

Docket: 2011-1955(IT)APP

BETWEEN:

SHY BROTHERS LTD.
& SOLID ENTERTAINMENT LTD.,

Applicants,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on August 24, 2011, at Vancouver, British Columbia

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Applicants:
Counsel for the Respondent:

Sid Iranzad
Amandeep K. Sandhu

ORDER

The Applicants' request to extend the time within which a notice of objection may be served is granted, without costs, in relation to the notices of objection in relation to the assessments issued in the name of Solid Entertainment Ltd. dated November 24, 2010 (for the penalty assessed for 2006), dated January 27, 2011 (for 2010) and dated February 4, 2011 (for the penalty assessed for 2009). The time to serve these notices of objection is extended to the date of this Order and these notices of objection shall be deemed to have been served on the date of this Order.

The application to extend time to serve a notice of objection in relation to the assessment issued in the name of Shy Brothers Production Inc. dated October 1, 2008 (for 2005) is dismissed, without costs.

The application to extend time to serve notices of objection to the assessments issued in the name of Solid Entertainment Ltd. dated August 26, 2008 (for 2007),

August 27, 2008 (for 2006), August 27, 2008 (for 2007), November 14, 2008 (for the penalty assessed for 2006), March 30, 2009 (for 2008), September 10, 2009 (for 2008), November 23, 2010 (for 2009), November 23, 2010 (for 2010), and January 13, 2011 (for 2009) is dismissed, without costs.

Signed at Winnipeg, Manitoba, this 8th day of September 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC419
Date: 20110908
Docket: 2011-1955(IT)APP

BETWEEN:

SHY BROTHERS LTD.
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HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb, J.

[1] This is an application by the Applicants to extend the time for serving notices of objection. The Applicants were issued several assessments in relation to amounts that the Canada Revenue Agency is claiming the Applicants should have deducted or withheld from payments made to non-residents (as provided in subsection 105(1) of the *Income Tax Regulations*) and should have remitted such amounts as provided in the *Income Tax Act* (the “*Act*”). The taxation years and the dates of the notices of assessment are as follows:

Shy Brothers Production Inc.¹

Taxation Year	Date of the Notice of Assessment
2005	October 1, 2008

Solid Entertainment Ltd.

¹ The assessment was issued in the name of “Shy Brothers Production Inc.” The agent for the Applicants stated during the hearing that the correct name for the company is “Shy Brothers Ltd.” and that there is no company of which he is aware with the name “Shy Brothers Production Inc.” Since the assessment was issued in the name of “Shy Brothers Production Inc.” this is the name that will be used. The only issue in this application is whether an extension of time should be granted to file a notice of objection to this assessment. The validity of the assessment issued in the name of “Shy Brothers Production Inc.” is not in issue in this application.

Taxation Year	Date of the Notice of Assessment
2007	August 26, 2008
2006	August 27, 2008
2007	August 27, 2008
Penalty for 2006	November 14, 2008
2008	March 30, 2009
2008	September 10, 2009
2009	November 23, 2010
2010	November 23, 2010
Penalty for 2006	November 24, 2010
2010	January 27, 2011
2009	January 13, 2011
Penalty for 2009	February 4, 2011

[2] The agent for the Applicants indicated that a notice of objection was filed on January 14, 2011. In the affidavit of the officer of the Canada Revenue Agency that was filed in this matter, it is indicated that the Applicants, on February 15, 2011, filed an application to request an extension of time for serving the notice of objection. It appears that the Applicants may have first filed a notice of objection and then filed an application to extend the time to serve a notice of objection. In any event, even if the earlier date of January 14, 2011 is accepted as the date on which the application was made to extend the time for serving a notice of objection, this is still more than one year and 90 days after the date of any of these assessments that were issued on or before September 10, 2009.

[3] Section 165 of the *Income Tax Act* (the “Act”) provides as follows:

165. (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a testamentary trust, on or before the later of

(i) the day that is one year after the taxpayer's filing-due date for the year, and

(ii) the day that is 90 days after the day of mailing of the notice of assessment; and

(b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

[4] If a notice of objection is not filed within the time as provided in subsection 165(1) of the *Act*, a taxpayer may request an extension of time to serve the notice of objection as provided in section 166.1 of the *Act*. However, paragraph 166.1(7)(a) of the *Act* provides as follows:

(7) No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be;

[5] No notices of objection were served before January 2011. Since the Applicants did not make any application to extend the time for serving a notice of objection to any of these assessments prior to January 2011, the application to extend the time to serve a notice of objection in relation to any assessment issued on or before September 10, 2009 is dismissed.

[6] Counsel for the Respondent confirmed that the Respondent has accepted the notices of objection that were served in relation to the assessment dated November 23, 2010 (for 2009), November 23, 2010 (for 2010) and January 13, 2011 (for the penalty for 2009) and confirmed that these notices of objection were all served within the time period as set out in subsection 165(1) of the *Act*. As a result, the application to extend time to serve these notices of objection is redundant and is dismissed.

[7] Counsel for the Respondent acknowledged during the hearing that the Respondent has agreed to allow the Applicant's application to extend the time for serving notices of objection to the assessments dated November 24, 2010 (for the penalty for 2006), January 27, 2011 (for 2010) and February 4, 2011 (for the penalty for 2009).

[8] As a result:

- (a) the Applicant's request to extend the time within which a notice of objection may be served is granted, without costs, in relation to the notices of objection in relation to the assessments issued in the name of Solid Entertainment Ltd. dated November 24, 2010 (for the penalty assessed for 2006), dated January 27, 2011 (for 2010) and dated February 4, 2011 (for the penalty assessed for 2009). The time to serve these notices of objection is extended to the date of this Order and these notices of objection shall be deemed to have been served on the date of this Order;
- (b) the application to extend time to serve a notice of objection in relation to the assessment issued in the name of Shy Brothers Production Inc. dated October 1, 2008 (for 2005) is dismissed, without costs; and
- (c) the application to extend time to serve notices of objection to the assessments issued in the name of Solid Entertainment Ltd. dated August 26, 2008 (for 2007), August 27, 2008 (for 2006), August 27, 2008 (for 2007), November 14, 2008 (for the penalty assessed for 2006), March 30, 2009 (for 2008), September 10, 2009 (for 2008), November 23, 2010 (for 2009), November 23, 2010 (for 2010), and January 13, 2011 (for 2009) is dismissed, without costs.

Signed at Winnipeg, Manitoba, this 8th day of September 2011.

“Wyman W. Webb”

Webb, J.

CITATION: 2011TCC419

COURT FILE NO.: 2011-1955(IT)APP

STYLE OF CAUSE: SHY BROTHERS LTD. & SOLID
ENTERTAINMENT LTD. AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: August 24, 2011

REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb

DATE OF ORDER: September 8, 2011

APPEARANCES:

Agent for the Applicants: Sid Iranzad
Counsel for the Respondent: Amandeep K. Sandhu

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada