

Federal Court



Cour fédérale

**Date: 20130325**

**Docket: T-208-13**

**Citation: 2013 FC 305**

**Ottawa, Ontario, March 25, 2013**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ALBERT ROSS DEEP, M.D., F.R.C.P. (C)**

**Plaintiff**

**and**

**CANADA REVENUE AGENCY (FORMERLY  
CANADA CUSTOMS AND REVENUE  
AGENCY) AND HER MAJESTY THE QUEEN**

**Defendants**

**REASONS FOR ORDER AND ORDER**

[1] The Defendants bring a motion in writing, pursuant to Rule 369 of the *Federal Courts*

*Rules* for:

- (a) An order directing that the within Statement of Claim be struck out in its entirety without leave to amend and that the action be dismissed accordingly;
- (b) In the alternative, should the Court refuse to grant the primary relief sought, an order providing the Defendants 45 days to serve and file a Statement of Defence;

- (c) Costs of this Motion; and
- (d) Such further and other relief as counsel may request and this Honourable Court permit.

[2] The Plaintiff's claim against the Defendants is set out in paragraph 1 of his Statement of Claim, as follows:

(1) The Plaintiff specifically claims in this action reversal, nullification and lawful quashing of the Order of Justice C. Miller of the Tax Court of Canada of June 5, 2006, Court File No. 2002-2009 (IT)G and the Order of the Federal Court of Appeal of November 15, 2007, Court File No. A-284-06 on the Grounds of FRAUD and SUBSEQUENT DISCOVERED EVIDENCE supportive of ADMINISTRATIVE MISFEASANCE OF PUBLIC OFFICE and coordinated or complicit intentional interference with economic relations, earnings, wealth, assets, retirement savings and credit injury.

(2) The Plaintiff claims complete vacation of the reassessments of the Minister with total vacation of all tax claims of the Canada Revenue Agency (heretofore C.R.A.) and cancellation or lifting of any personal or property liens and any claims for taxes alleged owing to C.R.A.

(3) SPECIAL DAMAGES for unnecessary usurption of the Plaintiff's time, interference with enjoyment of life, legal costs both personal and retained solicitors, transcript and court costs, preparation and carriage of the Tax Court proceedings, Federal Court of appeal costs, loss of business opportunity, impedance and obstruction of important concomitant litigation interfering with professional livelihood, production of excess borrowing costs due to injury to credit and an approximate amount of \$8.0 MILLION DOLLARS.

(4) GENERAL DAMAGES DUE TO MALICE AND LACK OF GOOD FAITH, characterized by recklessness, carelessness, gross negligence, gross fault, abuse of power and administrative misfeasance of \$20 MILLION .

(5) AGGRAVATED DAMAGES AND PUNITIVE DAMAGES in the discretion of this Court, \$50 MILLION suggested by the Plaintiff, to deter arbitrary capricious state action targeted against Canadian citizens and engineering of a confiscatory system tainted

with tyranny, despotism and dictatorship, foreign and unacceptable to Canadians, and alleged complicity in libellous denunciations.

(6) Interest on these amounts in accordance with the Courts of Justice Act to the date of payment to the Plaintiff.

(7) COSTS payable to the Plaintiff on a partial indemnity basis.

[3] The Defendants submit that the action is “*res judicata*, frivolous, vexatious and an abuse of this Court’s process.” The Defendants say that this action is a collateral attack on a decision of the Tax Court of Canada, and raises the same issues as the Plaintiff raised in two earlier proceedings in the Ontario Superior Court of Justice: the first action was dismissed as being *res judicata* and an abuse of process as an attempt to re-litigate the tax appeal; and the second action was dismissed after the Plaintiff, who had then been declared to be a vexatious litigant, was not granted leave to proceed.

[4] The records filed establish the following facts.

[5] The Canada Revenue Agency (CRA) conducted an audit of the Plaintiff’s 1994 to 1997 taxation years and disallowed certain claimed expenses. The reassessments were appealed by the Plaintiff to the Tax Court of Canada which issued judgment on June 5, 2006. The issues before the Tax Court are outlined at paragraph 1 of the judgment, as follows:

Dr. Albert Deep is a cardiologist. Over the past couple of decades his ability to carry on a full medical practice has been significantly impeded by a persistent preoccupation with litigation of every variety. A major issue in this case is the deductibility of over \$1 million of interest claimed during the years 1994 to 1997, a claim which stems from a lengthy legal battle between Dr. Deep and the Bank of Montreal (BMO). For the relevant periods, Deep also seeks to deduct legal costs of \$84,300 of which the Minister of

National Revenue allowed \$29,135, automobile expenses of \$32,017 of which the Minister allowed \$1,801 and office expenses of \$313,794, of which the Minister allowed \$43,457. The Minister also alleges that Dr. Deep underreported his 1997 income by approximately \$200,000.

[6] The Plaintiff's appeal was allowed as he was permitted some small amount of additional deductible expenses from that reflected in the Notices of Reassessments. However, the judge also found that the Plaintiff had failed to report \$193,213 of business income for the 1997 taxation year and he was liable for gross negligence penalties under the *Income Tax Act* for "making false statements with respect to interest and with respect to his other expenses, in that they were not business expenses, under circumstances amounting to gross negligence." Costs were awarded to the Crown.

