

CASE SUMMARY

High Court upholds TRA decision that proceedings a nullity and deemed withdrawn however finds right of appeal where challenge finally determined

Decision date: 2 December 2024

CSUM 25/01

CASE

Goodricke v Commissioner of Inland Revenue [2024] NZHC 3639

LEGISLATIVE REFERENCES

Tax Administration Act 1994, s120I, 138B and 138D

Taxation Review Authorities Act 1996, s 26A

Taxation Review Authorities Regulations 1998, regs 7, 8, 30(2) and 32

LEGAL TERMS

Final determination, jurisdiction, nullity, deemed withdrawn

Summary

The first claim related to the imposition of use of money interest (UOMI). However, s 120I of the Tax Administration Act 1994 (TAA) prohibits the imposition of UOMI being challenged.

The TRA determined that the proceedings relating to the second claim were a nullity and could not proceed. The High Court held that this is a final determination of the proceedings and accordingly, there is a right of appeal under s 26A of the Taxation Review Authorities Act 1996 (TRAA).

The High Court upheld that the proceedings were a nullity as the notice of claim was not a valid notice of claim. The High Court also upheld that the proceedings in the TRA were deemed withdrawn when the appellants (the Goodrickes) failed to attend the directions

hearing. There was no good reason for their non-attendance nor were there exceptional circumstances.

Impact

The outcome of this case is that a determination by the TRA that proceedings are a nullity is a final determination of the proceeding and there will be a right of appeal under s 26A of the TRAA.

The case confirms that a notice of claim must meet the requirements in the Taxation Review Authorities Regulations 1998 (the Regulations) and the TAA for challenge proceedings to commence, and failure to attend a directions hearing will bring the proceedings to an end unless there is a good reason or exceptional circumstances. It also confirms that s120I prohibits UOMI from being challenged.

Facts

Mrs Goodricke was the sole director and shareholder of Safety Beacons Limited (SBL) until 22 May 2021 when Mr Goodricke also became a director.

In 2022 SBL began a disputes process under pt 4A of the TAA in relation to the imposition of UOMI in respect of certain PAYE periods. An adjudication report was issued on 13 May 2022 (First Adjudication Report) which determined that SBL could not dispute the imposition of UOMI because it is expressly prohibited by s 120I of the TAA. On 17 June 2022 the Goodrickes and SBL filed a notice of claim with the TRA (First Claim).

The Commissioner filed a notice of appearance under protest to jurisdiction and applied to strike out the proceeding.

A second disputes process had also been commenced and the adjudication report for the second dispute was issued on 1 December 2022 (Second Adjudication Report). The Second Adjudication Report determined that SBL's contracting income should be included in its income tax return for the 2019 year and adjustments be made to income and deductions as proposed by the Commissioner. It was also determined that the attribution rule applied to the contract income, which was to be attributed to Mrs Goodricke with SBL being entitled to a deduction for the attributed amount. The Commissioner accepted that the Second Adjudication Report made "disputable decisions" capable of being challenged by commencing proceedings under s 138B of the TAA.

On 21 January 2023 SBL and the Goodrickes filed a notice of claim (Second Claim) purportedly in relation to the proceedings initiated by the First Claim but in fact it related to the decision in the Second Adjudication Report.

A directions hearing was set down for 11 August 2023 to deal with both the First Claim and the Second Claim. Notification was emailed on 3 August 2023 and there was no reply by the appellants. A further email was sent on 10 August 2023 setting out reg 30(2) of the Regulations and stating that if a disputant fails to attend a directions hearing the challenge is deemed withdrawn and the disputant may not proceed with the challenge without the consent of the TRA. There was no response. The directions hearing proceeded on 11 August 2023 in the absence of the appellants.

On 12 August 2023 Mr Goodricke emailed the TRA stating he had been out of the country and requested the directions hearing be rescheduled. On 23 August 2023 Mr Goodricke sent another email to the TRA asking if the directions hearing had been rescheduled and suggesting the case manager at the TRA had deliberately excluded him from attending the directions hearing on 11 August 2023 by hanging up on him.

