

Federal Court



Cour fédérale

Date: 20150609

Docket: T-1693-13

Citation: 2015 FC 724

Ottawa, Ontario, June 9, 2015

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

DENNIS A. KEAY

Applicant

and

HER MAJESTY THE QUEEN

Respondent

JUDGMENT AND REASONS

[1] The Plaintiff, Mr. Keay, alleges that he has suffered damages and other losses as a result of actions and omissions by the Canada Revenue Agency [CRA] and its agents or employees.

[2] In particular, the Plaintiff asserts that the conduct of the CRA and certain of its officials in the reassessments of his 2003 and 2004 income tax returns was negligent, an abuse of power, constituted misfeasance in public office, unlawfully interfered with or converted his rental income and expenses to the benefit of his former spouse, and violated his rights under sections 7

and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*]. The Plaintiff further asserts that the CRA and certain of its officials were wilfully blind, withheld material information from him and ignored material facts. This conduct, the Plaintiff contends, caused him to suffer unnecessary costs and expenses as well as emotional distress.

[3] Consequently, the Plaintiff has taken this action against the Defendant, and asks this Court to award him his unnecessary litigation costs, damages, aggravated damages and consequential damages in various amounts as stated in paragraph 40 of his Amended Statement of Claim dated January 29, 2015 (the initial Statement of Claim being dated October 15, 2013).

[4] In advance of the hearing of this matter, a joint book of exhibits was filed. These exhibits were received in evidence at the commencement of the hearing and collectively marked as exhibit J-1. A joint book of case authorities was also filed in advance of the hearing of this matter. The Plaintiff also filed a book of case authorities as part of his document record.

[5] The Plaintiff had also placed before the Court three volumes of additional documentation, but the Defendant objected to most of this documentation being received as evidence on the basis that it was not only irrelevant but not evidence at all. The Defendant had no objection, however, to certain parts of this documentation being received as evidence, notably correspondence between the Plaintiff and the CRA during 2007 and 2009, and this correspondence was collectively identified as exhibits J-2 (in the case of the 2007 correspondence) and J-3 (in the case of the 2009 correspondence).

[6] The Plaintiff also introduced a partial copy of the Defendant's Affidavit of Documents, which included the index and two of the documents, as well as an extract of the transcript of the hearing before the Tax Court of Canada.

[7] After making his opening statement, the Plaintiff called only himself as a witness. The Plaintiff's testimony focused on what he regarded as matters which had been ignored or suppressed by the CRA and its officials, and on how the 2003 and 2004 reassessments by the CRA were based on wrong information. It is not necessary to summarize the Plaintiff's testimony in any great detail in this case since, for the most part, he just repeated the various allegations stated in the Amended Statement of Claim. The Defendant elected not to cross-examine the Plaintiff on his testimony. The Plaintiff then closed his case.

[8] The Defendant did not call any witnesses on its behalf and did not submit any evidence other than that contained in exhibits J-1, J-2 and J-3.

[9] In his reply and closing statement, the Plaintiff argued that the facts and evidence to support his claims were proven by his testimony and can also be seen in the decision of the Tax Court of Canada (reported as *Keay v The Queen*, 2008 TCC 481, 2008 DTC 4704) and the appeal from that decision to the Federal Court of Appeal (reported as *Keay v Canada*, 2009 FCA 170, 2009 DTC 5118). He further argued that, after the decision by the Federal Court of Appeal in 2009, the CRA should have re-opened and re-evaluated the assessments in dispute and not just waived the interest and penalties.

[10] The Plaintiff asserts that he is not impugning or challenging the 2003 and 2004 reassessments by the CRA but, rather, is impeaching the conduct of the CRA and its officials before and after the Tax Court and Court of Appeal proceedings. He contends that the CRA did not honour the promises made to him and led him to believe that there would be an independent reassessment. He further contends that the CRA owed him a duty of care and ignored its own publications, audits and reassessments.

[11] For its part, the Defendant argued that the CRA and its officials acted reasonably at all times and did nothing untoward in auditing, assessing or reassessing the Plaintiff's income tax returns. According to the Defendant, all of the Plaintiff's allegations, including his claims of misfeasance, negligence, and breach of *Charter* rights, are contrary to the evidence as well as the law. The Defendant submits that the Plaintiff has not proven his case.

[12] The burden of proof rests on the Plaintiff to prove the claims and allegations asserted in his Amended Statement of Claim. It is not incumbent upon the Defendant to disprove those allegations.

[13] Furthermore, there is only one civil standard of proof at common law and that standard is proof on a balance of probabilities: *FH v McDougall*, 2008 SCC 53 at paragraph 40, [2008] 3 SCR 41. This standard is often expressed by saying that something must be shown to be more likely than not.

[14] The determinative issue for the Court to decide, therefore, is whether the Plaintiff has met his burden of proof.

[15] I agree with the Defendant that the Plaintiff has not proven his case. Although the Plaintiff's testimony was not challenged by the Defendant, it was such that it did not provide sufficient facts or evidence to show, on a balance of probabilities, that the CRA and its officials misconducted themselves as alleged by the Plaintiff or that they violated his *Charter* rights in any way.

[16] The Plaintiff has not established that the conduct of the CRA and its officials was unconstitutional, unlawful, negligent or otherwise tortious in any way whatsoever. At best, the Plaintiff's claims are just bald assertions without any factual foundation capable of proving the causes of action alleged. Even if all of the three volumes of additional documentation adduced by the Plaintiff, as well as the other documents introduced by the Plaintiff at the outset of the hearing of this matter, were accepted as evidence, that documentation is nothing more than documentation which was previously adduced by the Plaintiff before the Tax Court and Court of Appeal. This Court is not the forum for yet another hearing of the Plaintiff's tax troubles.

[17] In the result, therefore, the Plaintiff's claim fails and his Amended Statement of Claim is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the Plaintiff's Amended Statement of Claim is dismissed and, in view of the circumstances of this case, that there shall be no award of costs.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1693-13

STYLE OF CAUSE: DENNIS A. KEAY v HER MAJESTY THE QUEEN

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: MARCH 11, 2015

JUDGMENT AND REASONS: BOSWELL J.

DATED: JUNE 9, 2015

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