[7] An appeal to the Federal Court of Appeal was dismissed on November 15, 2007: 2007 FCA 366. Leave to appeal to the Supreme Court of Canada was dismissed on June 19, 2008, as was a subsequent motion for reconsideration.

[8] The Plaintiff also brought an action in the Ontario Superior Court on September 5, 2005, against Canada Revenue Agency (formerly Canada Customs and Revenue Agency) and Her Majesty the Queen, among others, claiming negligence and misrepresentation in the reassessment. That action was stayed pending the proceeding before the Tax Court and later dismissed as an abuse of process.

Having lost before the Tax Court, the Federal Court of Appeal (appeal dismissed) and the Supreme Court of Canada (leave denied), Dr. Deep is now trying to re-litigate his 1993-97 tax reassessments by continuing a tort action for damages in this court.

The action is a collateral attack on the judgment of the Tax Court. The issues in this action (the alleged tax errors and Charter breaches) have been fully adjudicated. This action is therefore an abuse of process.

An appeal to the Ontario Court of Appeal was dismissed on October 8, 2010.

[9] The Plaintiff was subsequently declared a vexatious litigant by the Ontario Superior Court and was refused permission to continue a second action he had commenced in that court against the same defendants as his previous action. The claim in the second action was the following:

- (1) The Judgment of the Tax Court of Canada, dated June 5, 2006, and the Judgment of the Federal Court of Appeal, dated November 15, 2007 be impeached on the ground of FRAUD.
- (2) The Judgments supra in paragraph (1) be SET ASIDE on the ground of subsequently discovered evidence of COMPLICITY IN ANIMUS FURANDI by a CONSIPRACY.
- (3) The Reassessments and all claims for taxation for the fiscal periods encompassing 1993 to 1997 inclusively BE VACATED and any liens filed against the Plaintiff's personal residence or property be withdrawn.
- (4) COSTS of this action awarded to the Plaintiff on a substantial indemnity basis.
- (5) SPECIAL DAMAGES for unnecessary usurption of the Plaintiff's time, interference with enjoyment of life, legal costs both personal and retained solicitors, transcript and court costs, carriage of the Tax Court proceedings, Federal Court of Appeal costs, loss of business opportunity, impedance and obstruction of important concomitant litigation of an approximate amount of \$3.5 MILLION DOLLARS.
- (6) GENERAL DAMAGES DUE TO MALICE, characterized by recklessness, carelessness and gross negligence, GROSS FAULT, abuse of power, and administrative misfeasance, OF \$20.0 MILLION.

(7) AGGRAVATED DAMAGES AND PUNITIVE DAMAGES in the discretion of the Court, \$80 MILLION suggested to deter arbitrary capricious state action targeted against Canadian citizens and engineering of a confiscatory system tainted with tyranny, despotism and dictatorship. This amount includes injury to credit and reputation and complicity in libellous denunciations.

(8) Interest on these amounts in accordance with the Courts of Justice Act to the date of payment of the Plaintiff's claim.

[10] The claim in this action seeks, as the Plaintiff claims the “reversal, nullification and lawful quashing of the Order of Justice C. Miller of the Tax Court of Canada of June 5, 2006, Court File No. 2002-2009 (IT) G and the Order of the Federal Court of Appeal of November 15, 2007, Court File No. A-284-06.” This Court quite simply has no jurisdiction to grant that relief. Nor does this Court have jurisdiction to vacate the Minister's reassessments as is claimed in this action. Such claims are solely within the domain of the Tax Court of Canada, the Federal Court of Appeal, and the Supreme Court of Canada – all courts where the validity of the reassessments have been previously determined.

[11] The claims for “special damages” “general damages” and “aggravated and punitive damages” arising out of those previous court proceedings and their decisions are collateral attacks on the judgments of those courts because no such damages, even if provable, can be awarded absent a reversal or variation of those judgments. As matters now stand there is quite simply no foundation for the claims for damages and there is no jurisdiction in this Court to make the changes the Plaintiff seeks in order to be awarded any damages.

[12] For these reasons, this action is an abuse of process and it is frivolous and vexatious and it must be struck. No leave to amend is granted because the substance of the claim is not within this Court's jurisdiction. The Defendants are entitled to one set of costs which are fixed at \$2000.

**ORDER**

**THIS COURT ORDERS** that the Statement of Claim is struck out in its entirety without leave to amend, the action is dismissed, and the Defendants are entitled to one set of costs fixed at \$2,000.00.

"Russel W. Zinn"

---

Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-208-13

**STYLE OF CAUSE:** ALBERT ROSS DEEP, M.D., F.R.C.P. (C) v CANADA  
REVENUE AGENCY (FORMERLY CANADA  
CUSTOMS AND REVENUE AGENCY) and HER  
MAJESTY THE QUEEN

**MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES**

**REASONS FOR ORDER AND ORDER OF THE HONOURABLE MR. JUSTICE ZINN**

**DATED:** March 25, 2013

**WRITTEN REPRESENTATIONS BY:**

Albert Ross Deep, M.D.

PLAINTIFF  
ON HIS OWN BEHALF

Maria Vujnovic

FOR THE DEFENDANTS

**SOLICITORS OF RECORD:**

NIL

PLAINTIFF  
SELF-REPRESENTED

WILLIAM F. PENTNEY  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE DEFENDANTS