On 12 October 2023 the TRA issued a minute which noted that the failure by the Goodricks to attend the directions hearing meant the challenge was deemed to have been withdrawn. The TRA treated Mr Goodricke's email of 12 August 2023 as an application under reg 32 of the Regulations to resume the proceeding and the allegation by Mr Goodricke that the case manager had deliberately excluded his participation as a ground on which that application was advanced. The TRA stated that the Goodricks "should proceed on the basis that the grounds advanced at this point do not demonstrate a good reason for failing to attend the directions hearing, or exceptional circumstances" that would enable the matter to proceed. The TRA gave the Goodricks an opportunity to provide further grounds that might establish a good reason that prevented them attending the directions hearing. The Goodricks did not file any response with the TRA.

On 30 October 2023 the Commissioner requested the TRA to declare the proceedings at an end because the Goodricks had not demonstrated a good reason for their non-attendance at the directions hearing, nor any exceptional circumstances. On 17 and 18 December 2023 Mr Goodricke emailed the TRA repeating his allegation that the case manager had hung up on him. The TRA rejected this allegation.

The decision of the TRA was issued on 19 April 2024 and determined that:

- The TRA has no jurisdiction to hear the First Claim because it related to UOMI;
- The proceedings relating to the Second Claim were a nullity as there was no valid notice of claim. The purported notice of claim was not compliant and did not demonstrate a reasonably arguable case to show any disputable decision made by the Commissioner was wrong and there was no "evident path to rectification";
- If a challenge proceeding had commenced, it was deemed withdrawn under reg 30(2) of the Regulations and the proceedings were at an end. The Goodricks failed to attend the directions hearing and there was not a good reason for their non-attendance or other exceptional circumstances.

The Goodrickes appealed to the High Court against the decision of the TRA.

Issues

1. Whether there is a decision by the TRA that is capable of appeal to the High Court under s 26A of the TRAA;
2. If so, whether the TRA erred in finding the proceedings were a nullity; and
3. Whether the TRA erred in finding that, if a challenge proceeding had been commenced, it was deemed to have been withdrawn such that the appellants could not proceed with their claim.

Decision

1. Is there a right of appeal?

In relation to the First Claim there can be no further challenge as s 120I of the TAA provides a statutory bar to any challenge to the imposition of interest.

In relation to the Second Claim, a determination that a challenge under the TAA cannot proceed has the same effect as a strike out – both result in a final determination of the proceeding. It is relevant that the merits (or purported lack thereof) of the notice of claim were considered by the TRA; that is the basis upon which the TRA ultimately held that the notice of claim was invalid, and the proceedings were a nullity, because they disclosed no reasonably arguable basis for the claims. Where there has been engagement with the merits of the taxpayer's challenge application, and the decision of the TRA has the effect of finally determining the proceedings, there is a right of appeal under s 26A of the TRAA.

2. Were the proceedings a nullity?

In relation to the First Claim the TRA did not err in finding the proceedings were a nullity as UOMI cannot be challenged.

In relation to the Second Claim the notice of claim did not follow the prescribed form. There were no specific references to any parts of the Second Adjudication Report or reasoning contained within it that are said to be incorrect. The notice of claim presents as a complaint narrative and puts forward baseless claims against the Commissioner. The TRA did not err in finding that the notice of claim was not capable of commencing a challenge proceeding and was therefore a nullity.

3. Could the challenge be deemed to have been withdrawn?

The TRA was entitled to deem the challenge to be withdrawn under reg 30(2). Despite being given the opportunity the appellants did not provide the TRA with evidence that there was good reason or exceptional circumstances preventing them from attending the directions hearing. The suggestion that the case manager deliberately hung up on Mr Goodricke was untenable given the decision-maker's own knowledge that did not happen.

The TRA made multiple attempts to connect with Mr Goodricke. Mr Goodricke did not engage with the TRA in a constructive way to explain the non-attendance. The TRA cannot be criticised for deeming the proceeding to have been withdrawn.

4. New Zealand Bill of Rights Act 1990 (NZBORA) and Crimes Act 1961

There was no breach of s 27 of the NZBORA by the TRA. The procedural prerequisites to a challenge proceeding do not deprive a taxpayer of access to the TRA or the Courts. In this case it is only the appellants' failure to comply with the provisions of the TAA and the Regulations that has deprived them of their ability to bring a challenge.

The allegation there was a breach of s 116 of the Crimes Act 1961 is not a matter that could be advanced in the appeal.

About this document

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