Federal Court of Appeal | Cour d'appel fédérale

CANADA

Date: 20100120

Docket: A-173-07

Citation: 2010 FCA 23

CORAM: **NADON J.A.**
EVANS J.A.
TRUDEL J.A.

BETWEEN:

IAN GOODFELLOW

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on January 20, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on January 20, 2010.

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 20, 2010)

NADON J.A.

[1] This is an appeal from an Order of Sarchuk J. of the Tax Court of Canada, dated February 23, 2007, which allowed the respondent's motion for an Order quashing the appellant's appeals from tax assessments made by the Minister of National Revenue (the "Minister") in respect of his 1991 to 1999 taxation years.

[2] In concluding as he did, the Judge was satisfied that the matters raised by the appellant's appeals had been finally determined when the Tax Court of Canada issued Judgments by consent on December 6, 2004 in dockets 2003-3785(IT) and 2003-844(IT). The Judgements, which are identical, read as follows:

> **UPON** reading the consent to judgement filed:
>
> The appeals from the assessments made under the "Income Tax Act" with respect to the 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998 and 1999 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Consent to Judgment.
>
> The appellant is entitled to no further relief.

[3] Relying on this Court's decision in *Canada v. Chevron Canada Resources Ltd.*, [1999] 1 FC 349, the Judge concluded that the respondent's plea of *res judicata* was well-founded.

[4] We are all agreed that the Judge made no error in allowing the respondent's motion. We are of the view, like the Judge, that the appellant is estopped from relitigating the cause of action which the consent Judgments of the Tax Court of Canada finally determined.

[5] The fact that these Judgments did not extend to all of the issues that were raised or could have been raised in the earlier proceedings in connection with the appellant's cause of action, i.e. the Minister's assessment of his tax liability for the 1991 to 1999 taxation years, does not constitute a bar to the application of the doctrine of *res judicata*. As Noël J.A. stated at paragraph 36 of his Reasons in *Chevron, supra:*

> [36] In my view, the position of the respondent that the only issues that have been "conclusively determined" are those that have been specifically decided is untenable if the doctrine of res judicata, in so far as it bars further litigation with respect to undecided but related matters, applies. The law on this point is summarized by the decision of the Judicial

Committee of the Privy Council in *Thomas v. Trinidad and Tobago (Attorney General)* [(1990) 115 N.R. 313 (P.C.), at pp. 316-317]:

> The principles applicable to a plea of res judicata are not in doubt and have been considered in detail in the judgment of the Court of Appeal. It is in the public interest that there should be finality to litigation and that no person should be subjected to action at the instance of the same individual more than once in relation to the same issue. The principle applies not only where the remedy sought and the grounds therefore are the same in the second action as in the first but also where, the subject matter of the two actions being the same, it is sought to raise in the second action matters of fact or law directly related to the subject matter which could have been but were not raised in the first action. The classic statement on the subject is contained in the following passage from the judgment of Wigram, V.C., in *Henderson v. Henderson* (1843), 3 Hare 100, at page 115:
>
> > ". . . where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

[6] Nor is it a bar to the application of the doctrine that the Judgements on which the respondent relies were rendered by consent. In *Chevron, supra*, the appellant, successful on its appeal, also relied on a consent judgment rendered by the Tax Court in support of its argument that that judgment had “conclusively determined” the matters that gave rise to the reassessments which the taxpayer sought to challenge.

[7] For these reasons, the appeal will be dismissed with costs.

"M. Nadon"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-173-07
(APPEAL FROM AN ORDER OF THE HONOURABLE A.A. SARCHUK, OF THE TAX COURT OF CANADA, DATED FEBRUARY 23, 2007, DOCKET NO. 2005-2805 (IT) I)	
STYLE OF CAUSE:	IAN GOODFELLOW v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 20, 2010
REASONS FOR JUDGMENT OF THE COURT BY:	(NADON, EVANS & TRUDEL JJ.A.)
DELIVERED FROM THE BENCH BY:	NADON J.A.

APPEARANCES:

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