Beattie v. The Queen, 2001 FCA 309 (CanLII)

Date: 2001-10-18
Docket: A-834-00
Parallel citations: (2001), 207 D.L.R. (4th) 374 • (2001), 214 F.T.R. 319
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Noteup: Search for decisions citing this decision

Date: 20011018

Docket: A-834-00

Neutral citation: 2001 FCA 309

CORAM: DESJARDINS, J.A.

DÉCARY, J.A.

SEXTON, J.A.

BETWEEN:

BRUCE ALLAN BEATTIE, as the assignee of Sicily Candice Aven, on his own behalf and on behalf of each of the persons listed on Schedule "A" attached hereto

Appellants

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on Thursday, September 27, 2001.

Judgment delivered at Ottawa, Ontario, on Thursday, October 18, 2001.

REASONS FOR JUDGMENT BY: SEXTON, J.A.

CONCURRED IN BY: DESJARDINS J.A.

DÉCARY J.A.

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REASONS FOR JUDGMENT

SEXTON, J.A.

[1] This is an appeal from an Order of the Trial Division which struck out the Statement of Claim filed by the Appellants on the basis that the action was scandalous, frivolous and vexatious because the Appellants were seeking to litigate a subject matter which had already been determined by this Court.

Facts:

[2] In 1978, an action was brought by the then Chiefs of the Blueberry River Indian Band and the Doig River Indian Band against Her Majesty the Queen in Right of Canada, as represented by the Department of Indian Affairs and Northern Development, and by the Director of the Veterans Land Act in *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)* 1995 CanLII 50 (S.C.C.), [1995] 4 S.C.R. 344 (hereinafter *Blueberry River 1995*). This action arose out of the surrender and sale of Indian Reserve No. 172 which had been set aside for the Fort St. John Band of Beaver Indians. The Fort St. John Band of Beaver Indians was divided into the Blueberry River and Doig River Indian Bands in 1977, and all of the right, title and interest held by the Fort St. John Beaver Band in Indian Reserve No. 172 was acquired by way of succession by the Blueberry River Indian Band and the Doig River Indian Band.

[3] The claim was brought by the Chiefs "on behalf of themselves and all other members of the Doig River Indian Band, the Blueberry Indian River Band and all present descendants of the Beaver Band of Indians". In the action, it was claimed that the Crown was guilty of various acts and omissions relating to its fiduciary obligation to the Plaintiffs in relation to Indian Reserve No. 172.

[4] The matter was litigated all the way to the Supreme Court of Canada which ordered that the Plaintiffs were entitled to damages against the Crown for breach of fiduciary duty with respect to mineral rights in Indian Reserve No. 172. The Supreme Court referred the action back to the Federal Court Trial Division for assessment of damages.

[5] The question of damages was settled and, pursuant to a motion for judgment, the Federal Court Trial Division by judgment dated March 2, 1988, awarded the Plaintiffs judgment for $147 million inclusive of damages, prejudgment interest and costs in all levels of the Court. The Court ordered that the Federal Crown pay that amount to the Blueberry River Indian Band and the Doig River Indian Band jointly or pursuant to their direction. It is clear that the Court was dealing with all of the claims of all of the Plaintiffs when it said "the Defendant is hereby released with respect to the claims of the Plaintiffs made in this action". The Court further ordered at paragraph 11:

[T]his judgment and the settlement reached do not create any rights in favour of persons described in the style of cause as "present descendants of the Beaver Band of Indians" or in favour or persons described in paragraph 3 of the Statement of Claim as "all descendants of the Beaver Band of Fort St. John and the St. John Beaver Band, ascertained and unascertained and their legal personal representatives", including any right to claim entitlement to share in the Settlement Proceeds. The question of their entitlement remains to be resolved in accordance with Appendix "A" and upon further order of the Court.

Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development, [1998] F.C.J. No. 1952 (Q.L.) (hereinafter *Blueberry River 1998*).

[6] In this judgment, the Trial Division also ordered that $12 million of the $147 million settlement proceeds be placed in a trust fund to secure the payment of any claims by the "present descendants of the Beaver Band of Indians" who were not members of the Blueberry River and Doig River Bands. Appendix "A" to the judgment provided that notice of their possible entitlement to make a claim against the settlement proceeds should be given to (*Blueberry River 1998, supra*, Appendix A, paragraph 1):

All persons, other than members of the Blueberry River and Doig River Indian Bands, who were members or who are descendants of members of an Indian Band once known as the Beaver Band and later known as the Fort St. John Band and the St. John Beaver Band, and who may claim entitlement to share in the settlement proceeds in this action, which action arises out of a breach of fiduciary duty by the Crown in relation to the former Indian Reserve known as Indian Reserve No. 172.

[7] Neither the Appellants nor any other party to *Blueberry River 1998, supra*, appealed the judgment of 2 March 1998.

[8] Pursuant to the March 2, 1998 Order, notice was given and approximately 500 individuals submitted claims including all of the present Appellants except Mr. Beattie, but including Sicily Candice Aven, through whom Mr. Beattie now claims by purported assignment. The Trial Division heard argument on this question and, by judgment dated April 7, 1999, Hugessen J. determined that the Appellants and the other claimants had no right to share in any portion of the *Blueberry River* action settlement proceeds. Mr. Justice Hugessen said as follows in *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)* 1999 CanLII 7935 (F.C.), (1999), 171 F.T.R. 91 at 99 (hereinafter *Blueberry River 1999*):

The rights of the Beaver Band in Indian Reserve 172 were collective rights enjoyed by the members for the time being of that Band. When that Band ceased to exist those rights passed to the members of the two successor Bands, the Blueberry River and the Doig River Bands. Since those rights were collective and not individual rights, they could neither be exercised by nor transmitted to individuals. The breach of fiduciary duty which has been established in this case was owed to the Beaver Band and the right of action which resulted therefrom was transmitted to the successor Bands. That right was equally a collective right which belonged and still belongs collectively and not individually to the members for the time being to the members of those Bands. It is membership and not ancestry which determines entitlement to reserve lands and, in consequence, to the damages flowing from any breach of fiduciary duty in relation to those lands. Therefore, descendants who are not Band members can have no share in the proceeds of judgment.

[9] The judgment of Hugessen J. was appealed by persons other than the present Appellants. This Court dismissed that appeal, *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [2001] F.C.J. No. 725 (Q.L.) (hereinafter called *Blueberry River 2001*). Leave to appeal to the Supreme Court of Canada was denied.

[10] On September 23, 1999, upon motion brought by the Plaintiffs in the original action, the Trial Division ordered that the question of the entitlement of the "present descendants" had been resolved in accordance with the March 2, 1998 order, and that the claims of persons who filed notices of claim under the order March 2, 1998, were dismissed. The present Appellants did not appear on that motion though they had been duly served.

[11] On July 21, 1999, Sicily Candice Aven, claiming to be a descendant of the Beaver Band of Indians, purported to assign to the present Appellant, Bruce Allen Beattie, absolutely all unpaid benefits, compensation or damages of every nature which derived from the sale or disposal by Her Majesty's government of the mineral rights of Indian Reserve No. 172.

[12] On July 29, 1999, the present Appellant, on behalf of himself and 16 other persons, commenced an action in this Court by way of Statement of Claim seeking declarations as to their personal entitlement to the benefits of the disposal of mineral rights of Indian Reserve No. 172. In addition, declarations were sought regarding personal entitlement to receive payment of a share of the total fair market value of the mineral rights of Indian Reserve No. 172, and for compound interest payable in regard to the alleged personal entitlement. The Respondent, in its Statement of Defence, pleaded *inter alia* that the Plaintiffs were estopped by the principle of *res judicata* from bringing this action.

