

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Tobacco Tax Act* R.S.N.W.T 1988 c. T-5,
as amended;

AND IN THE MATTER OF an appeal respecting the suspension of a
dealer's retail permit, pursuant to s.22.3 of the said Act.

AND IN THE MATTER OF an application to Stay the suspension of a
dealer's permit, pursuant to s.22.3(3) of the Act.

BETWEEN:

GASGA-OLTON LTD.

Appellant

- and -

THE MINISTER OF FINANCE OF THE
GOVERNMENT OF THE NORTHWEST TERRITORIES

Respondent

MEMORANDUM OF JUDGMENT

The appellant seeks a stay, pending the hearing of this appeal, of the suspension of its dealer's permit issued pursuant to the *Tobacco Tax Act*. There is no issue taken with the validity of the legislation authorizing the suspension nor with the authority of the appropriate government officer to suspend the permit. The position of the appellant on the appeal is simply that the suspension is having a detrimental effect on its business operations thereby jeopardizing its ability to pay the taxes owing and its ongoing viability as a business. The appellant acknowledges that the taxes owing are in excess of \$725,000.00.

The test to be applied in exercising the discretion to grant a stay was prescribed in *Manitoba (A.G.) v. Metropolitan Stores (MTS) Ltd.* (1987), 38 D.L.R. (4th) 321 (S.C.C.). That test requires the applicant to show that there is a serious triable issue; that the applicant will suffer irreparable harm if the stay is not granted; and, that the balance of convenience favours a stay.

The appeal relates solely to the exercise of a discretionary enforcement power by a government official. The appellant is really saying that it would be more convenient for it if the permit were not suspended. Yet the outstanding taxes relate to a period from 1990 to 1995 and to date, apparently, even though the appellant's permit was only suspended two months ago, no payments have been made by the appellant. I am therefore somewhat skeptical about the appellant's expressions of interest in quickly clearing this debt.

The appellant offers to dispose of assets and to assign the proceeds to the government. It does not need a stay to do that. It could have proceeded with these dispositions at any time. Furthermore, the harm, if any, suffered by the appellant in the absence of a stay is purely economic and therefore compensable in damages.

The granting of a stay is a discretionary remedy. Based on the factors noted above I am not satisfied that it should be granted in this case. The application is dismissed.

Dated this 11th day of April, 1997.



J. Z. Vertes
J.S.C.

To: James R. Posynick,
Counsel for the Appellant

Craig Bell,
Counsel for the Respondent

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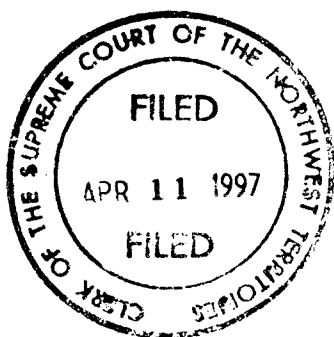
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**Memorandum of Judgment of the
Honourable Justice J. Z. Vertes**
