



Date: 20121218

Docket: T-1658-11

Citation: 2012 FC 1499

Toronto, Ontario, December 18, 2012

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

HAROLD COOMBS AND JOAN COOMBS

Applicants

and

CANADA REVENUE AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of the discretionary decision by the Canada Revenue Agency [CRA] to issue a Requirement to Pay [RTP] to the applicants.

[2] The applicants seek an order to quash or invalidate the RTP and a mandamus order to restrict the CRA from instituting any further collection actions until such time that a Notice of Confirmation or variation of assessments has been issued to the applicants.

II. Background

[3] The applicants, Harold Coombs and Joan Coombs, are the directors and controlling shareholders of Select Travel Inc [Select Travel].

[4] Harold Coombs is also the president of Select Travel, a company incorporated under the laws of Ontario.

[5] On March 23, 2010, Select Travel was reassessed by the CRA for the 2004 and 2008 taxation years and was found to owe 6,651.84\$ and 597.28\$, respectively. On March 24, 2010, the CRA sent a notice of reassessment for those two years and advised Mr. Coombs of an outstanding balance of 8,094.61\$. On June 24, 2011, Mr. Coombs filed a Notice of Objection to the reassessment with the Chief of Appeal.

[6] On March 24, 2011, Select Travel was reassessed for the 2009 and 2010 taxation years and was found to owe 1,612.45\$ and 1,349.78\$, respectively. On August 11, 2011, CRA sent Select Travel a Statement of Account which indicated a tax debt of 12,692.84\$. By September 2, 2011, that amount had increased to 12,729.40\$.

[7] It is submitted by the respondent, and not contested by the applicants, that the 12,729.40\$ amount consists only of Select Travel's source deduction tax liability.

[8] On September 2, 2011, CRA sent the RTP to TD Canada Trust, Select Travel's financial institution, for the amount owing: 12,729.70\$. On September 8, 2011, TD Canada Trust complied

with the RTP and paid the full amount of 12,729.70\$. On September 28, 2011, Harold Coombs filed an application for judicial review on behalf of Select Travel Direct Inc. (file T-1597-11).

[9] On October 7, 2011, Harold Coombs filed another application for judicial review, this time on behalf of himself and his wife, Joan Coombs (file T-1658-11). On November 24, 2011, the respondent sought a motion to strike one of the two Notices of Application on the grounds that they were virtually identical and sought the same relief.

[10] On December 19, 2011, Justice Roger Hughes issued an order stating that both applications would be heard together. However, file T-1597-11 was discontinued on December 7, 2011. The remaining file, T-1658-11 is the object of this application for judicial review.

[11] It should be noted that the applicants are self-represented and submitted no memorandum of argument. Respondent's counsel made a preliminary objection that the Coombs did not have status to appear on behalf of the corporate entity Select Travel in respect of which the complaint concerning the issuance of the RTP and collection has been raised. In the interest of justice, and given their roles as sole directors and shareholders, I granted status to the Coombs to make representations on behalf of Select Travel.

[12] The applicants seek the following:

- A. An order quashing the RTP;
- B. A declaration that the RTP is unlawful and in violation of paragraph 225.1(d) and subsection 225.1(2) of the *Income Tax Act*, RSBC 1996, c 215 [ITA];

- C. An order restricting the CRA from making further collection actions until a notice of confirmation or variation has been mailed to the applicants;
- D. An order stating that the CRA must comply with subsections 225.1(a) to (g) of the ITA;
- E. An order compelling the CRA to fulfill its duties pursuant to sections 225.1 and 225.1(2) of the ITA.

III. Issues

[13] The issues, as reformulated, are as follows:

- A. Does the Federal Court have jurisdiction to determine the present application regarding whether Select Travel's tax assessments are valid?
- B. Was the CRA legally permitted under the ITA to issue the RTP on September 2, 2011 to collect the tax debt?
- C. Was the CRA obligated, through the Taxpayers Bill of Rights or for any other reason, to provide reasons for its assessment and collections actions and if so, were these obligations met?

IV. Standard of review

[14] Neither party submitted an evaluation of the applicable standard of review, however, the applicable standard of review for discretionary decisions of the CRA is reasonableness (*Dingman v Canada (Minister of National Revenue - MNR)*, 2009 FC 395).

V. Analysis

[15] Federal Court does not have jurisdiction to hear challenges of tax assessments which are solely within the jurisdiction of the Tax Court of Canada (*Walker v Canada*, 2005 FCA 393 at para 13). Therefore, to the extent the applicants wish to challenge the validity of the reassessments, the application must fail. Moreover, collection actions taken in respect of a valid assessment are lawful (*Krahn v Canada (Customs and Revenue Agency)*, 2005 FC 471 at paras 9 and 10).

[16] To the extent the applicants challenge the CRA's decision to issue the RTP on September 2, 2011, the Court has jurisdiction.

[17] The applicants submit that CRA erred when it issued the RTP, in failing to consider their Notice of Objection filed on June 2, 2010, and on proceeding with the collection measures before the collection commencement-day, pursuant to subsection 225.1(1) of the ITA.

[18] However, given that the applicants' tax debt represents payroll source deductions, which are required to be deducted or withheld and to be remitted or paid, subsections 225.1(1) to 225.1(4) do not apply, and CRA was entitled to issue the RTP to collect that debt. The notice of objection is not relevant here (*Gagne v Minister of Revenue*, 2003 FCT 18 at paras 17, 28, and subsections 225.1(6) (b), (d) and (e) of the ITA).

[19] Where there is no stay of such a collection action, the CRA can take immediate collection action as long as the assessment is valid (*Canada (Minister of National Revenue - MNR) v Vu*, 2004 FC 1783 at para 3; aff'd 2005 FC 788).

[20] Lastly, while CRA was not obligated to provide reasons for its assessment and collections action, pursuant to section 152 of the ITA, nevertheless the evidence shows through the affidavits of Lynn Watson sworn February 6, 2012 and Nancy Arnold sworn November 23, 2011, that sufficient reasons were given to the applicants to explain CRA's reassessment and collections (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62). In reviewing that evidence, I gave little or no weight to references to third party conversations contained in the affidavit of Lynn Watson, but did give weight to the Exhibits to her affidavit, and particularly Exhibits A, B and C, relating to Automated Collections and Source Deduction System business records, evidencing communications with Select Travel and Harold Coombs.

[21] For the reasons stated above, this application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1658-11

STYLE OF CAUSE: HAROLD COOMBS ET AL. V. CRA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 18, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** MANSON J.

DATED: December 18, 2012

APPEARANCES:

Harold Coombs	FOR THE APPLICANTS (ON HIS OWN BEHALF)
Natalie Hamam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Harold Coombs Toronto, Ontario	FOR THE APPLICANTS (ON HIS OWN BEHALF)
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT