Date: 20100915

Docket: T-369-10

Citation: 2010 FC 921

Ottawa, Ontario, September 15, 2010

PRESENT: The Honourable Mr. Justice Martineau

IN THE MATTER OF the *Income Tax Act*,

AND

IN THE MATTER OF notices of assessments by the Minister of National Revenue under the *Income Tax Act*;

AGAINST:

GÉRARD ROSS
47, rue de la Réserve
Les Escoumins, Quebec G0T 1K0

and

CLAIRE ROSS
47, rue de la Réserve
Les Escoumins, Quebec G0T 1K0

Debtors-Respondents

REASONS FOR ORDER AND ORDER

[1] With this application for re-consideration, the debtors-respondents are seeking the setting aside of the order made by Beaudry J. on June 1, 2010, upholding the amended jeopardy collection order made by Mactavish J. on March 15, 2010 under subsection 225.2(2) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.) c. 1 (the federal Act).

[2] In his reasons for order (2010 FC 594), Beaudry J. finds that the evidence submitted by the debtors-respondents does not raise any doubt that the criterion set out in subsection 225.2(2) of the Act was not met, whereas the additional evidence submitted by the Canada Revenue Agency (the Agency) reinforces the reasonable grounds to believe that the delay arising from the opposition process would jeopardize the collection of the debt due to Her Majesty in right of Canada.

[3] Under subsection 225.2(13) of the federal Act, no appeal lies from the order of Beaudry J. However, on motion, the Court may set aside or vary an order by reason of a matter that arose or was discovered subsequent to the making of the order: paragraph 399(2)(a) of the *Federal Courts Rules*, SOR/98-106, as amended (the Rules). The facts surrounding the submission of this application are not being contested; rather, what is in dispute is their characterization for the purposes of the exercise of the Court's power of re-consideration.

[4] In this case, the debtors-respondents are challenging, before the competent authorities, the validity of the assessments issued by the Deputy Minister of Revenue of Quebec under the *Taxation Act*, R.S.Q., c. I-3 (the provincial Act), and by the Minister of National Revenue (the Minister) under the federal Act. Objections have been raised in this regard on the basis that Gérard Ross is entitled to a tax exemption arising out of his status as an Indian under the *Indian Act*, R.S.C., 1985, c. I-5.

[5] At the time when Beaudry J. heard the matter, the Court of Quebec had not yet handed down its decision in the matter of Gérard Ross's appeal, in which he sought to have the provincial

assessments vacated. In this case, in upholding the validity of the jeopardy collection order, Beaudry J. assumed that the federal assessments were valid, while also noting that the provincial assessments were being disputed in the Court of Quebec. The development described below occurred in the course of Beaudry J.'s consideration of the case, without the attorneys involved informing the Federal Court.

[6] Thus, in a decision dated May 20, 2010, the Court of Quebec ruled in favour of Mr. Ross and vacated the provincial assessments (*Gérard Ross c. Sous-ministre du Revenu du Québec*, N^{o}. 200-80-002022-067). Arguing that this is a new "matter" and that the Minister is bound by the Court of Quebec judgment, the debtors-respondents now submit that if Beaudry J. had known about the said judgment, he would have handed down a different decision, hence this application for re-consideration.

[7] For his part, the Minister submits that the Court of Quebec judgment is not a new matter and that it does not affect the validity of the federal assessments or of Beaudry J.'s findings, especially given that the debtors-respondents and their counsel learned of the Court of Quebec judgment a few days before Beaudry J. made his order, which means that the conditions for an application for re-consideration to be allowed have not been met in this case.

[8] There is no basis for setting aside Beaudry J.'s order. Even if we accept that the Court of Quebec judgment constitutes a new "matter" and that it was impossible for the debtors-respondents' counsel to communicate with Beaudry J. in the days after it was received, it has not been shown that

the said judgment would have a "determining influence" on the decision that Beaudry J. was called upon to make under subsection 225.2(11) of the federal Act, to the effect that this application must fail (*Ayangma v. Canada*, 2003 FCA 382, 313 N.R. 312, at paragraph 3).

