

Citation: 2007TCC238
Date: 20070504
Docket: 2005-193(IT)G

BETWEEN:

ANTHONY COMPARELLI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Counsel for the Appellant: Douglas D. Langley
Counsel for the Respondent: Jenny P. Mboutsiadis

REASONS FOR ORDER

**(Delivered orally from the Bench at
Toronto, Ontario, on January 19, 2007)**

McArthur J.

[1] This is a motion for an Order that the Minister of National Revenue has Hillary Fox, on behalf of the Respondent, re-attend to answer the refusals given during her examination for discovery on October 20, 2006. The motion continues requesting an Order extending time. I will deal with that at the end.

[2] Grounds for the motion includes that on October 20, 2006, Hillary Fox attended an examination for discovery. During the examination, she improperly refused to answer questions about the liability of other directors of mindthystore.com, which I will refer to as the corporation.

[3] The appeal from which this motion flows is from an assessment under subsection 227.1(1) of the *Income Tax Act*, and related sections arising from

unremitted payroll deductions of the corporation, of which the Appellant was one of five directors. The Appellant seeks information with regard to his four co-shareholders, and that information includes: Were they assessed for the corporation's liability, and if not, why not? If so, did they appeal? The Appellant requests copies of all correspondence, reports and other detailed information with respect to the other four shareholders.

[4] The Minister's position is that the Respondent is prohibited under paragraph 244(1)(1) of the *Income Tax Act* from responding, and further that the information is not relevant to any issue in the appeal.

[5] The Appellant's position includes that the other directors' information is relevant to his appeal, particularly in that errors may have been made with respect to the four shareholders, which affect his assessment. He asks that the information be disclosed by the Minister pursuant to paragraph 241(4)(b). The resolution to this motion relies primarily on the application of the following sections. Which read as follows:

241(1) Except as authorized by this section, no official shall

- (a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information

It goes further in that regard. The exception that the Appellant relies on is contained in paragraph 241(4)(b) where taxpayer information may be disclosed:

244(1) An official may

...

- (b) provide to any person taxpayer information that can reasonably be regarded as necessary for the purposes of determining any tax, interest, penalty or other amount.

And it goes on further to expand.

[6] The question narrows down to whether the information the Appellant seeks can reasonably be regarded as necessary for the purposes of the issue in this appeal. Both parties agree that the issue is whether the Appellant exercised the degree of care, diligence and skill to prevent the failure of the corporation to make, and remit,

deductions that any reasonably prudent person would have exercised in comparable circumstances as set out in subsection 227.1(3).

[7] The Appellant is in the unenviable position of not knowing whether the information he requests is of assistance to him, or necessary for his purposes. The four other shareholders may have or may not have been assessed, we do not know.

[8] One thing that is constant in subsection 227.1(3), "due diligence cases", is that each appeal is to be considered on its own particular merits. What may apply to one shareholder may not apply to a fellow shareholder. The tests are both subjective and objective, and I refer to the case of *Soper v. The Queen*.¹ The Appellant is concerned that the information relied on by the Minister for his colleagues may have been incorrect. For instance, they may have submitted that the Appellant was the only fully informed shareholder. I have been provided with no information that assists me in this regard. There is absolutely no evidence that assists in determining that other shareholder's files can reasonably be regarded as necessary in determining whether the Appellant met the due diligence requirements of the *Income Tax Act*.

[9] The Appellant did not testify. We do not know if he asked his colleagues for their assessment history or not. The Appellant's pleadings do not assist us in this regard. He does not challenge anything but due diligence. The Minister's assumptions do not deal with the other directors and pursuant to subsection 227.1(1), the Appellant is jointly and severally liable for the corporation's failure to remit.

[10] Obviously the Minister cannot collect more than what is owed by the corporation and he must provide an accounting to the Appellant. However, from a reading of subsection 227.1(1), there is no obligation on the Minister to assess the Appellant's co-shareholders. The application of subsection 227.1(1) may be somewhat harsh with respect to the Appellant in this instance. It is expected that the Minister will pursue reasonable efforts to satisfy its claim through assessments of all directors, to come within the meaning of subsections 227.1(1) or 227.1(3).

[11] Both parties referred to several cases. The Appellant relied particularly on *Page v. The Queen*² in which three Appellants were directors together with two other Appellants of a law firm management company, which failed to deduct or withhold and remit certain amounts to the Receiver General. The Appellants were assessed in

¹ 97 DTC 5407.

² [1996] 1 C.T.C. 2697.

respect to these amounts, but the remaining two directors were not. The Appellants brought a motion pursuant to subsection 241(4) of the *Act* to require the Minister to produce certain documentation concerning the other two directors. In conclusion, Judge Bell wrote:

In each of the Appellant's cases, the documents sought are not the income tax returns of any other person. They, to the extent that any such documents exist, may contain inaccurate information. In addition, such documents may have influenced the decision or decisions of officers of Revenue respecting the liability of directors

....

[12] Also Bell J. referred to *Page* in *General Motors Acceptance Corp. of Canada Ltd. v. R.*³ where he stated, in part, that the five directors were united in a common endeavour. It was the Court's opinion that such documents were reasonably regarded as necessary for the purpose of determining any tax, interest or penalty payable under the *Act*.

[13] In the present instance, we have no evidence to assist in determining if there is, or may be, inaccurate information and I am not prepared to guess, or draw an inference, that the Minister's mind may have been influenced by information received from the remaining shareholders. In *Hockhold v. The Queen*,⁴ a case which specifically involved the motion to dismiss allegations, Rothstein, J. stated:

The plaintiff's concern seems to be that other taxpayers were treated differently than he was by Revenue Canada. Whatever the reasons for Revenue Canada's action in respect of other taxpayers, they are not relevant to the plaintiff's situation.

He also added at page 5344:

... While it is understandable that the plaintiff considers it unfair that Revenue Canada appears to have treated taxpayers in similar circumstances differently, that cannot be the basis for the plaintiff's appeal.

These statements are relevant to the present situation, although the Appellant is not asking to be treated the same, or not to be treated differently from other taxpayers. He is requesting information that may, or may not, assist him.

³ [1999] 3 C.T.C. 2069.

⁴ 93 DTC 5339.

[14] The Minister has a serious obligation to taxpayers to keep individual files in complete confidence. To break this trust requires greater reasons than have been presented to me. I cannot conclude that the information requested can be reasonably regarded as necessary for the issue of whether or not the Appellant exercised due diligence. For these reasons, the Appellant's motion is denied with costs to the Respondent.

[15] Further, the Appellant requested an extension of time under *Rule 125* of the *Tax Court of Canada Rules (General Procedure)* for the purpose of answering undertakings, after an exchange with counsel for the parties, I have extended that date to March 5, 2007.

Signed at Ottawa, Canada, this 4th day of May, 2007.

"C.H. McArthur"

McArthur J.

CITATION: 2007TCC334

COURT FILE NO.: 2005-193(IT)G

STYLE OF CAUSE: Anthony Comparelli and
Her Majesty the Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 17, 2007

REASONS FOR ORDER BY: The Honourable Justice C.H. McArthur

DATE OF ORDER: February 5, 2007

APPEARANCES:

Counsel for the Appellant: Douglas D. Langley

Counsel for the Respondent: Jenny P. Mboutsiadis

COUNSEL OF RECORD:

Name: Douglas D. Langley

Firm: Wilson Vukelich LLP

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada