
CANADA / JUDGMENT

De Vries v. Canada Revenue Agency

2021 BCSC 527

COURT

Supreme Court of British Columbia

DECIDED

24 March 2021

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2021 BCSC 527 De Vries v. Canada Revenue Agency

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

De Vries v. Canada Revenue Agency,

2021 BCSC 527

Date: 20210324

Docket: 88397

Registry: Nanaimo

Between:

Albert De Vries

Plaintiff

And

Canada Revenue Agency

Defendant

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

The Plaintiff, appearing in person

(via teleconference):

A. De Vries

Counsel for the Defendant

(via teleconference):

S. Singh

O. French

Place and Date of Hearing:

Nanaimo, B.C.

February 25, 2021

Place and Date of Judgment:

Nanaimo, B.C.

March 24, 2021

INTRODUCTION

- [1] The defendant Canada Revenue Agency seeks the following orders against the plaintiff, Albert De Vries, who has represented himself without legal assistance throughout these proceedings:
- a) That the Notice of Civil Claim of the plaintiff filed herein ("NOCC") be struck out, without leave to amend, pursuant to Rule 9-5 by reason that the pleading:
 - i. discloses no reasonable claim;
 - ii. is unnecessary, scandalous, frivolous or vexatious;
 - iii. is otherwise an abuse of process of the court;
 - b) That the proceeding herein be dismissed;
 - c) Alternatively, that the NOCC be dismissed pursuant to Rule 9-6(4) on the grounds that:
 - i. it is statute-barred by the Limitation Act, R.S.B.C. 1996, c. 266, as amended, the Limitation Act, S.B.C. 2012, c. 13 at s. 30, and the Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50 at s. 32; and
 - ii. there is no evidence on which the plaintiff can rely that supports the claim, and therefore there is no bona fide triable issue and the claim is bound to fail;
 - d) In the further alternative, that such portions of the NOCC be struck out as the Court may deem appropriate;
 - e) Such further and other relief as the Court may deem appropriate; and
 - f) Costs.

FACTUAL BASIS

- [2] The plaintiff's protracted dispute with the defendant is rooted in his business relationship with a person called Paul Houweling, who, along with his spouse, Elizabeth Houweling, is a court ordered debtor to the defendant for substantial amounts of unpaid taxes. The background is as follows:

THE TAX DEBTS

a) Paul Houweling's Tax Debt

- [3] On January 22, 2001, the defendant assessed Paul Houweling \$3,184,241.89 for unpaid income tax relating to 1997 and 1998 taxation years. Mr. Houweling disputed the assessed income tax through the appeals processes of the defendant and in the Tax Court of Canada ("TCC"), which imposed a stay on collection action until the appeals were resolved.
- [4] On December 6, 2004, the defendant obtained a court order under subsection 225.2(2) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp) ("ITA"), known as a jeopardy order, permitting collection action notwithstanding the stay.
- [5] In September 2005, Mr. Houweling's appeals of the assessed income tax were dismissed at the TCC and the stay on collection action was lifted. Mr. Houweling further appealed the assessment to the Federal Court of Appeal ("FCA") and these appeals were dismissed in October 2006.

b) Elizabeth Houweling's Tax Debt

- [6] On October 5, 2004, the defendant assessed Elizabeth Houweling \$1,014,835.05 for unpaid income tax respecting a non-arm's length, without consideration transfer of a term deposit from Mr. Houweling on March 6, 1998.
- [7] On October 25, 2004, the defendant obtained a jeopardy order permitting collection action to proceed. Elizabeth Houweling did not file a Notice of Objection to the assessment and on January 3, 2005, the collections restrictions were lifted.

c) Imperial Pacific Greenhouses' Tax Debt

- [8] The plaintiff was the president and director of Imperial Pacific Greenhouses ("IPG") until 2012, when the corporation involuntarily dissolved. In September 2010, prior to dissolution, the plaintiff and his wife, Christine De Vries, purchased IPG's assets. IPG operated a nursery business on a parcel of land in Cedar, B.C. Paul Houweling had been involved in the business before the plaintiff purchased it.