[9] Because the provincial assessments were vacated by the Court of Quebec, the debtors-respondents submit that the federal assessments are now void. Their argument has no basis in law. The federal and provincial assessments were established under different acts and by different authorities. Beaudry J. did not have jurisdiction to vacate the federal assessments (*Redeemer Foundation v. Canada (National Revenue)*, [2008] 2 S.C.R. 643, 2008 SCC 46, paragraph 58). Subsection 152(8) of the federal Act deems federal assessments to be valid unless varied or vacated by the Minister or the Tax Court of Canada, on objection or on appeal.

[10] Nonetheless, it is highly speculative to claim today that the decision of Beaudry J. would have been different if he had had knowledge of the Court of Quebec judgment. The Minister refused to vacate the federal assessments, and chances are that a possible appeal by the debtors-respondents to the Tax Court of Canada will be hotly contested by Canadian tax authorities. The dispute between the parties is regarding the *situs* of the commercial fishery operated by Mr. Ross and the scope of the exemption based on his Indian status. Despite the existence of a provincial decision directly in favour of the argument put forward by the debtors-respondents, the Tax Court of Canada made the opposite decision in an apparently similar case if one accepts the contentions of Minister's counsel: *Ballantyne v. The Queen*, 2009 TCC 325 (under appeal). As explained to us at the

application for re-consideration hearing, it is based on that case that the Minister today refuses to vacate the original assessments and in 2010 reassessed the debtors-respondents.

[11] Furthermore, not only has the Deputy Minister of Revenue of Quebec appealed the Court of Quebec judgment, but contrary to what the debtors-respondents contend, the Minister never agreed to be bound by that judgment. At most, he agreed in 2008 to postpone consideration of the objections relating to Mr. Ross's original assessments (years 2001–2005) until a decision was made by the Court of Quebec. However, in the meantime, new assessments (years 2001–2008) were made in March 2010, while there were grounds to believe that the collection of the amounts owed by the debtors-respondents could be jeopardized if a delay were granted, hence the Agency decision to apply to the Court for the issuance of a jeopardy collection order.

[12] Lastly, in light of the circumstances, the debtors-respondents' tax debts, the action plan developed and the steps undertaken by Mr. Ross to transfer his business to his son, Beaudry J. found that the Agency had demonstrated that, in this case, it had reasonable grounds to believe that the collection of the amounts owed to Her Majesty in right of Canada would be jeopardized if the debtors-respondents were granted a delay. The debtors-respondents did not seriously challenge that finding or the facts underlying the order made by Beaudry J. In this connection, the Court of Quebec judgment is not relevant.

[13] In conclusion, it is not the role of the judge reviewing a jeopardy collection order to rule on the legality of a notice of assessment. The finality of an order made under subsection 225.2(11) of

the federal Act serves an important public interest. In this case, the Federal Court is not bound by a judgment delivered by any court other than the Federal Court of Appeal and the Supreme Court of Canada. To that end, by invoking the Court of Quebec judgment as a new "matter," the debtors-respondents are trying to indirectly do what they cannot do directly.

[14] For these reasons, this application is dismissed with costs.

ORDER

THE COURT ORDERS that the *de bene esse* application to re-consider and motion to set aside the order made by Beaudry J. on June 1, 2010, be dismissed with costs.

"Luc Martineau"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-369-10
STYLE OF CAUSE:	***Income Tax Act*** **v.** **GÉRARD ROSS AND CLAIRE ROSS**
PLACE OF HEARING:	Québec, Quebec
DATE OF HEARING:	September 9, 2010
REASONS FOR ORDER:	MARTINEAU J.
DATE OF REASONS:	September 15, 2010

APPEARANCES:

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