

COURT OF APPEAL FOR ONTARIO

CITATION: Lewis v. Uber Canada Inc., 2024 ONCA 702

DATE: 20240919

DOCKET: COA-23-CV-1337

Lauwers, Zarnett and Pomerance JJ.A.

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

BETWEEN

William Daniel Lewis

Plaintiff (Appellant)

and

Uber Canada Inc., Uber Technologies Inc., Uber B.V.,
Uber Portier Canada Inc. and Uber Portier B.V.

Defendants (Respondents)

Robert Ben and Stephen Birman, for the appellant

Dana M. Peebles, Gillian P. Kerr and Emilie Bruneau, for the respondents

Heard and released orally: September 17, 2024

On appeal from the order of Justice Jasmine T. Akbarali of the Superior Court of Justice, dated November 1, 2023, with reasons reported at 2023 ONSC 6190.

REASONS FOR DECISION

[1] We dismiss the appeal on the basis identified by the motion judge. She stated, at para. 50:

The funds in issue in this case were remitted to the government as GST.

I conclude that it is plain and obvious that s. 312 prohibits the plaintiff's action. The scheme of the *ETA* requires the plaintiff to turn to the rebate mechanism contained in s. 261(1) to obtain a rebate of the GST wrongly paid.

[2] In reaching this conclusion, the motion judge properly interpreted s. 312 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 ("*ETA*") and applied the law as correctly found by the Federal Court of Appeal in *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184, 321 D.L.R. (4th) 301, which applied this court's decision in *Sorbara v. Canada (Attorney General)*, 2009 ONCA 506, 98 O.R. (3d) 673. In *Sorbara*, this court found the *ETA* "provides a complete statutory framework with respect to a taxpayer's claim for a rebate of GST paid under Part IX of the *Excise Tax Act*": at para. 9. The Federal Court of Appeal concluded that Parliament has given the Tax Court exclusive jurisdiction to deal with claims arising out of, among other things, taxpayers' claims for rebates of GST paid: *Merchant Law Group*, at paras. 14-15, citing *Sorbara*, at paras. 9, 11.

[3] We also agree with the motion judge that s. 224.1 of the *ETA*, contrary to the appellant's argument, reinforces s. 312's intent. We accept the respondents' argument that s. 224.1 does not provide a "loophole" to s. 312.

[4] We agree with the respondents that "the Federal Government itself expressly rebutted that theory: it stated, in the amending statute, that it was adding s.224.1 to the *ETA* to 'extend the [statutory] protection from civil liability claims...

to agents of the Crown who collect tax,' not to reduce their protection." Section 224.1 of the *ETA* bars actions, even if cast as claims for damages, against persons for the way they calculate, collect, and remit GST if they act in compliance or intended compliance with the *ETA*. We agree with the motion judge that the appellant's pleading does not take his claim outside of that statutory bar.

[5] This is sufficient to dispose of the appeal.

[6] As agreed between the parties, costs are awarded to the respondents in the amount of \$25,000, all-inclusive.

"P. Lauwers J.A."
"B. Zarnett J.A."
"R. Pomerance J.A."