[13] The Respondent brought an application for an order striking out the Appellants' Statement of Claim and for an order dismissing the action (*Beattie v. Canada*, [2000] F.C.J. No. 1920 (Q.L.)). The Trial Court Judge held that it was clear that the Appellants were seeking to litigate a subject matter which had already been determined by this Court. He said at paragraph 25:

In this proceeding, the same subject matter is raised, that is, the alleged breach of the defendant in regard to I. R. No. 172. The subject of the alienation of the mineral rights of I. R. No. 172 has been exhaustively determined by the courts. This proceeding does not disclose a cause of action that has not already been adjudicated and accordingly, the plaintiffs' Statement of Claim is struck and their action is dismissed.

[14] The Appellant argued that the claim being made in the present action is a different claim from that made in *Blueberry River 1995, supra*. The Appellant says that the breach of duty at issue derives exclusively from the express terms of the Treaty No. 8 reserve clause, and that the Crown's duty is owed jointly or in common to all those particular Treaty No. 8 Indians and their natural descendants for whose use and benefit Indian Reserve No. 172 was originally set apart. The Appellant says his claim is in respect to only the personal Treaty No. 8 entitlements to per capita shares of the benefits of the disposal of the mineral rights of Indian Reserve No. 22. He further argues that Hugessen J. decided that treaty rights were not an issue in *Blueberry River 1999, supra*, and that this was confirmed by this Court.

[15] The Crown points out that Treaty No. 8 provided for the possibility that lands could be set aside for the band but also for individuals and that the Indians at the time opted to have Indian Reserve No. 172 set aside for the Band. *Blueberry River 1995, supra*, proceeded on the basis that it was the band which had been given Indian Reserve No. 172. It is clear from the Supreme Court of Canada reasons, *Blueberry River 1995, supra* 344 at 367, that it was the band that was given the parcel of land. Madam Justice McLaughlin, as she then was, said:

The band was given a parcel of land near Fort St. John in northeastern British Columbia (also referred to as IR-172)...

In 1940, the band surrendered the mineral rights on its Fort St. John reserve to the Crown in trust to lease for its benefit.

[16] In the appeal to this Court from the judgment of Hugessen J., Rothstein J.A. spoke in similar terms in *Blueberry River 2001, supra*, at paragraph 27:

Some of the present descendants argue that their rights are treaty rights flowing to them as descendants of the signatories of Treaty 8. The rights at issue here are not treaty rights. They are rights that flowed from Indian Reserve 172 being set aside for the Beaver Band in accordance with the Crown's treaty obligations. The rights

were those of the members, collectively, of the Beaver Band, by reason of their membership in the Band and which, for the reasons already set out, passed to the members, collectively, of each of the Blueberry and Doig Bands.

Leave to appeal to the Supreme Court of Canada was refused.

Analysis

[17] It is difficult to see, on these facts, how any entity except the band had any claim with respect to mineral rights in Indian Reserve No. 172, and it is therefore difficult to see that any claim relating to treaty rights remains with respect to Indian Reserve No. 172 as claimed by the present Appellants. However, in my view, it is unnecessary in this case to decide this point.

[18] The Crown argues that the present action is barred by the doctrine of *res judicata* on either grounds of cause of action estoppel or issue estoppel.

[19] The criteria for the application of the cause of action estoppel are as follows:

(a) there must be a final decision of a court of competent jurisdiction in the prior action;

(b) the parties to the subsequent litigation must have been parties to or privy with the parties to the prior action;

(c) the cause of action in the prior action must not be separate and distinct; and

(d) the basis of the cause of action in the subsequent action was argued or could have been argued in the prior action if the parties had exercised reasonable diligence.

[20] In my view, all four of these criteria have been established in the present case. With respect to (a) there has been a final decision with respect to the breach of the fiduciary duty on the part of the Crown. This decision was rendered by the Supreme Court of Canada. It is clear from the formal judgment of the Supreme Court of Canada that the claims against the Crown by the Appellants with respect to the mineral rights in Indian Reserve No. 172 have been finally determined, *Blueberry River 1995, supra*, at 408:

I would allow the appeal and set aside the judgments below. The appellants are entitled to damages against the Crown for breach of fiduciary duty with respect to mineral rights as were conveyed by agreement for sale or by deed after August 9, 1949.

