Federal Court  Cour fédérale

Date: 20161130

Docket: T-493-16

Citation: 2016 FC 1329

Ottawa, Ontario, November 30, 2016

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

MARCO VALLELUNGA

Applicant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF REVENUE

Respondent

JUDGMENT AND REASONS

[1] In December 2002, the Applicant's father, Giuseppe Vallelunga, transferred real property known as 259 Regina Avenue in Thunder Bay, Ontario, to the Applicant for less than fair market value. As a result of this non-arm's length transfer, the Applicant was assessed by the Canada Revenue Agency and determined to be liable for $69,329.75. Ultimately, this debt resulted in a memorial issued pursuant to section 223 of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [*Act*] being registered against the title to the real property on November 21, 2007. The Applicant has

applied for cancellation of the memorial pursuant to paragraph 223(7) (c) of the *Act* as well as the cancellation of all penalties and interest in respect of the memorial.

I. Background

[2] In a letter dated February 16, 2006, the Canada Revenue Agency notified the Applicant of the CRA's intention to assess the Applicant under subsection 160(2) of the *Act* for the amount which was the lesser of, the benefit he received from the non-arm's length transfer of the Regina Avenue property in 2002, and the amount of his father's outstanding tax debt which, at the time of the transfer, totalled $110,325.85. In May 2006, the CRA proceeded to assess the Applicant pursuant to subsection 160(1) of the *Act* for the amount of the equity transferred to him by his father, being $69,329.75, plus accrued interest to the date of mailing of the Notice of Assessment on May 25, 2006. The total amount assessed was $88,564.74. A year or so later, the CRA advised the Applicant in a letter dated August 24, 2007, that the amount of $88,564.74, plus interest, remained outstanding and, that if he failed to respond to the letter or to pay the full amount owing within 14 days, appropriate legal action would be taken without further notice.

[3] The CRA continued its collection efforts by sending the Applicant and his bank a requirement to pay dated September 10, 2007, which sought to garnish his bank account. On October 11, 2007, the principal amount of the Applicant's tax debt was certified pursuant to subsection 223(2) of the *Act* and registered in this Court pursuant to subsection 223(3). The CRA advised the Applicant of this certificate in a notice dated November 1, 2007; this notice stated that if the Applicant did not pay the amount due, it might be necessary to seize and sell some of his assets to eliminate the debt. In response to this notice, the Applicant's legal counsel called the

CRA on November 8, 2007, requesting information about the certificate; he was informed that the certificate related to the assessment under section 160 of the *Act* dated May 25, 2006, and that the CRA would be proceeding to register a lien against the Applicant's property. On November 21, 2007, the CRA registered a notice of lien pursuant to subsections 223(5) and (6) of the *Act* against the Applicant's Regina Avenue property as well as another property of the Applicant located in Thunder Bay.

[4] In 2012, the Applicant decided to sell the Regina Avenue property and the Applicant's representative obtained a copy of the lien from the Land Registry Office; the lien stated that the Applicant owed an outstanding debt of $69,329.75, plus interest, to the CRA. On May 10, 2012, the Applicant's accountant obtained a Client Summary from the CRA website which stated that his account balance was zero, and on June 22, 2012, the Applicant's accountant conducted another online search and confirmed that the account balance remain unchanged. On December 17, 2012, the Applicant sold the Regina Avenue property; but, in order to complete the sale, a holdback in the amount of $150,000 was set aside until the apparent discrepancy between the lien and the Client Summary was resolved. According to the CRA's records, neither the Applicant nor any of his representatives contacted the CRA after the sale of the property.

[5] As of May 10, 2016, the total outstanding balance of the Applicant's income tax debt, including interest, was $159,537.36.

II. Issues

[6] The Applicant submits that the only issue is whether the Crown is estopped from enforcing the memorial because of its misrepresentation of fact made to him. For the Respondent, the issue is whether the CRA can be compelled to vacate the memorial on the basis of estoppel. In my view, however, the overarching issue is whether the doctrine of estoppel by representation applies in this case.

III. Analysis

A. *Does the Doctrine of Estoppel by Representation Apply?*

[7] The Applicant says that the doctrine of estoppel by representation binds the Crown in cases where there is a representation made about facts. According to the Applicant, the CRA's representation, in the form of the Client Summary, is a clear statement of fact that showed that the Applicant did not owe any taxes. The Applicant maintains that he suffered a detriment as a result of the Client Summary in that a $150,000 holdback was applied upon sale of the Regina Avenue property.