- [9] The defendant's investigations revealed that Paul Houweling or a company associated with him had loaned IPG \$1,105,438.00. On December 9, 2004, the defendant issued IPG a Requirement to Pay under s. 224(1) of the ITA garnishing any funds payable by it to Paul Houweling. On December 21, 2004, IPG offered to pay the defendant \$80,000.00 to satisfy the Requirement to Pay. This proposal was rejected.
- [10] The defendant renewed the Requirement to Pay on January 3, 2006 and again on December 27, 2006. Also on December 27, 2006, the defendant issued IPG a Requirement to Pay garnishing any funds payable to Elizabeth Houweling for repayment of loans that she had made to IPG.
- [11] IPG did not comply with the Requirements to Pay, and on October 12, 2007, the defendant issued two non-compliance assessments against IPG under s. 224(4) of the ITA for a total of \$1,012,451.00 ("IPG Assessments") as follows:
- a) \$253,821.00 relating to Elizabeth Houweling's loan/tax debt ("IPG Assessment #1"); and
 - b) \$758,630.00 relating to Paul Houweling's loan/tax debt ("IPG Assessment #2").
- [12] On January 17, 2008, IPG filed Notices of Objection to both of the IPG Assessments. On April 16, 2008, the defendant, through its own appeal processes, allowed IPG's objection to IPG Assessment #1. On August 23, 2010, the TCC dismissed IPG's appeal relating to IPG Assessment #2, and IPG's appeal from this decision was dismissed in the FCA.
- [13] The defendant never took any collection steps concerning IPG Assessment #1 before it was set aside. IPG Assessment #2 continues to be valid, binding, and of full force and effect, but it remains unpaid to this day, and apparently the defendant has not taken any efforts to collect it.
- d) The Plaintiff's Tax Debt
- [14] On October 10, 2007, the defendant assessed the plaintiff \$72,000.00 for non-compliance with a Requirement to Pay that was issued in relation to a loan from Elizabeth Houweling ("2007 Assessment"). The plaintiff did not object to the 2007 Assessment and paid it in full on January 7, 2008.
- [15] On November 7, 2012, the defendant assessed the plaintiff \$83,565.00 regarding capital dividends paid to him by IPG ("Capital Dividends Assessment") and \$450,000.00 in September 2010, allegedly for transferring IPG's assets to himself for less than fair market value whilst IPG was a tax debtor ("Property Transfer Assessment").

- [16] On December 3, 2012 and January 14, 2013, the plaintiff objected to the Property Transfer Assessment and Capital Dividends Assessment, respectively. On April 22, 2014, the defendant allowed the objection relating to the Property Transfer Assessment. On August 20, 2018, the TCC allowed the Plaintiff's appeal regarding the Capital Dividends Assessment. The defendant never took any collection action with respect to either the Property Transfer Assessment or the Capital Dividends Assessment.

COLLECTION EFFORTS

- [17] On December 9, 2004, as a means of collecting Paul Houweling's income tax debt, the defendant instructed a bailiff to seize farm equipment owned by Paul Houweling located on IPG's property. The bailiff served the plaintiff with a Writ of Seizure and Sale respecting this equipment on December 13, 2004. The defendant further instructed the bailiff to hold the seizure in abeyance pending the disposition of a motion filed by Mr. Houweling to prevent the seizure. This motion was dismissed on January 31, 2005.
- [18] Over a year later, on April 12, 2006, the bailiff finally seized the equipment. Neither IPG nor the plaintiff took court proceedings to prevent or dispute the seizure, to contest ownership of the equipment, or to seek judicial review of the lawfulness of seizure at the time it took place, despite receiving advice from the defendant on April 13, 2006 that they should take such steps if they felt they had proper cause. On or about April 27, 2006, IPG purchased the seized equipment from the defendant for \$58,000.00.
- [19] Since then, as I understand it, the defendant has taken no collection action against the plaintiff, though it has never been contested, as previously stated, that IPG owed Mr. Houweling the amount of \$758,630, or that IPG Assessment #2 in the same amount remains valid, subsisting and enforceable as a tax debt.

THE NOCC

- [20] The NOCC begins, under the heading "Statement of Facts", with an uncontroversial 32 paragraph history of the plaintiff's various disputes with the defendant which does not differ in any material way from the background information that I have just given.
- [21] In other words, the plaintiff refers in his NOCC to the Houweling's loans to IPG, the various tax assessments issued to him and IPG, the Requirements to Pay, which demands he paid, which ones he objected to, which ones were set aside, and the results achieved in litigation before the TCC and the FCA.
- [22] In paragraphs 33-47, under the heading "Relief Sought", the NOCC is composed in the following terms:
33. For recommending that IPG inflate the value of the property through an appraisal of the property.

