

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170613

Docket: A-88-16

Citation: 2017 FCA 121

**CORAM: GAUTHIER J.A.
DE MONTIGNY J.A.
WOODS J.A.**

BETWEEN:

1218395 ONTARIO INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on June 13, 2017.
Judgment delivered from the Bench at Toronto, Ontario, on June 13, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 13, 2017).

GAUTHIER J.A.

[1] We have before us an appeal from an Order of Graham J. of the Tax Court of Canada (TCC) quashing the appeals of 1218395 Ontario Inc. (the appellant) from a number of assessments made under Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15 for the reporting periods between January 1, 2001 to December 31, 2001, and from reassessments under the

Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.) in respect of the appellant's taxation years 1998 to 2005.

[2] We also have a motion for leave to file new evidence pursuant to Rule 351 of the *Federal Courts Rules*, SOR/98-106, which was referred to the panel hearing the merits of this appeal.

[3] The TCC quashed the appeals referred to above on the basis that the appellant has no legal status to initiate legal proceedings due to the fact that it had lost its corporate charter on or about March 27, 2006 (when its charter was revoked under the *Ontario Business Corporations Act*, R.S.O. 1990, c. B-16 (OBCA)). The appellant filed its notices of appeal to the TCC in 2011. The appellant failed to revive its corporate charter within the time period set by the TCC in its Order dated November 18, 2015, despite being granted the additional three months it requested to complete the process.

[4] Before quashing the said appeals, the TCC held a conference call with the parties on February 8, 2016 in order to ascertain the status of the matter (the telephone conference). The appellant's counsel at the time, a former officer and a former employee of the appellant all had the opportunity to explain the prior attempts made to revive the company's charter back in 2012 and in March 2015. They also indicated that the appellant had hoped that the Canada Revenue Agency (CRA) could help them change the view of the Minister of Finance of Ontario who was apparently refusing to give his consent because of the appellant's outstanding provincial tax.

[5] When the appellant sought a further extension, the TCC asked its representatives to clarify what concrete steps had been taken since November 18, 2015 to meet the deadline set by the TCC. The request for a further extension of time was refused because the TCC determined that insufficient efforts had been deployed to advance this matter since November 2015. In fact, the TCC noted that the appellant had done little more but to confirm information it already had at the time it requested the three month extension.

[6] It is clear that on the record before it, it was open to the TCC to conclude as it did. This is not really disputed.

[7] Instead, the appellant submits that the TCC's decision was made on the basis of inadequate information insofar as the CRA failed to fairly and candidly disclose all relevant information about its role in the Ontario Minister of Finance's refusal to consent to the revival of the company.

[8] In its motion to file new evidence, the appellant alleges that the CRA was responsible for blocking the revival of its corporate charter. It claims that it wishes to contest the position taken by the Ontario Ministry of Finance. We note that during the telephone conference, Mr. Bonhomme, the appellant's employee, alluded to the need to make further investigations into the process under section 241 of the OBCA.

[9] The new evidence the appellant seeks to file consists mostly of information and documentation which were in the appellant's possession when it made its representation before

the TCC on February 8, 2016. It also includes information about the fact that in 2008, the CRA entered into an agreement with the Minister of Finance of Ontario for the provision of services relating to the administration and enforcement of provincial taxes (the Agreement). Also included are correspondence between the parties' counsel since February 2016 in respect of what knowledge, if any, counsel for the respondent and other persons within the Ministry of Justice had about the appellant's applications under the OBCA.

[10] The appellant acknowledges that its new evidence does not meet the test generally used by this Court to determine whether it will exercise its discretion under Rule 351. However, it asks the Court to exercise its residual discretion for in its view, this is a clear case where this new evidence is required to avoid a miscarriage of justice.

[11] Having considered this new evidence, we have not been persuaded that it provides much more than what was generally conveyed to the TCC by the parties. The new evidence does not substantiate the appellant's bald allegation that the CRA was responsible for blocking the revival of the appellant's corporate charter. At best, it raises a line of inquiry in respect of an issue that had already been identified by Mr. Bonhomme. There is nothing in the Agreement indicating that the delegation of power extends or includes the granting of consent for Articles of revival under the OBCA. The appellant acknowledged that there was no specific provision dealing with this matter in the *Corporation Tax Act*, R.S.O. 1990, c. C-40. The only provision dealing with such a consent is section 6 of the *Ontario Regulation 289/00* adopted under the OBCA. Finally, we are not satisfied that it establishes that the CRA failed to disclose any information that could have a material impact on the TCC's view that the appellant had not been diligent.

[12] The Court must exercise its discretion under Rule 351 with great care and whatever residual discretion remains when the applicable test is not met must be used only in the clearest cases where the interest of justice requires it. This is not one of those cases.

[13] The appellant has known for many years that it had to revive its corporate charter under the OBCA. It was put on notice that if this was not done by February 12, 2016, its appeals before the TCC would be quashed. It did nothing before the telephone conference but write to the Ontario Ministry of Finance to inform it that the appellant needed a letter of consent to revive its corporate charter to pursue its appeal of a federal tax reassessment. When it sought a further extension of time from the TCC during the telephone conference, it provided no evidence from which the TCC could infer that the appellant had a serious plan as to how they would obtain the Ontario Minister's consent or how they could otherwise obtain their corporate revival.

[14] In light of the above, we have not been persuaded that, even with the new evidence, this Court's intervention is justified. Therefore, the motion for leave to file new evidence and the appeal shall be dismissed with costs fixed in the amount of \$1,000.00 (all inclusive).

“Johanne Gauthier”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE DAVID GRAHAM OF THE TAX COURT OF CANADA DATED FEBRUARY 19, 2016, IN DOCKET NOS. 2011-759(GST)G AND 2011-769(IT)G.

DOCKET: A-88-16

STYLE OF CAUSE: 1218395 ONTARIO INC. v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: JUNE 13, 2017

REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.
DE MONTIGNY J.A.
WOODS J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

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