Federal Court of Appeal

Cour d'appel fédérale

Date: 20140319

Docket: A-309-13

Citation: 2014 FCA 73

CORAM: **BLAIS C.J.**
GAUTHIER J.
MAINVILLE J.

BETWEEN:

RITA CONGIU
AND
9100-7146 QUÉBEC INC.

Appellants

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on March 18, 2014.

Judgment delivered at Montréal, Quebec, on March 19, 2014.

REASONS FOR JUDGMENT OF THE COURT BY: BLAIS C.J.

CONCURRED IN BY: GAUTHIER J.A.
MAINVILLE J.A.

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REASONS FOR JUDGMENT

BLAIS C.J.

[1] This is an appeal against two decisions of Justice Angers of the Tax Court of Canada dismissing the appeal of Rita Congiu from an assessment made on February 1, 2006, under subsections 270(3) and 270(4) of the *Excise Tax Act* (ETA), and the appeal of 9100-7146 Québec Inc. from an assessment made on the same date, but under section 325 of the ETA.

[2] In this case, the appellants have filed a single appeal against two separate decisions of Justice Angers. This procedure is not usually allowed by the *Federal Courts Act*. However, as the matter has already been heard, this Court will make an exception and render two separate judgments in the same appeal docket.

[3] Essentially, Justice Angers cited an earlier decision of the Court of Quebec regarding the appellants. In that decision, the Court of Quebec had disposed of similar issues to the issues at bar, under Quebec tax legislation.

[4] After clarifying that he was not bound by the decision of the Court of Quebec, the judge held that, since no additional evidence had been filed in support of the appellants' arguments, it was preferable to avoid a relitigation of the claims; he further held that the principle of judicial comity had to be applied to the decision of the Court of Quebec and that the appeals had to be dismissed.

[5] Justice Angers thoroughly examined the facts of record and concluded that there was no identity of cause since the amounts of the assessments and the legal basis of the assessments were different and, moreover, that there was no identity of parties [TRANSLATION] "because the federal and Quebec governments are not the same person" (paragraph 8 of the decision).

[6] However, he carefully reviewed the state of the law on abuse of process and judicial comity. He also noted that the appellants did not submit any different evidence from that submitted in the Court of Quebec. He added that the agreed statement of facts filed in the Tax Court of Canada was based on the findings of fact of the judge of the Court of Quebec (paragraph 12 of the decision).

[7] In my opinion, Justice Anger's decision to apply the principles of judicial comity was entirely warranted in the particular circumstances of this case.

[8] Moreover, on February 7, the Quebec Court of Appeal rendered a decision in which it unanimously dismissed the appeal from the decision of the Court of Quebec. This recent decision of the Quebec Court of Appeal, which deserves examination, makes it considerably difficult for the appellants' chances to argue that the decision of Justice Lareau of the Court of Quebec was not correct in law. This decision is cited as 2014 QCCA 242.

[9] At paragraphs 14, 15 and 23 of its decision, the Quebec Court of Appeal responds to the arguments that the appellants have now raised before this Court. I agree with the Quebec Court of Appeal's statement of the law:

> [TRANSLATION]
> **14** The appellant's main ground of appeal, which reiterates the argument made before the trial judge, is the following: section 14 of the *Act respecting the ministère du Revenu* does not apply when the tax debtor invokes the *Bankruptcy and Insolvency Act*, in this case, by making a proposal in bankruptcy. In keeping with the doctrine of the Supreme Court of Canada in *Quebec (Revenue) v. Caisse populaire Desjardins de Montmagny*, [2009] 3 S.C.R. 286, and *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379, all recovery measures benefitting tax authorities are in fact stayed in the event of bankruptcy or a proposal in bankruptcy. For either event, the *Bankruptcy and Insolvency Act* has established a self-contained legal regime that applies to claims of the Crown (including for taxes and income tax) and takes precedence over the regular system for recovering such debts. According to the appellant, this means that section 14 of the *Act respecting the ministère du Revenu* does not apply.
>
> **15** The trial judge rejected this submission. Specifically, he wrote as follows:
>
> > [TRANSLATION]
> > [41] One of the purposes of section 14 of the TAA [*Tax Administration Act*] is to sanction the conduct of a director who transfers the property of a corporation

> under his or her control even though the corporation owes taxes. The director's liability arises from the director's conduct and failure to respect the duties imposed on him or her by this provision. It is hard to see a link between the penalty provided for under section 14 and the bankruptcy of [Canada inc.]. The parties are distinct, the patrimonies are distinct, and the matter is of no concern to the trustee in bankruptcy. Its collocation order is not affected, and it has no legal interest in intervening in this dispute. Is it any surprise that it made no attempt to intervene in this dispute?
> [42] The proposal in bankruptcy of [Canada inc.] may have had the effect of deferring the date on which the [Canada inc.'s] debt became due, but it has not eliminated the debt. Moreover, the failure to make the payments under the proposal has led to its cancellation and to the bankruptcy of [Canada inc.]. [Canada inc.'s] tax debt remained outstanding and, before liquidating all assets, [Ms. Congiu] should have given the [Agence du Revenu du Québec] notice and obtained a certificate. She did not respect this obligation and therefore breached section 14 of the TAA, which makes both her and QUÉBEC INC liable.

16 The Court shares this point of view.

23 One could perhaps consider what would have happened if Canada inc. had, from the sale of its immovables, made the last payment provided for under the proposal in a timely manner. The corporation would have been released from its debt to the respondent. Would the respondent still have been able to rely on section 14 to engage the appellant's personal liability? There is no need to answer this question since the proposal was not respected in the matter at bar and the debtor was therefore not released from its tax debt.

[10] For these reasons, I would dismiss the appeal with costs on appeal only.

"Pierre Blais"

Chief Justice

"I agree.
Johanne Gauthier, J.A."

"I agree.
Robert M. Mainville, J.A."

Certified true translation
François Brunet, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-309-13

(APPEAL FROM THE DECISIONS OF JUSTICE ANGERS OF THE TAX COURT OF CANADA, DOCKET NOS. 2009-153(GST)G AND 2009-154(GST)G)

STYLE OF CAUSE:	RITA CONGIU AND 9100-7146 QUÉBEC INC. v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MARCH 18, 2014
REASONS FOR JUDGMENT BY:	BLAIS C.J.
CONCURRED IN BY:	GAUTHIER J.A. MAINVILLE J.A
DATED:	MARCH 19, 2014

APPEARANCES:

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