34. For forcing the plaintiff to increase IPG's debt by acquiring additional loans from the commercial banks (BDC and TD) knowing that IPG was insolvent.
 35. Compensation for damages arising from improper collection procedures and jeopardizing IPG's daily business operation by unlawfully seizing vital farm equipment with the intent to cause loss.
 36. For violating the Taxpayer Bill of Rights, number 10. "You have the right to have the costs of compliance taken into account when administering tax legislation." By not accepting the proposals of settlement dated December 20, 2004 and June 10, 2010 to settle Paul Houweling's tax debt.
 37. For violating the Taxpayer Bill of Rights, number 4. The CRA Appeals officer did not accept a verbal statement or an affidavit from Paul Houweling.
 38. Misconduct by appraising the plaintiff's property by appointing an under qualified appraiser and not disclosing that appraisal report in a timely manner so that the set time restriction to file the Notice of Objection within 90 days would elapse.
 39. For mis-using [sic] a notice of motion to Rule 58 asking the Tax Court for estoppel from presenting crucial evidence confirming that the shareholder's loans became payable as soon as the court's settlement from the water claim was finalized.
 40. Reimbursement of payment of \$58,000 made to the CRA on April 2006 for the redemption of farm equipment including interest and penalty for misrepresentation equal to CRA standards.
 41. Reimbursement of payment of \$72,000 made to the CRA in December 2007 on behalf of account number 714-107-018R including interest.
 42. Damages for Negligence
 43. Damages for wilful misconduct.
 44. Damages for mental distress.
 45. Interest pursuant to the Court Order Interest Act.
 46. Costs and alternatively costs to be taxed as special costs.
 47. Such other relief as to this honourable court may deem just.
- [23] The NOCC fails to set out a concise summary of the legal basis for the relief sought as required by Rule 3-1(2)(c).

RULE 9-5 APPLICATION

a) General Principles

- [24] For the purposes of an application to strike under Rule 9-5(1)(a), the test is whether, assuming the facts pleaded are true, it is plain and obvious the claim discloses no cause of action: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959. On that question no evidence is admissible: Rule 9-5(2).
- [25] However, for the purposes of an application to strike brought under Rule 9-5(1)(b) or (d), evidence may be adduced to determine if the pleading is unnecessary, scandalous, frivolous, or vexatious, or about circumstances that are said to constitute an abuse of process: *Footé* at para. 17, 23.
- [26] Affidavit evidence may also be adduced to determine whether a claim is outside of the court's jurisdiction, *res judicata*, or amounts to a collateral attack: *Re Taylor Ventures Ltd. v. Canada Customs and Revenue Agency*, 2005 BCSC 1349 at paras. 14-15.
- b) Abuse of Process
- [27] The defendant argues that the plaintiff's NOCC is an abuse of process because it seeks to re-litigate his and IPG's tax assessments, which have already been fully and finally decided either by the defendant's own dispute resolution processes under the ITA, or in the TCC or the FCA, the only courts with lawful jurisdiction to deal with them. The defendant says that the NOCC also attempts a collateral attack on final orders concerning the plaintiff's or IPG's tax appeals.
- [28] I accept these arguments. This court has no jurisdiction to adjudicate challenges to tax assessments: ITA, ss. 152(8), and 165-180; Tax Court of Canada Act, R.S.C. 1985, c. T-2 at s. 12; Federal Courts Act, R.S.C. 1985, c. T-2 at ss. 18, 18.1, 18.5; *Smith v. Canada (Attorney General)*, 2006 BCCA 237 at paras. 12-15; *JP Morgan Asset Management (Canada) Inc. v. Minister of National Revenue*, 2013 FCA 250 at paras. 81, 82; *Horseman v. Canada*, 2016 FCA 252 at para. 4. When it comes to such matters, quite simply, the plaintiff is in the wrong forum.
- [29] The NOCC raises allegations that the defendant somehow miscalculated assessment amounts and abused the TCC's processes by bringing a motion, during one of the plaintiff's disputes, to exclude evidence under the TCC rules. Matters such as this are dealt with on appeal by means of the statutory processes of the ITA, and are not justiciable in this court.
- [30] The NOCC also includes a claim for a refund of the plaintiff's voluntary payment of the 2007 Assessment. This assessment was valid, binding, enforceable, and collectable. This Court has no jurisdiction to vary, cancel or reverse it: ITA, s. 152(8), s. 165. The plaintiff's voluntary payment of the amount in question over 13 years ago constituted the final determination of the matter. His attempt to have it reconsidered in this court is wrong-headed and clearly inadmissible: *Horseman* at para. 6.
- [31] For emphasis, the ITA provides a complete code for objecting to and appealing from tax assessments. Parliament has granted the Minister of National Revenue the authority to administer and enforce the ITA through the defendant. Parliament has likewise conferred

on the TCC and FCA exclusive jurisdiction to adjudicate tax claims and appeals. All of the plaintiff's tax complaints have been dealt with in specialised processes reserved for their adjudication under the ITA, and to the extent that the NOCC attempts to revisit these complaints in this court, it constitutes an abuse of process and must be struck out.

d) Reasonable Cause of Action

- [32] The defendant argues, furthermore, that on issues unrelated to tax assessments under the ITA, the NOCC discloses no valid cause of action. I agree that it does not contain any material facts to ground the claims alleged of negligence, misconduct, infliction of mental distress, and so on. There are no material facts alleged supporting the breach of a duty of care, or the suffering of any damages, and there is no concise summary of the legal basis for the relief sought as required by Rule 3-1(2)(c): *Sahyoun v Ho*, 2013 BCSC 1143, at paras. 15-26, 33.
- [33] The NOCC does not disclose a reasonable claim to this extent, and does not conform with the requirements set out in the Rules concerning the content of proper pleadings and effective notice to the opposing party. When it comes to unrepresented litigants, in the absence of some good reason not to, the court will often grant leave to amend. In this case, however, for the reasons that follow, leave to amend would be quite pointless.

RULE 9-6 APPLICATION

a) General Principles

- [34] Rule 9-6(5)(a) allows the Court, on hearing an application, to dismiss a claim if it is satisfied that there is no genuine issue for trial. This must be proven through evidence and each side must "put its best foot forward" with respect to the existence or non-existence of material triable issues: *McLean v. Law Society of British Columbia*, 2016 BCCA 368, para 36, citing *Canada v. Lameman*, 2008 SCC 14 at paras. 10, 11.

b) The NOCC is out of time

- [35] An action that is clearly statute barred because of the expiry of a limitation period can be dismissed pursuant to Rule 9-6(4): see *Brown v. Canada*, 2014 BCSC 357 at para 16, aff'd 2015 BCCA 102 at para 5.
- [36] The plaintiff's various claims for damages in tort, however articulated, are subject to a two year limitation period beginning on the date that the cause of action accrued: *Rain Coast Water Corp. v. British Columbia*, 2019 BCCA 201 at para. 133; *Levitt v. Carr* (1992), 66 B.C.L.R. (2d) 58 (C.A.); *Limitation Act*, S.B.C. 2012, c. 13 at ss. 6, 30; *Limitation Act*, R.S.B.C. 1996, c. 266 at ss. 3(2)(a), 6(4), 9; and *Crown Liability and Proceedings Act*, R.S.C 1985 c. C-50 at s. 32; and *Brown* at para 20.
- [37] There is no doubt, of course, that in appropriate circumstances a civil lawsuit may be brought in this court against the defendant arising from the wrongful conduct of its agents or employees, and it may be the case, as the NOCC would seem to suggest, that the standard

of care applicable is set out in the so-called Taxpayers Bill of Rights: see, for example, *Ludmer v. Attorney General of Canada*, 2020 QCCA 697 at para. 17. However, such a claim must be brought within the two year limitation period, and in this case the plaintiff has failed to do this.

- [38] To the extent that the NOCC alleges tortious conduct surrounding the seizure of Mr. Houweling's farm equipment, the Writ of Seizure was served on December 13, 2004, and the limitation passed on December 13, 2006, or at the latest on April 12, 2008, two years after the equipment was actually seized. The various other forms of tortious misconduct alleged, though they are not, as I have said, supported by properly pleaded material facts, would seem quite clearly to be referable to acts or omissions attributed to the defendant that were well-known and documented by the plaintiff dating back to 2012 at the very latest.
- [39] As the NOCC was filed on August 6, 2019, in my view there is no question that these claims, even if adequately pleaded, are statute barred, and there are no real issues to be argued relating to a lawful basis for postponement of the limitation: *Sime v. Jupp*, 2009 BCSC 1154 at para. 17. It would be idle, therefore, to grant the plaintiff leave to amend the NOCC, because it relates to allegations of tortious misconduct that, by anyone's reckoning, occurred much longer than two years before the NOCC was filed. For that reason alone it is plain and obvious that they are bound to fail and the plaintiff's claim must be dismissed.
- [40] I should specify that my conclusion in this connection is not altered by a reading of *De Vries v. Canada*, 2018 TCC 166, the decision by which the TCC set aside the Capital Dividends Assessment. The plaintiff's pursuit of this litigation did not have the effect of postponing the two year limitation period, and the decision itself did not, as the plaintiff seems to think, somehow expose a previously undiscovered cause of action in tort.

DISPOSITION

- [41] In summary, the facts alleged in the NOCC and the legal issues related thereto fall within the exclusive jurisdiction of the TCC and have been fully and finally determined under processes duly established under the ITA. To this extent the NOCC is an abuse of process. The bare allegations in the NOCC of tortious conduct by the defendant are not supported by sufficiently pleaded material facts, and taken altogether they disclose no reasonable cause of action. Leave to amend the NOCC will not be granted as the tortious causes and remedies set out therein are statute barred and bound to fail.
- [42] The plaintiff's claim is dismissed. There will be no order as to costs.

"Baird J."

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