[8] The Respondent says that estoppel does not apply in this case because estoppel cannot override the law and, therefore, cannot prevent the Crown from exercising its statutory duty to collect a tax debt. According to the Respondent, the Minister of National Revenue has a statutory duty under subsection 220(1) to administer and enforce the *Act*, which includes the collection of

an outstanding income tax debt, and case law has established that the doctrine of estoppel can never interfere with the proper carrying out of the provisions of Acts of Parliament.

[9] The parties agree that the essential factors giving rise to an estoppel by representation are set forth in *Canadian Superior Oil Ltd v Paddon-Hughes Development Co*, [1970] SCR 932 at para 19, [1970] SCJ No 48 [*Canadian Superior Oil*]; the three elements to be satisfied are:

> (1) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made.
>
> (2) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made.
>
> (3) Detriment to such person as a consequence of the act or omission.

[10] In addition, the representation must be unambiguous and unequivocal (see: *Canada (Attorney General) v Jencan Ltd*, [1997] FCJ No 876 at para 49, [1998] 1 FC 187, (FCA)), and that to constitute an estoppel it is necessary that the truth not be known to the party relying upon the representation (see: *Livingstone v Jannetta*, [1931] OJ No 422 at para 42, [1931] OR 325, (Ont CA), rev'd on other grounds, [1932] SCR 175 [*Livingstone*]).

[11] Although in certain circumstances the doctrine of estoppel may lie against the Crown, estoppel will generally not bind the Crown if it would "work a contrary result to that set out in a statute; nor should it work to tie the hands of the legislature in the future." (See: Bruce MacDougall, *Estoppel* (Markham: LexisNexis Canada, Inc, 2012) at 47 [*Estoppel*]). In the tax context, the Crown is not bound by the statements of its officials regarding opinions about the

interpretation of a statute (*Estoppel* at 49); though it may be if a taxpayer relies to his detriment upon an erroneous statement about the status of an educational institution for tax purposes (see: *Rogers v Canada*, [1998] TCJ No 31 at para 7, 98 DTC 1365). The Crown may also be bound by estoppel "where a statute allows a government official some discretion" (*Estoppel* at 49).

[12] In my view, the doctrine of estoppel cannot be utilized in the circumstances of this case to erase the Applicant's outstanding income tax debt which he is obligated to pay under the *Act*. Estoppel cannot be used to remove an obligation to obey a statute or, as in this case, to pay a valid and binding tax assessment (see: *Maritime Electric Co v General Dairies Ltd*, [1937] JCJ No 3 at para 9, [1937] 1 DLR 609; also see *Kenora (Town) Hydro Electric Commission v Vacationland Dairy Co-operative Ltd*, [1994] 1 SCR 80 at para 52, [1994] SCJ No 3). Moreover, in *Abbott v Canada*, 2001 FCT 242 at para 70, [2001] 3 FC 342, this Court observed that: "it is trite law to say that the Crown cannot be estopped from applying the law to a subject in terms of enforcing regulatory or taxing provisions."

[13] I agree with the Respondent that subsection 220(1) places a positive duty on the Minister to administer and enforce the *Act*. This positive duty encompasses, at the very least, an obligation to assess taxpayers under the *Act* and to take appropriate steps to collect unpaid taxes. Moreover, when non-arm's length persons transfer property to each other, subsection 160(1) of the *Act* makes both "the transferee and transferor... jointly and severally, or solidarily, liable to pay a part of the transferor's tax." The Applicant in this case did not question or object to the assessment made in 2006 prior to the commencement of this application.

[14] Although I am of the view that the Applicant cannot resort to the doctrine of estoppel to eradicate his tax debt, this is not to say that the Crown could never be estopped from enforcing a memorial through a registered lien. As noted above, estoppel might apply when the Crown exercises a discretionary power conferred upon it by statute. In this case, the CRA exercised its discretion to obtain a memorial and file it as a lien against the Applicant's Regina Avenue property. The evidence shows that the CRA made no representation whatsoever to the Applicant that it would not enforce the tax debt or not file the lien. On the contrary, the Applicant's legal counsel was apprised of the CRA's intentions to take action to enforce the tax debt during a telephone call on November 8, 2007, a week after a certificate was filed pursuant to subsection 223(2) of the *Act* and registered pursuant to subsection 223(3). The Applicant does not claim that the CRA misrepresented the manner in which it intended to enforce the tax debt.

