

Citation: 2013 TCC 251
Date: 20130808
Docket: 2013-1444(GST)I

BETWEEN:

9218-4167 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Counsel for the appellant: Simon St-Gelais

Counsel for the respondent: Éric Bernatchez

ORDER AND REASONS FOR ORDER

[1] The appellant is appealing from an assessment concerning the goods and services tax under section 325 of the *Excise Tax Act*.

[2] According to the Notice of Appeal, the issue is the fair market value of an immovable. The Notice of Appeal states that there is a discrepancy of \$600,000 between the parties' positions.

[3] The respondent filed a motion to strike certain paragraphs and two titles from the Notice of Appeal on the ground that the alleged facts are not relevant.

[4] The respondent requests that the motion be determined on the basis of written submissions.¹

¹ The appellant did not ask for a hearing and the Court is persuaded that it is appropriate to determine the motion based on the parties' written submissions.

[5] The paragraphs in question are allegations relating to the conduct of the objection stage before the appeal was commenced before this Court. Among other things, it is alleged that the objection file was closed only one week after the appellant sent to the respondent a copy of an assessment report without counsel for the appellant being able to speak with the objections officer and that, subsequently, the respondent refused to reopen the file.

[6] The respondent claims that all these allegations are not relevant in determining the validity of the assessment and the issue, the fair market value of an immovable. The respondent cites the Federal Court of Appeal decision in *Main Rehabilitation Co. v. Canada*.²

[7] I agree that the conduct of objections and the conduct alleged in the Notice of Appeal are not relevant in determining the fair market value of an immovable.

[8] In its written observations, the appellant does not claim that the provisions in question are relevant to the fair market value. However, the appellant claims that these provisions are relevant to its application for costs on a solicitor-client basis.

[9] In additional written submissions, the respondent acknowledges the Court's power to award costs, but in citing *Canada v. Landry*,³ the respondent submits that normally the conduct prior to the proceeding can only be taken into account in exceptional circumstances.

[10] I agree. Nothing in the allegations in question suggests that there are circumstances that justify that the conduct prior to the appeal be taken into account.⁴

[11] To get an idea of what is exceptional, it is useful to examine the rather unique facts in *E.F. Anthony Merchant v. The Queen*,⁵ a case where this Court considered conduct before the Notice of Appeal. In *Merchant*, "the taxpayer's conduct frustrated the audit process, and unduly and unnecessarily prolonged the hearing"⁶ (emphasis added).

² 2004 FCA 403.

³ 2010 FCA 135.

⁴ I would add this: regardless of what took place at the objection stage, nothing prevents the parties from speaking to one another at this stage.

⁵ 2001 FCA 19.

⁶ *Canada v. Landry*, paragraph 24.

[12] For example, in *Merchant*, the Federal Court of Appeal stated:

4 ... The taxpayer's conduct was unacceptable and frustrated a proper audit of his claims with the result that a motion for disclosure became necessary. Moreover, the appellant refused and failed to comply with the disclosure order either by not disclosing documents immediately as requested or, in violation of the order which required specificity and the giving of particulars, by disclosing a large number of documents in such a state of disarray that it was impossible to understand them and make use of them. For instance, the appellant produced a list containing more than 16,000 items with no description which could assist the respondent in determining their nature and relevancy. As a result, the discovery process, like the audit process, was frustrated.

5 The appellant, who is a lawyer and an officer of the Court, submitted in his memorandum of fact and law that he was under no legal duty to cooperate with Revenue Canada during both the audit and the objection stages. ...

6 Whatever the duty of cooperation may have been at the audit stage or whether there is one at the objection stage, the appellant, as a litigant before the Tax Court seeking to obtain relief, had a duty to comply with the Rules and provide meaningful disclosure. ...

7 ... In turn, the appellant's failure to cooperate and obey the order of the Tax Court placed the Tax Court judge in an invidious and unacceptable position where he was left with virtually all factual determinations instead of having a proper and initial determination made at the audit level as is usually the case. ...

...

9 One last thing ought to be said. Even before this Court, the appellant showed disrespect by circumventing an order of this Court and flouting Rules 65 and 70(4) of the *Federal Court Rules* (1998) which regulate the length, size and disposition of a memorandum of fact and law.

[Emphasis added.]

[13] For these reasons, the motion is granted and the Court orders that

- (a) paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36 and 37 (including sub-paragraphs “a” to “h”), title [TRANSLATION] “iii. The vexatious conduct of the respondent in the processing of the appellant’s objection file” and the title [TRANSLATION] “b. The vexatious nature of the respondent’s conduct” in the Notice of Appeal should be struck;

- (b) the appellant submit a new Notice of Appeal, amended in accordance with this order and these reasons, at the latest by September 4, 2013;
- (c) the respondent submit a reply to the Amended Notice of Appeal at the latest by October 15, 2013.

Signed at Ottawa, Ontario, this 8th day of August 2013.

“Gaston Jorré”

Jorré J.

Translation certified true
on this 3rd day of October 2013
Catherine Jones, Translator

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COURT FILE NO.: 2013-1444(GST)I

STYLE OF CAUSE: 9218-4167 QUÉBEC INC. v. HER
MAJESTY THE QUEEN

REASONS FOR ORDER BY: The Honourable Justice Gaston Jorré

DATE OF APPELLANT'S
WRITTEN SUBMISSIONS: June 3, 2013

DATE OF RESPONDENT'S
WRITTEN REPLY TO THE APPELLANT'S
WRITTEN SUBMISSIONS: July 4, 2013

DATE OF ORDER: August 8, 2013

SIGNATORIES OF THE WRITTEN
SUBMISSIONS:

Counsel for the appellant: Simon St-Gelais

Counsel for the respondent: Éric Bernatchez

COUNSEL OF RECORD:

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