Similarly the Judgment of the Trial Division of this Court of March 2, 1998, *Blueberry River 1998, supra*, provides paragraph 12:

THE COURT FURTHER ORDERS that the claims of the Plaintiffs merge in this judgment and that the Defendant is hereby released with respect to the claims of the Plaintiffs in this action;

[21] With respect to (b), the parties to the present litigation were also parties to *Blueberry River 1999, supra*, litigation with the exception of Mr. Beattie. However he claims by way of an assignment from a party to *Blueberry River 1995, supra*.

[22] With respect to (c) the cause of action in both cases, (the *Blueberry River 1995* case and the present case) is the wrong alleged on the part of the Crown, being its breach of fiduciary duty relating to Indian Reserve No. 172. Specifically, it related to the failure of the Crown to reserve mineral rights for the band.

[23] With respect to (d), if, as suggested by the present Appellants, there is a further claim arising out of the breach of fiduciary duty of the Crown with respect to Indian Reserve No. 172, it is a claim which could and should have been made in the *Blueberry River 1995* action. The present Appellants, with the exception of Mr. Beattie who

only claims by assignment, were parties in the *Blueberry River 1995* case and were represented by counsel. If it was their intention to advance further claims on the part of individuals to relief, in addition to claims on the part of the band, it should have been done in that action and no reasonable explanation or justification has been given for the failure to do so. Wigam V.C. in *Henderson v. Henderson* (1843), 3 Hare 100, 67 E.R. 313, at 319 said the following:

In trying this question, I believe that I state the rule of the court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of [a] matter which might have been brought forward as part of the subject in contest but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time[...] It is plain that litigation would be interminable if such a rule did not prevail.

[24] Consequently, in my view, the Appellants are barred by the doctrine of *res judicata* on grounds of cause of action estoppel from proceeding with their new action.

[25] It is apposite to note what Rothstein J.A. said in this respect *Blueberry River 2001, supra*, at paragraph 33:

As between the Crown and all the appellants, including the present descendants, I have no doubt that a cause of action estoppel applies. The Crown cannot re-litigate the question of whether it breached its fiduciary duty in respect of mineral rights on Indian Reserve 172 against any of the appellants.

[26] I am also of the view that the Appellants are barred by reason of the doctrine of *res judicata* on grounds of issue estoppel. They appeared and argued before Hugessen J. in *Blueberry River 1999, supra*, and made precisely the same arguments before him that were made before us. The Appellants having lost before Hugessen J. did not participate in the appeal from his decision and the matter is therefore *res judicata*. As mentioned, his decision was appealed by other persons and the appeal was dismissed.

[27] I therefore can find no error on the part of the learned Trial Judge and this appeal should be dismissed with costs.

"J. Edgar Sexton"

J.A.

"I agree

"Alice Desjardins J.A."

"I agree

"Robert Décary J.A."

SCHEDULE "A"

LIST OF REPRESENTED PLAINTIFFS

Tracy Candice Aven,

Alexander Chipesia,

Daniel Ronald Chipesia,

Darcy Chipesia,

Lorraine Chipesia,

Mary Chipesia,

Peter Chipesia,

Richard Douglas Chipesia,

Doreen Marie Reno,

Gary Ray Reno,

Jacqueline Reno,

William Kenneth Reno,

Earl Kenneth Thomas,

Brian Wolf,

Gabrial Louie Wolf,

James Wolf,

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-834-00

STYLE OF CAUSE: BRUCE ALLAN BEATTIE and others

v.

Her Majesty the Queen

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: September 27, 2001

REASONS FOR

JUDGMENT BY Sexton, J.A.

CONCURRED IN BY: Desjardins, J.A.

Décary, J.A.

DATED: October 18, 2001

APPEARANCES:

Mr. Bruce Beattie	ON HIS OWN BEHALF
Mr. Kenneth Tyler	
Mr. Angus Gunn	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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