

**Date: 20070515**

**Docket: A-37-06**

**Citation: 2007 FCA 193**

**CORAM: LÉTOURNEAU J.A.  
NOËL J.A.  
PELLETIER J.A.**

**BETWEEN:**

**STATUS-ONE INVESTMENTS INC.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Hearing held at Montréal, Quebec, on May 14, 2007.

Judgment delivered at Montréal, Quebec, on May 15, 2007.

**REASONS FOR JUDGMENT BY:**

**NOËL J.A.**

**CONCURRED IN BY:**

**LÉTOURNEAU J.A.  
PELLETIER J.A.**

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**REASONS FOR JUDGMENT**

**NOËL J.A.**

[1] This is an appeal from an interlocutory decision of Mr. Justice Rip of the Tax Court of Canada (2005 TCC 766), which granted leave to the Crown to file a second amended reply to the notice of appeal.

[2] In an earlier decision dated July 27, 2004 (2004 TCC 473), Rip J. refused the Crown's first attempt to amend, which dealt with adding the following paragraphs:

[TRANSLATION]

- (uu) During the years 1993 to 1998, Equicap promoted and marketed several limited partnership arrangements by means of offering memoranda;
- (ww) The important aspects of these limited partnership arrangements were identical to AFS No. 11, notably in terms of structure, operating method, agreements signed, parties involved, actions taken, objectives pursued and financial and tax results obtained.

[3] In that first decision, Rip J. determined that even though the actions of third parties, in this case Equicap, could be relevant to a tax appeal in some cases, relevancy had not been demonstrated (reasons for first decision, paragraph 30).

[4] The decision of Rip J. was confirmed on appeal (2005 FCA 119). In its reasons, the Court of Appeal pointed out that if the Minister wants to base an assessment on the actions of third parties, it is his responsibility to specify the link between these actions and those of the taxpayer in question, so that the taxpayer knows the case it has to meet (reasons for appeal, paragraph 24).

[5] On June 7, 2005, the Crown brought a second motion for leave to add paragraphs 1100.(1) to 1100.(10) to its reply to the notice of appeal. It is not necessary to reproduce these paragraphs for purposes of this appeal. Suffice it to say that they add details to the amendment as it was presented in its original form.

[6] After stating that the paragraphs in question meet the requirement set out by the Court of Appeal and that these new allegations could be relevant for purposes of the appeal, Rip J. granted the amendment.

[7] This is an appeal of that decision.

### **DECISION**

[8] The appellant criticizes Rip J. for not following his first decision. According to the appellant, after Rip J acknowledged that the allegations in the second amended reply merely provided more details about the previous amendment, he should have found that the allegations were not relevant.

[9] I do not agree with this argument. In its decision of April 6, 2005, our Court approved Rip J.'s approach and stated:

In our opinion, the Crown has failed to demonstrate, on the basis of the pleadings, how the allegations in subparagraphs 11(uu) and 11(ww) are relevant. As Mr. Justice Rip indicates, in some cases, it is quite possible that relationships or ties between an appellant and third parties will be relevant to the determination of its tax payable. But it is still necessary for the pleadings to indicate precisely how those ties or relationships could serve that purpose.

[10] On this point, Rip J. specified in his reasons that (paragraph. 15):

... ,paragraphs 11oo.1) to 11oo.10) of the second amended Reply contain sufficient particulars for the appellant to be able to understand the possible links and relations between it and the third parties, which are not contained in paragraphs 11 uu)and 11ww) of the amended Reply.

[11] He added that at this stage of the proceedings, he could not make a finding as to the relevancy of the proposed amendment (paragraph 17):

The facts in paragraph 5 of these reasons suggest that there may be a relationship between the appellant and the third parties that influenced the appellant's decision to invest in AFS No. 11. Up to this point, these allegations are merely allegations since the Minister assumed that most of these allegations were true in issuing the assessment and that they could be rebutted. It is possible that evidence that will not be available until the hearing is necessary to determine the relevance of the contested allegations. Only the trial judge will be able to decide whether the allegations in paragraphs 1100.1) to 1100.10) are relevant in whole or in part or whether they are not relevant at all in determining the intention of the appellant when it acquired shares of AFS No. 11.

[12] Bearing in mind that the impugned decision is discretionary in nature, I cannot find an error in the decision of the motions judge to allow the amendment proposed by the Crown.

[13] I would dismiss the appeal with costs both before this Court and the Tax Court of Canada.

“Marc Noël”

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J.A.

“I concur.  
Gilles Létourneau, J.A.”

“I concur.  
J.D. Denis Pelletier, J.A. ”

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-37-06

**(APPEAL FROM AN ORDER OF MR. JUSTICE RIP OF THE TAX COURT OF CANADA DATED DECEMBER 23, 2005, DOCKET NO. 2002-2867(IT)G).**

**STYLE OF CAUSE:** Status-One Investments Inc. v.  
Her Majesty the Queen

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 14, 2007

**REASONS FOR JUDGMENT BY:** NOËL J.A.

**CONCURRED IN BY:** LÉTOURNEAU J.A.  
PELLETIER J.A.

**DATED:** May 15, 2007

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