canada.

[32] CRA seeks its costs of this application in the amount of $2,500.00, all in. The court finds that to be a reasonable sum.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed, with costs payable to the respondent fixed at $2,500.00, all in.

"Russel W. Zinn"
Judge

APPENDIX A

An application for Judicial Review has been made in the Federal Court of Canada to challenge the validity, applicability and/or the operability of the Exercise Tax Act ('ETA'). Where the following Constitutional questions will be raised:

1. When the Minister of National Revenue, or a designated agent ('the Minister') unilaterally registers an individual for GST, and

2. When the Minister unilaterally registers an individual for GST without a hearing to determine the individual's rights and obligations, and

3. When the Canada Revenue Agency ('CRA') interprets section 123(1) of the ETA, the definition of "registrant – a person who is registered or required to be registered" to mean they are authorized to unilaterally register an individual for GST without a hearing to determine the individual's rights and obligations, does it violate the Canadian Charter of Rights and Freedoms ('the Charter') and the Canadian Bill of Rights (the 'Bill'), in that:

   a. It involuntarily deprives the individual, via s. 222 and s. 313-321 of the ETA, of their inalienable right to the enjoyment of their property and the right not to be deprived thereof except by due process of law, as protected by s.7 and 8, and by way of s. 26 of the Charter and s. 1(a) and 2(e) of the Bill?

   b. It involuntarily converts the individual's property, via s. 222 of the ETA, into the property of Her Majesty without full disclosure, without the individual's

express consent and without regard for the principles of procedural fairness and natural justice that are protected by s. 7 and by way of s. 26 of the Charter and s. 1(a) and 2(e) of the Bill?

c. It compels the individual into the role of a trustee for her Majesty the Queen, without full disclosure and without his express consent. A role that has fiduciary duties and responsibilities. And, the non-performance of these duties and responsibilities results in, by way of assessment and collections: the deprivation of his property without due process of law, and by way of criminal proceedings: fines and imprisonment. The compulsion which is without regard for procedural fairness and natural justice is in violation of s. 7 and by way of s. 26 of the Charter and s. 1(a) and 2(e) of the Bill?

d. It compels the individual into involuntary servitude as an agent or officer for her Majesty the Queen without full disclosure, without the individual's express consent and without compensation, in violation of s.7 of the Charter and s. 1(a) of the Bill?

e. In this case it deprives the individual of his freedom of conscience and religion as protected by s. 2(a) of the Charter and s. 1(c) of the Bill, by involuntarily contracting him into commerce in violation of God's law....

FEDERAL COURT

SOLICITORS OF RECORD

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