Federal Court  Cour fédérale

Date: 20110718

Docket: T-451-11

[UNREVISED ENGLISH CERTIFIED TRANSLATION] **Citation: 2011 FC 901**

Montréal, Quebec, July 18, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MICHEL MAHEUX

Applicant

and

HER MAJESTY THE QUEEN

Respondent

and
ANDRÉ FERLAND

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Maheux filed a statement of claim with this Court seeking damages from the Federal Crown for an unspecified amount, but in the amount of at least several million dollars. He alleged that the Canada Revenue Agency, through Mr. André Ferland, had falsified documents on the basis of which the Agency falsely claimed he owed a tax debt of almost $4,000,000. In light of that assessment, the Crown proceeded with a statutory set-off, as provided for under section 224.1 of the *Income Tax Act*, of the applicant's Old Age Security pension benefits and Guaranteed Income

Supplement. Mr. Maheux also maintained that the statutory set-off was, in any event, illegal since it was an unlawful seizure under the *Old Age Security Act.*

[2] Under Rule 221 of the *Federal Courts Rules*, the respondent filed a motion to have the applicant's statement struck out on the ground that it disclosed no reasonable cause of action.

[3] By order dated June 20, 2011, Prothonotary Morneau struck out the applicant's entire statement of claim on the ground "that his text disclosed no reasonable cause of action". He nonetheless allowed the applicant to file a new statement of claim solely against Her Majesty the Queen for [TRANSLATION] "damages for the alleged falsification of documents for the alleged purpose of creating a false tax debt for the applicant" to the extent that each of the conclusions alleged contained the necessary particulars in accordance with the requirements under Rule 174 and paragraph 181(*a*) of the *Federal Courts Rules*. This is an appeal of that decision.

[4] Mr. Maheux represented himself. During the hearing, he had a tendency to testify; it is therefore difficult for this Court to determiner what was before the prothonotary and what is presently before this Court.

[5] Mr. Maheux argued the following:

a. Under Rule 50(2) of the *Federal Courts Rules*, this matter is beyond the prothonotary's jurisdiction because he may only hear: "an action exclusively for monetary relief, or an action *in rem* claiming monetary relief, in which no amount claimed by the party exceeds $50,000 exclusive of interest and costs".

b. That the set-off applied was illegal under section 36 of the *Old Age Security Act* because benefits are exempt from seizure.

c. That the seizure was unconstitutional on the ground that it violates the *Canadian Charter of Rights and freedoms.*

d. That the request for statutory set-off sent by Mr. Ferland to Service Canada cannot, in any event, be interpreted as including the supplement.

[6] With all due respect for the applicant, I find his arguments to be without merit. Prothonotary Morneau correctly cited the case law.

[7] The Prothonotary had the jurisdiction to strike out the applicant's statement of claim, even if the amount of the statement of claim exceeded $50,000 (see *First Canadians' Constitution Draft Committee the United Korean Government (Canada) v. Canada*, 2004 FCA 93, 238 D.L.R. (4th) 306).

[8] It is settled law that the "statutory set-off" as provided for under the *Income Tax Act*, is not a "seizure" in any sense. One need only consider the Federal Court of Appeal's decision in *Bouchard v. Canada (Attorney General)*, 2009 FCA 321, 398 NR 350, in addition to the other decisions cited by the Prothonotary.

[9] The Charter, in my opinion, does not come into play in this matter. And even if it were to come into play, I would not entertain the argument raised by Mr. Maheux because no notice of constitutional question was served under section 57 of the *Federal Courts Act*.

[10] The notice of statutory set-off sent to Service Canada included “any amount that may be or become payable to the taxpayer”.

[11] In this case, the Court does not have to decide whether Mr. Maheux [TRANSLATION] “owes nothing and owed nothing” I am obliged to consider the assessment valid as long as it has not been vacated. This question was examined in *Canada (Minister of National Revenue - MNR) v. Arab*, 2005 FC 264, 276 F.T.R. 18 :

> [9] Mr. Arab intends to object to the assessment, and that is the route for him to follow for a final determination as to what, if anything, he owes. It does not fall on me to rule on the validity of the assessments. Section 152(8) of the Act provides that an assessment is deemed to be valid and binding notwithstanding any error, defect or omission until it is varied or vacated on objection or appeal (*Minister of National Revenue v. MacIver* (1999), 99 D.T.C. 5524, at paragraph 7 (Sharlow J., as she then was) and *Minister of National Revenue v. Services M.L. Marengère Inc.* 2000 D.T.C. 6032, at paragraph 64 (Lemieux J.)).

[12] Mr. Maheux did not take advantage of the fact that the prothonotary allowed him to file a fresh action against Her Majesty the Queen regarding his allegations of fraudulent documents, as long as [TRANSLATION] “it was truly serious and founded in fact”. That said, the prothonotary’s decision does not affect the prescription of a new action.

ORDER

FOR THE FOREGOING REASONS:

THE COURT ORDERS that Mr. Maheux's appeal be dismissed with costs of $350 to Her Majesty the Queen.

"Sean Harrington"
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-451-11
STYLE OF CAUSE:	MICHEL MAHEUX v HER MAJESTY THE QUEEN ET AL.
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	July 11, 2011
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	July 18, 2011

APPEARANCES:

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Ian Demers	FOR THE RESPONDENTS

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