[15] In any event, even if I am incorrect in my view that the Applicant cannot resort to the doctrine of estoppel to eliminate his tax debt, the Applicant has nevertheless failed to satisfy the onus upon him to show that an estoppel by representation has been established. The Applicant has not satisfied any of the elements from *Canadian Superior Oil*.

[16] It is difficult to see how any intention on the part of the CRA can be attributed to the Client Summary. It is true, as the Applicant rightly points out, that the Client Summary indicated a zero account balance. However, the intent requirement of the first element from *Canadian Superior Oil* requires the Applicant to establish that "a reasonable person would interpret the purpose of the statement as having been made with the intention that it be relied on" (*Estoppel* at 161). In this case, it appears that the Applicant unreasonably assumed that because the Client

Summary showed a zero account balance, his tax debt and the associated lien had somehow been removed.

[17] I agree with the Respondent that the Client Summary was not a clear and unequivocal representation intended to induce the Applicant to sell his property in the belief that the lien against the property would be or had been removed. The Client Summary is not a sufficiently unequivocal representation that the Applicant no longer owed the $69,329.75, plus interest. On the contrary, it only details a taxpayer's own personal income tax assessments and does not include any information about a so-called "derivative assessment" based on the underlying debt of another taxpayer, such as an assessment under section 160 of the *Act*. Nothing in the Client Summary warrants that there are no other assessments against a taxpayer who relies upon it. Indeed, the words used in the Client Summary, e.g., "status of return", "instalments" and "payments made on filing", are suggestive of assessments made with respect to annual income tax returns.

[18] The Applicant cannot satisfy the second element of estoppel by representation because there is no act or omission resulting from the representation. The Applicant had notice of the debt and his counsel was aware of the CRA's intention to register a lien since 2007. However, the Applicant took no steps to contact the CRA before selling the Regina Avenue property. Furthermore, the Applicant did not contact the CRA about the outstanding debt even after he says he became aware of the lien in 2012. Although he obtained the Client Summary, the Applicant never bothered to contact the CRA to specifically inquire about the lien.

[19] A party seeking to show an estoppel by representation "must have been misled or deceived by the representation… if the representee knew or ought to have known of the falsity of the representation, then it cannot form the basis for an estoppel by representation" (*Estoppel* at 244; also see: *Livingstone*). The Applicant has not established that he was unaware that the alleged representation in the Client Summary was false. The evidence is such that the Applicant was well aware, at least since November 2007, that there was an outstanding income tax assessment in respect of which a lien would be registered against the Regina Avenue property. The Applicant was notified on numerous occasions prior to sale of the property about the assessment, the debt, and collection of the debt. Although the Applicant never personally responded to the various letters and notices from the CRA, his counsel spoke with the CRA on November 8, 2007, and was informed about the debt and the CRA's intention to register a lien. Additionally, the Applicant received a copy of the lien from the Land Registry Office, which stated the debt owing to the CRA, when he prepared to sell his property in 2012.

[20] Lastly, the Applicant has not suffered any detriment from allegedly acting on the representation in the Client Summary. The Applicant simply decided to holdback $150,000 in order to effect the sale of the Regina Avenue property. Even if the Applicant had never received the Client Summary, he still would have likely been compelled to agree to the holdback to effect sale of the property, unless he contacted the CRA and had the lien discharged. The Applicant's conduct also demonstrates the lack of detriment, in that he never bothered to contact the CRA and have the lien discharged prior to the sale of the property and he has allowed the money to remain in a holdback account for nearly four years. I agree with the Respondent that the Applicant's complacency exhibits that there is no detriment.

IV. Conclusion

[21] The Applicant's application under subsection 223(7) of the *Act* is dismissed with costs in favour of the Respondent.

[22] The Respondent is entitled to costs in such amount as may be agreed to by the parties. If the parties are unable to agree as to the amount of such costs within 15 days of the date of this judgment, either party shall thereafter be at liberty to apply for an assessment of costs by an assessment officer in accordance with the *Federal Courts Rules*, SOR/98-106.

JUDGMENT

THIS COURT'S JUDGMENT is that: the Applicant's application under subsection 223(7) of the *Income Tax Act* is dismissed with costs in favour of the Respondent; and that the Respondent is entitled to costs in such amount as may be agreed to by the parties, provided that if the parties are unable to agree as to the amount of such costs within 15 days of the date of this judgment, the Respondent shall thereafter be at liberty to apply for an assessment of costs by an assessment officer in accordance with the *Federal Courts Rules*, SOR/98-106.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-493-16
STYLE OF CAUSE:	MARCO VALLELUNGA v HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE
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