

Docket: 2008-93(IT)G

BETWEEN:

DENIS ASSELIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Motion heard on common evidence with
the motion of **Plomberie de la Capitale Inc. (2008-95(IT)G)**
on September 17, 2008, at Québec, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant:	Bernard Roy
Counsel for the Respondent:	Susan Shaughnessy

ORDER

UPON motion by the Appellant for an Order naming Diane Moore, Auditor, and Nathalie Locas, Appraiser, as persons to be subjected to an oral examination for discovery on behalf of the Respondent;

UPON the sworn declaration filed by counsel for the Appellant in support of the motion;

UPON the sworn declaration of Christine Verreault, Appeals Officer, confirming the Appellant's tax liability and the penalties in issue;

AND having heard counsel for both parties;

IT IS ORDERED that the Appellant's motion be dismissed, with costs to the Respondent in any event of the cause, in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 25th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 12th day of November 2008.
Susan Deichert, Reviser

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PLOMBERIE DE LA CAPITALE INC.,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

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the motion of **Denis Asselin (2008-93(IT)G)**
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Citation: 2008 TCC 535
Date: 20080925
Dockets: 2008-93(IT)G
2008-95(IT)G

BETWEEN:

DENIS ASSELIN,
PLOMBERIE DE LA CAPITALE INC.,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

Favreau J.

[1] The Appellants have made the instant application under section 17.3 of the *Tax Court of Canada Act*, R.S., 1985, c. 51 (4th Supp.), s. 5; 1993, c. 27, s. 216 (hereinafter "the Act"), which is worded as follows:

Examinations for discovery

17.3 (1) Where the aggregate of all amounts in issue in an appeal under the *Income Tax Act* is \$25,000 or less, or where the amount of the loss that is determined under subsection 152(1.1) of that Act and that is in issue is \$50,000 or less, an oral examination for discovery shall not be held unless the parties consent thereto or unless one of the parties applies therefor and the Court is of the opinion that the case could not properly be conducted without that examination for discovery.

Consideration on application

(2) In considering an application under subsection (1), the Court may consider the extent to which the appeal is likely to affect any other appeal of the party who instituted the appeal or relates to an issue that is common to a group or class of persons.

Mandatory examination

(3) The Court shall order an oral examination for discovery in an appeal referred to in subsection (1), on the request of one of the parties, where the party making the request agrees to submit to an oral examination for discovery by the other party and to pay the costs in respect of that examination for discovery of that other party in accordance with the tariff of costs set out in the rules of Court.

[2] Counsel for the Respondent objects to the two officers of the Crown being subjected to examinations for discovery, firstly because the amount in issue for each of the Appellants' taxation years 2002 and 2003 is less than \$25,000 (in the case of Denis Asselin, the amount is \$23,697 for 2002 and \$1,161 for 2003, and in the case of Plomberie de la Capitale Inc., the amount is \$13,570 for 2002 and \$1,398 for 2003); and also because the credibility of the persons that the Appellants wish to examine is not in issue, since neither the pleadings, nor the correspondence, nor any of the various documents submitted by the Appellants disclose any allegation in this regard.

[3] Counsel for the Appellants submits that discovery in writing would not be a satisfactory alternative in the conduct of this appeal.

[4] At the hearing, counsel for the Appellants submitted that an examination for discovery makes the proceedings fairer and more efficient by shortening the hearing. In support of his position, he cited the decisions in *MIL (Investments) S.A. v. The Queen*, 2006 DTC 2784 and *Boast v. The Queen*, 2005 DTC 818. Lastly, he emphasized that, in civil law, examinations for discovery are standard practice.

[5] At the hearing, counsel for the Respondent told the Court that the Respondent had produced her list of documents, but that the Appellants had merely produced a list of documents that referred solely to the notices of assessment; and that the Respondent had given the Appellants the audit report and the appraisal report concerning the residence built by Denis Asselin. In her opinion, the Appellants have in their possession all the necessary and useful information required in order to understand the bases of the notices of assessment and the criteria that the appraiser used in order to appraise the residence.

[6] As stated in subsection 17.3(1) of the Act, the Court has the discretion to allow a motion for an examination for discovery if it is of the opinion that the appeal could not properly be conducted without an oral examination for discovery, even where, as here, the amounts in issue are less than \$25,000.

[7] Upon reading the pleadings, it seems to me that the facts are not complex and that the Respondent's position is clearly articulated in the Reply to the Notice of Appeal.

[8] In view of the fact that the Appellants are in possession of the Respondent's list of documents, the audit report, and the appraisal report concerning the residence, the Appellants have not satisfied me that their appeals cannot properly be conducted without the oral examinations of Diane Moore and Nathalie Locas.

[9] The motion is dismissed, with costs to the Respondent in any event of the cause.

Signed at Ottawa, Canada, this 25th day of September 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 12th day of November 2008.
Susan Deichert, Reviser

CITATION: 2008 TCC 535

COURT FILE NOS.: 2008-93(IT)G and 2008-95(IT)G

STYLES OF CAUSE: Denis Asselin and Her Majesty the Queen
Plomberie de la Capitale Inc. and Her
Majesty the Queen

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: September 17, 2008

REASONS FOR ORDER BY: The Honourable Justice Réal Favreau

DATE OF HEARING: September 25, 2008

APPEARANCES:

Counsel for the Appellants: Bernard Roy
Counsel for the Respondent: Susan Shaughnessy

COUNSEL OF RECORD:

For the Appellants:

Name: Bernard Roy

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