Federal Court of Appeal  Cour d'appel fédérale

Date: 20200123

Docket: A-160-18

Citation: 2020 FCA 17

CORAM: **NADON J.A.**
PELLETIER J.A.
DE MONTIGNY J.A.

BETWEEN:

BRADMAN LEE

Appellant

and

HER MAJESTY THE QUEEN,
THE MINISTER OF NATIONAL REVENUE

Respondents

Heard at Toronto, Ontario, on January 16, 2020.

Judgment delivered at Ottawa, Ontario, on January 23, 2020.

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: NADON J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] Mr. Lee appeals from the dismissal by a judge of the Federal Court (2018 FC 504) of his appeal from the order of a prothonotary striking his statement of claim on the basis that it was scandalous, frivolous, or vexatious and an abuse of the process, as provided in Rule 221 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules). The statement of claim seeks damages and other relief against Her Majesty the Queen and the Minister of National Revenue.

[2] Mr. Lee's complaints stem from tax administration, enforcement and collection activity undertaken by Canada Revenue Agency staff as a result of Mr. Lee's under-reporting and failure to pay income tax and excise tax for certain taxation years. Mr. Lee maintains that he filed accurate income tax and excise tax returns and paid all amounts owing but that as a result of misconduct by various state actors, he has been convicted of an offence pursuant to section 239 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.) (the ITA), has had assessments issued against him for unpaid tax, interest and penalties, and has been the subject of enforcement action to collect those amounts. Mr. Lee claims that as a result of these activities he and his family have suffered great harm and have had their lives disrupted. As a result, Mr. Lee sues for damages and ancillary relief.

[3] The difficulty which Mr. Lee has not been able to overcome before the prothonotary and the Federal Court judge is that his statement of claim is a collateral attack on final and conclusive court judgments that he was guilty of an offence under section 239 of the ITA (*R. v. Lee*, [2008] 5 C.T.C. 117, [2008] G.S.T.C. 65 (Ont. C.J.)), and that confirmed the Minister's assessment of his liability for income tax and GST. Mr. Lee's appeal from his conviction pursuant to section 239 of the ITA was dismissed by the Ontario Superior Court, and the Ontario Court of Appeal (*Lee v. R.* (7 February 2011), C50827, 2011 CarswellOnt 5754 (CA)). His appeal of his income tax reassessment was dismissed (*Lee v. The Queen*, 2013 TCC 289, 2013 D.T.C. 1227). His appeals from the assessments made against him for excise tax were dismissed by the Tax Court of Canada *(Lee v. The Queen*, 2012 TCC 335, [2012] G.S.T.C. 92), save for certain adjustments so as to equalize amounts as between the criminal proceedings and the tax court proceedings and this Court (*Lee v. Canada (National Revenue*), 2013 FCA 67, [2013] G.S.T.C. 35). Mr. Lee's

applications for leave to appeal to the Supreme Court were all dismissed (*Lee v. The Queen*, [2011] 2 S.C.R. viii, 2011 CanLII 38826; *Lee v. Minister of National Revenue*, [2013] 3 S.C.R. viii, 2013 CanLII 71611).

[4] Mr. Lee's attempt to relitigate these questions by seeking damages and other relief engages the rule against collateral attack and the doctrine of abuse of process. In *Wilson v. The Queen*, [1983] 2 S.C.R. 594 at p. 599, 1983 CanLII 35, the Supreme Court set out the rule against collateral attack:

> [it] has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally — and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.

[5] As for abuse of process, in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77 [*CUPE*] at paragraph 37, the Supreme Court described the scope of that doctrine as follows:

> Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice.

[6] Mr. Lee clearly believes that he is the victim of an injustice. His desire to relitigate the decisions which went against him is understandable but it is also impermissible:

> A desire to attack a judicial finding is not in itself an improper purpose. The law permits that objective to be pursued through various reviewing mechanisms such as appeals or judicial review. Indeed reviewability is an important aspect of finality. A decision is final and binding on the parties only when all available

> reviews have been exhausted or abandoned. What is improper is to attempt to impeach a judicial finding by the impermissible route of relitigation in a different forum.
>
> *CUPE* at para. 46

[7] A reading of Mr. Lee's lengthy statement of claim discloses that all material factual assertions are either inconsistent on their face with judicial determinations in prior proceedings involving Mr. Lee or are conclusory statements which cannot be proven except by invoking those inconsistent facts.

[8] A determination that a pleading should be struck pursuant to Rule 221 is a discretionary decision reviewable on the appellate standard (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at para. 79, [2017] 1 F.C.R. 331). For the reasons set out above, I find that neither the prothonotary nor the Federal Court judge fell into palpable and overriding error in dismissing Mr. Lee's claim.

[9] I would therefore dismiss Mr. Lee's appeal with costs.

"J.D. Denis Pelletier"

J.A.

"I agree
M. Nadon J.A."

"I agree
Yves de Montigny J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-160-18
STYLE OF CAUSE:	BRADMAN LEE v. HER MAJESTY THE QUEEN, THE MINISTER OF NATIONAL REVENUE
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 16, 2020
REASONS FOR JUDGMENT BY:	PELLETIER J.A.
CONCURRED IN BY:	NADON J.A. DE MONTIGNY J.A.
DATED:	JANUARY 23, 2020

APPEARANCES:

Bradman Lee	FOR THE APPELLANT (ON HIS OWN BEHALF)
Michael W. Bader, Q.C.	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENTS