

Docket: 2011-622(IT)I

BETWEEN:

DIANNE-MARIE BYDELEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 11, 2012, at Hamilton, Ontario.

Before: The Honourable Justice Paul Bédard

Appearances:

Agent for the Appellant: Steve Bydeley
Counsel for the Respondent: Alisa Apostle

JUDGMENT

The appeal is dismissed and the decision of the Minister of National Revenue is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of April 2012.

“Paul Bédard”

Bédard J.

Citation: 2012 TCC 142
Date: 20120430
Docket: 2011-622(IT)I

BETWEEN:

DIANNE-MARIE BYDELEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bédard J.

Facts

[1] In the 2009 taxation year, Dianne-Marie Bydeley (the “appellant”) received pension or superannuation income from the Ontario Teachers Pension Plan (the “Payer”) in the amount of \$43,237.80

[2] The Payer issued a T4A slip, Statement of Pension, Retirement, Annuity, and Other Income for 2009.

[3] In the 2009 taxation year, \$5,474.37 in tax was withheld at source in respect of the pension or superannuation income of \$43,237.80.

[4] The appellant reported total income of \$0 in computing her income for the 2009 taxation year.

[5] The appellant only reported in her tax return for the 2009 taxation year tax withheld at source in the amount of \$5,474.37.

[6] By Notice of Assessment dated June 10, 2010, the Minister assessed the appellant's tax liability for the 2009 taxation year and in so doing included income in the amount of \$43,237.80 received by the appellant from the Payer.

[7] The appellant served on the Minister a Notice of Objection dated June 16, 2010 for the 2009 taxation year.

[8] By Notification of Confirmation dated February 3, 2011, the Minister confirmed the appellant's tax liability for the 2009 taxation year.

[9] In determining the appellant's income tax liability for the 2009 taxation year, the Minister relied on the following assumptions of fact:

- a) the facts as stated above;
- b) in 2009, the appellant resided at 118 Gracefield Crescent, Kitchener, Ontario;
- c) in 2009, the appellant was a Canadian resident.

Issue to be decided

[10] The issue to be decided is whether the Minister properly included in the appellant's income for the 2009 taxation year the amount of \$43,237.80 in pension or superannuation income that the appellant received in that year.

Parties' submissions

Appellant's submissions

[11] First, the appellant says that she should not be liable under the *Income Tax Act* ("ITA") without her express consent. From the appellant's point of view, to suggest that under the ITA Parliament can compel a man or woman to pay tax without his or her explicit consent is *prima facie* evidence of slavery.

[12] The appellant also argues that a "natural person" is not a person within the meaning of the term "person" contained in the ITA and, consequently, a "natural person" is exempt from paying income tax.

[13] Moreover, the appellant's position is that she has no valid contractual obligation to the Canada Revenue Agency ("CRA") resulting from her application for a social insurance number ("SIN") and therefore has no "taxable income". In reaching this conclusion, the appellant relies particularly on the following reasons:

- a) When the appellant made her application for a SIN, she was a minor and therefore unable to legally contract.
- b) The appellant was wrongfully led to believe that she could not be employed without a SIN and was coerced into a contractual agreement with the CRA under threat, duress or intimidation consisting in the prospect of losing an employment opportunity.
- c) The CRA changed the terms or details of that contract when it changed the eight-digit number on the application to nine digits without the appellant's consent.

[14] Finally, the appellant denies that she was a resident of Canada for the 2009 taxation year since, in the *Interpretation Act*, R.S.C. 1985, c. I-21, "Canada" is defined as including "the internal waters of Canada and the territorial sea of Canada". Using the legal maxim *inclusio unius est exclusio alterius*, which means "the inclusion of one is the exclusion of another", the appellant argues that she was not a resident of Canada in 2009 since she was not residing in or on water.

Respondent's submissions

[15] The respondent submits that the appellant received from the Payer during the 2009 taxation year pension or superannuation income in the amount of \$43,237.80 and that the Minister correctly included this amount in computing the appellant's income for the 2009 taxation year in accordance with section 3 and subparagraph 56 (1)(a)(i) of the ITA.

[16] The respondent further submits that the appellant was resident in Canada and earned taxable income in the 2009 taxation year, and thus the Minister properly assessed the appellant's liability for tax on the income in question for the 2009 taxation year pursuant to section 2 of the ITA.

Analysis

Minister's power to enforce tax liability under the *Income Tax Act*

[17] The appellant asks this Court to protect her sovereign inalienable right to choose whether to pay taxes or not.

[18] Both the British Columbia Supreme Court and the Supreme Court of Canada have already ruled that the ITA is constitutional and *intra vires* legislation insofar as it relates to the Federal Government's jurisdiction and authority to pass laws requiring the payment of income taxes. As counsel for the respondent quite correctly submitted, the case law is well settled that it is within Parliament's power to impose taxes on its citizens. The relevant cases are the following: *Caron v. The King*, [1924] 4 D.L.R. 105 (J.C.P.C. affirming the S.C.C. decision reported at (1922), 64 S.C.R. 255; *Bruno v. Canada (Customs and Revenue Agency)*, 2002 BCCA 47; *R. v. Klundert* (2004), 187 C.C.C. (3d) 417 (Ont. C.A.), leave to appeal to the Supreme Court of Canada refused 2005 CarswellOnt 1118 (S.C.C.)).

[19] Regarding the argument that the ITA tends toward a form of slavery, I think it sufficient simply to examine the definition of slavery contained in the *Oxford English Dictionary* online (2012) to clarify this issue:

Slavery, n.: ... The condition or fact of being entirely subject to, or under the domination of, some power or influence.

[20] The ITA is a law passed by a legislature whose power is exercised by a democratically elected government. Therefore, I simply fail to see the merit of this argument.

"Natural person" argument

[21] The "natural person" argument has already been considered on many occasions by the Tax Court of Canada, the Federal Court of Canada, the Federal Court of Appeal and the Superior Courts and Courts of Appeal of the provinces and by many Provincial Courts.

[22] The appellant is obviously not the first person to invoke the "natural person" argument and, regrettably, is unlikely to be the last. I do not intend to get out in detail the reasoning of the courts in dealing with this issue; suffice it to say that all, without

exception, have rejected the same argument as that made by the appellant in the case at bar.

[23] I would simply refer to the following decisions:

- *Kennedy v. Canada (Customs and Revenue Agency)*, [2000] O.J. No. 3313 (Ont. S.C.J.) (QL).
- *M.N.R. v. Camplin*, 2007 DTC 5165.
- *R. v. Lindsay*, 2006 BCCA 150, [2006] 3 C.T.C. 146.
- *Canada (M.N.R.) v. Stanchfield*, [2009] F.C.J. No. 61 (FC) (QL).
- *M.N.R. v. Stanchfield*, 2009 DTC 5050 (FC).
- *Hovey Ventures Inc. v. The Queen*, 2007 DTC 617.
- *Kion v. The Queen*, 2009 TCC 447.
- *Canada v. Galbraith*, 2001 BCSC 675.
- *R. v. Dick*, 2003 BCPC 13.
- *R. v. Carew*, [1992] B.C.J. No. 995 (B.C.S.C.) (QL).
- *R. v. Sullivan*, [1991] 1 S.C.R. 489.
- *PPG Industries Canada Ltd. v. Canada (Attorney General)*, [1983] B.C.J. No. 2260 (B.C.C.A.) (QL).

[24] In my view, the “natural person” argument is without merit. As stated by Judge P.R. Meyers, “to repeat the same analysis and reasoning as undertaken by the other Courts, would serve no useful purpose. All it would accomplish is to put into my own words, what those Courts have already more eloquently written. My conclusion and decision can best be summarized, by the phrase, ‘I concur’”. See *R. v. Sydel*, [2006] 5 C.T.C. 88, at para. 9.

Interpretation Act's definition of "Canada"

[25] Notwithstanding the word "includes", the appellant argues that the term "Canada" as defined in the *Interpretation Act*, R.S.C. 1985, c. I-21, embraces only the internal waters of Canada and the territorial sea of Canada.

[26] It should first be noted that section 12 of the *Interpretation Act* states:

Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[27] The appellant's position ignores the fact that the ordinary meaning of "Canada" is first and foremost its land and that the purpose of the statutory definition is to extend that meaning to include also the internal waters and territorial sea of Canada.

[28] The appellant's position that, for the purposes of the ITA, Ontario is not part of Canada is simply not tenable.

Fundamentals of tax liability in Canada

[29] The Appellant further argues that she had no valid contractual obligation to the CRA based on her SIN and therefore had no taxable income for the 2009 taxation year.

[30] Sheridan J. had to deal with similar facts in *Tuck v. R.*, [2008] 1 C.T.C. 2598. In that case, the appellants also challenged their assessments on among others, the grounds that they had never asked for a SIN and that, accordingly, their assessments were not valid.

[31] Called upon to rule on a motion to strike out the notice of appeal, Sheridan J. found that this argument was without merit and stressed that the case law is well settled that it is within Parliament's power to impose taxes on its citizens. See *Tuck, supra*, at paras. 7 and 10.

[32] Whereas other countries may tax income on the basis of citizenship, domicile or the obtaining of a number analogous to the SIN, the principal basis on which the ITA imposes liability for income tax is residence.

[33] A person who is resident in Canada during a taxation year is subject to Canadian income tax on his or her worldwide income from all sources. See subsection 2 (1) of the ITA.

[34] In determining the appellant's income tax liability for the 2009 taxation year, the Minister relied on the assumption of fact that in 2009 the appellant was a Canadian resident.

[35] It is trite law that the Minister, in making assessments, proceeds on assumptions and that the initial onus is on the taxpayer to "demolish" the Minister's assumptions on which the assessment is based. This initial onus of "demolishing" the Minister's exact assumptions is met where the appellant makes out at least a *prima facie* case. See *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336, paras. 91-94.

[36] In the case at bar, I fail to see how the appellant has met her initial burden of proof.

[37] The appellant admitted that she had a dwelling place at 118 Gracefield Crescent in Kitchener, Ontario, during the 2009 taxation year. See testimony of Dianne-Marie Bydeley, transcript at pages 2 and 34.

[38] Moreover, the appellant did not bring before this Court any type of evidence that could have established, *prima facie*, that she was not a Canadian resident during the 2009 taxation year.

Conclusion

[39] In conclusion, the appellant received pension or superannuation income from the Ontario Teachers Pension Plan in the amount of \$43,237.80 in the 2009 taxation year.

[40] Therefore, the Minister correctly included the amount of \$43,237.80 in computing the appellant's income for the 2009 taxation year in accordance with section 3 and subparagraph 56 (1)(a)(i) of the ITA.

[41] The Minister also properly assessed the appellant's liability for tax on that income for the 2009 taxation year pursuant to subsection 2(1) of the Act.

[42] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 30th day of April 2012.

“Paul Bédard”

Bédard J.

CITATION: 2012 TCC 142

COURT FILE NO.: 2011-622(IT)I

STYLE OF CAUSE: DIANNE-MARIE BYDELEY v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: January 11, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: April 30, 2012

APPEARANCES:

Agent for the Appellant: Steve Bydeley
Counsel for the Respondent: Alisa Apostle

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada