Dockets: 2006-835(IT)G
2006-836 (IT)G
2006-837 (IT)G
2006-838 (IT)G
2006-839 (IT)G

BETWEEN:

HER MAJESTY THE QUEEN,

Applicant,

and

COMTAX COMMODITY TAX CONSULTANTS INC.,
JACKY SCHRYVER,

Respondents.

Motion heard on common evidence
on April 4, 2007, at Montreal, Quebec.

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Applicant:	Bernard Fontaine
Counsel for the Respondent:	Guy Paul Martel

ORDER

Upon motion by counsel for the applicant for an order compelling the respondents to produce for inspection documents appointing Jacky Schryver as director of the Jenkinson Corporation and documents effecting the issuance or transfer of shares of Jenkinson Corporation to Jacky Schryver or to his nominee;

The motion is dismissed in accordance with the attached Reasons for Order.

Upon motion by counsel for the applicant for an order extending the time for filing the replies to the notices of appeal in each of the appeals;

The motion is granted and the applicant has 60 days from the date of this Order to file the replies to the notices of appeal.

Upon motion by counsel for the applicant for an order compelling the respondents to answer a demand for particulars pursuant to section 52 of the *Tax Court of Canada Rules (General Procedure)*;

The motion is dismissed in accordance with the attached Reasons for Order.

The respondents are entitled to costs which I fix at $1,000.

Signed at Ottawa, Canada, this 22nd day of June 2007.

« François Angers »

Angers J.

Citation: 2007TCC305
Date: 20070622
Dockets: 2006-835(IT)G
2006-836(IT)G
2006-837(IT)G
2006-838(IT)G
2006-839(IT)G

BETWEEN:

HER MAJESTY THE QUEEN,

Applicant,

and

COMTAX COMMODITY TAX CONSULTANTS INC.,
JACKY SCHRYVER,

Respondents.

REASONS FOR ORDER

Angers J.

[1] This is a motion by the applicant seeking from this Court:

1. An order compelling the respondents to produce for inspection pursuant to Section 80 of the *Tax Court of Canada Rules (General Procedure)* (Rules)
   (a) documents appointing Jacky Schryver as director of the Jenkinson Corporation; and
   (b) documents effecting the issuance or transfer of shares of Jenkinson Corporation to Jacky Schryver or to his nominee;
2. An order extending the time for filing the replies to the notices of appeal in each of the appeals;

3. An order pursuant to section 52 of the Rules compelling the respondents to answer a demand for the following particulars:

With respect to paragraph 3 of the notice of appeal for 1998:

(a) what happened on November 1, 1997 in order for an agreement, which has been characterized as a verbal one, to be entered into, what was said by whom, who was speaking on behalf of Comtax and on behalf of Jenkinson Corporation, what was said on behalf of Jenkinson Corporation and what were the terms of the agreement?

With respect to paragraph 6 of the notice of appeal for 1998:

(b) what was the amount of the liabilities that decreased the value of the property and that had to be paid by Jenkinson Corporation and to whom did they have to be paid?

(c) what were the services to be provided and the services actually provided during each of the years 1998, 1999, 2000 and 2001 by Mr. Schryver to the respondent corporation in consideration of the payment of $1.3 million in the taxation year 1998?

(d) was the consulting fee the only consideration/remuneration received in connection with the services Mr. Schryver provided to the respondent corporation in the years 1998, 1999, 2000 and 2001?

(e) in respect of what taxation year was the amount of $42,521 allegedly owed by Meco Ltd. included by the respondent in its income and was the deduction claimed as a bad debt or as a reserve for a doubtful debt?

(f) with respect to the notice of appeal generally, does the respondent allege that the sale of the group of contracts to Jenkinson Corporation allegedly taking place on November 1, 1997, gave rise to a capital gain?

(g) were the fees of Wise, Blackman or a portion thereof incurred in connection with the disposition of capital property?

(h) in what fashion were the fees of $15,610.56 and $22,502.88 paid by the respondent to Sternthal Katznelson Montigny connected with the earning of business income and what portion of those fees was so connected?

(i) what legal services were provided by Sternthal Katznelson Montigny to the respondents?

(j) what portion of the fees of $40,000 and $22,500 paid to Fuller Landau was connected with the earning of income by the respondent and in what fashion was it so connected?

(k) what portion of the legal fees paid by the respondent to Pandora Production in 1998 and 1999 and to Alpha Beta Gamma in 1999 was connected with the earning of income by the respondent and how was it so connected?

(l) what legal services were provided by Susan Singer in consideration of the amount of $40,860.68 and in what fashion were the said services connected with the earning of business income by the respondent?

(m) what legal services were provided by Goldstein, Flanz & Fishman and how were such services connected with the earning of business income by the respondent Comtax (as opposed to the earning of income by Jenkinson Corporation)?

(n) what was the actual date of the disposition in 1998 of the condominium rental property and what was the fair market value of the said property on that date?

(o) were the fees of Wise, Blackman or a portion thereof incurred in connection with the disposition of capital property?

(p) as regards the goods and services claimed as promotional expenses of $30,576.66, were any of them for food or beverages or entertainment, and if so, what portion?

With respect to Comtax's 1999 and 2000 taxation years:

(a) what goods and services were provided to the respondent as a result of the Solomon School donation and how is such an outlay related to office expenses or general expenses of the respondent?

(b) what was the amount of the bad debts, who were the debtors and when was the amount of each of the debts included in income?

[2] The respondent corporation is appealing with respect to its 1997, 1998, 1999, 2000 and 2001 taxation years. The respondent Jacky Schryver is appealing

with respect to his 1997 taxation year. All the notices of appeal are dated March 14, 2006.

[3] The respondent corporation is in the business of providing to its clients consulting services on a contingency fee basis in the area of commodity tax and customs duties. The respondent Schryver is the sole shareholder of the respondent corporation. He is also the sole shareholder of the Jenkinson Corporation (Jenkinson), a tax consulting company incorporated under the laws of the Cayman Islands.

[4] The respondent corporate taxpayer earns income from submitting claims on behalf of its clients to the federal and provincial tax authorities. The income earned is in the form of contingency fees based on a percentage of the tax refunds or rebates it is able to obtain for its clients. On November 1, 1997, the respondent taxpayer sold certain of its claims to Jenkinson. On August 12, 2003, the Canada Revenue Agency (CRA) issued a notice of assessment in respect of the respondent corporation's taxation year ending October 31, 1998; in its assessment the CRA included in the respondent corporation's income an additional amount of $11,102,287. Of this amount, $8,552,750 was estimated by the CRA to be the difference between the fair market value of the claims and the price paid for them by the Jenkinson Corporation.

[5] In addition, the CRA disallowed certain expenses that had been claimed, namely: travel and promotion, professional fees, office and general expenses, a loss on the sale of real estate, consulting fees and bad debts.

[6] As for the respondent Schryver, the CRA issued a notice of assessment on November 20, 2003, with respect to his 1997 taxation year; by this assessment the CRA increased the respondent Schryver's taxable income from $63,182 to $8,143,182. Since the respondent Schryver is the sole shareholder of Jenkinson Corporation, the CRA concluded that the additional income should be taxable in his hands by virtue of subsection 56(2) of the *Income Tax Act* (Act). The original notice of assessment with respect to the respondent Schryver's 1997 taxation year is dated June 4, 1998. The respondent Schryver argues that the assessment is statute-barred and that subsection 56(2) has no application here. He also raises the matter of quantum, which is dependent on establishing the fair market value of the claims sold, and the question of the disallowance of certain expenses by the CRA as described earlier, these being the issues in the respondent corporation's appeals.

[7] The additional taxable income and disallowed expenses affected the carry-back and carry-forward of certain non-capital losses. As a result, the respondent corporation's tax position changed for all the years under appeal.

[8] Approximately one month after the notices of appeal were filed, counsel for the applicant wrote a letter to counsel for the respondents asking for particulars regarding the disallowed expenses referred to in those notices. I will not refer to all of these expenses, but under travel and promotion, for example, the respondent's counsel asked for the following particulars:

- who travelled?
- where was the travelling being done, by whom and by what means?
- in what did the promotion consist?
- what were the amounts paid or payable and for what goods and services in terms of travel and promotion?
- how were the expenses allegedly incurred connected with the business of the respondent and thus deductible?

[9] A request was also made by the applicant's counsel under section 80 of the Rules for production of the agreement dated November 1, 1997, referred to in the notice of appeal for the 1999 taxation year (2006-837(IT)G). That request was abandoned in a letter sent by the applicant's counsel on April 18, 2006, in which a further demand for particulars and a demand to produce with respect to the 1998 taxation year (2006-835(IT)G) the agreement dated November 1, 1997, were made. The demand for particulars made reference to the particular notices of appeal but requested basically the same particulars as the first demand.

[10] On April 19, 2006, a further letter containing a demand for particulars was sent by the applicant's counsel to the respondents' counsel. Three questions were asked and a further demand was made for production of the November 1, 1997, agreement referred to earlier. The applicant's counsel wrote again on April 27, 2006, asking the respondents' counsel if the respondents intended to comply, as the deadline for filing the replies to the notices of appeal was close and he wanted to prepare a motion for a court order pursuant to section 52 of the Rules and for an extension of time.

[11] A further letter was sent by the applicant's counsel on May 2, 2006, explaining that, after reviewing the notices of objection, he noted that a real estate loss was claimed in the 1998 taxation year on the sale of rental property. He demanded to know the fair market value of the property in question at the time of

disposition, the actual date of disposition and the circumstances and facts which support the implied allegation that the amount of $1.3 million in consulting fees paid by the respondent Comtax to Jenkinson was not greater than the reasonable amount that would have been paid or payable had the respondent Comtax and Jenkinson been dealing with each other at arm's length.

[12] On May 18, 2006, the respondents' counsel answered by letter almost all of the questions asked in the demand for particulars and undertook to provide the relevant documents related to the November 1, 1997 sale. The applicant's counsel wrote back the next day reiterating some of his demands for particulars and requesting consent to a 30-day extension of time for the filing of the replies. More letters were sent by the applicant's counsel to the respondents' counsel regarding additional particulars, seeking clarification of the "without prejudice" appearing on the letter providing answers to the requests for particulars, expressing his view that these answers were inadequate and inquiring about the respondents' counsel's availability for the hearing of a motion on the applicant's counsel's demand for particulars.

[13] On July 14, 2006, the respondents' counsel replied, providing answers to all of the unanswered requests for particulars made in the first and second demands (April 13 and April 18, 2006) and in others among the above-mentioned letters from the applicant's counsel, and providing as well a copy of the agreement of November 1, 1997.

[14] On July 19, 2006, counsel for the applicant wrote to acknowledge receipt of the July letters and requested other information. This request did not take the form of a further demand for particulars but the respondents' counsel replied nonetheless and provided the information.

[15] On July 28, 2006, a further letter was sent by the applicant's counsel referring to a conversation he had had with another lawyer from the respondents' counsel's law firm and to matters pertaining to the conduct of the case. The applicant's counsel felt that there were "lacunae" in the particulars and indicated that, because of planned holidays for himself and certain CRA personnel, he could not undertake to file Replies by mid-August.

[16] On August 4, 2006, the respondents' counsel provided further information regarding bad debts and, taking the position that they had answered all the demands, requested that the applicant file Replies by August 15, 2006. Further letters were sent by the applicant's counsel seeking further information; in

particular one dated August 16, 2006, contains a series of queries in relation to some of the answers that had been provided and which in some cases comprised summaries of conversations or of the contents of letters. It does not appear to me to be a formal demand for particulars but is rather in the nature of further inquiries regarding matters which I believe would not constitute proper pleadings. Demands for particulars should not be contained in an exchange of arguments or of comments between counsel. Other letters, in which counsel exchange other information, are included in the evidence produced in support of this motion. In one in particular the respondent's counsel presumes certain things and, if they should not be as presumed, he asks the respondents' counsel to consider his letter as notice under section 80 of the Rules requiring the said counsel to produce a copy of a certain appraisal report or to let him know when he may inspect the report. In any event, that document is not what is being requested in this motion under section 80 of the Rules.

[17] In support of this motion, the applicant's counsel submitted an affidavit informing this Court that, with respect to the same relevant period as that involved herein, an application was made to, and received by, the Federal Court under subsection 225.2 of the Act for an order allowing the Minister to take action immediately to collect the debt owed by the respondents. The order is dated March 27, 2006, but on March 15, 2006, the respondent corporation gave notice of its intention to make a proposal to its creditors, which it did on September 28, 2006. An examination for discovery of the respondent Schryver was held on December 13, 2006, pursuant to the provisions of the *Bankruptcy and Insolvency Act*, and it appears from the affidavits that the undertakings given by the respondent Schryver at the discovery have not yet been fulfilled. It also appears from the evidence given by the respondent Schryver that he is not aware of one particular clause in the contract of November 1, 1997, and other matters. Counsel for the applicant submits that he needs these particulars in order to properly prepare the replies to the notices of appeal.

[18] The affidavit of Louis Sébastien, counsel for the applicant in collection matters, filed in support of this motion, refers to, among other things, conversations and exchanges of information or facts between counsel and to matters which the respondent Schryver was unable to explain or of which he had no knowledge when questioned at the discovery in the bankruptcy proceedings. There is presently before the Superior Court of Quebec an appeal from a decision of the trustee in bankruptcy who rejected the CRA's claims and therefore its right to vote on, and to oppose, the proposal made by the respondent corporation.

[19] I will deal first with the demand made under section 80 of the Rules, which reads as follows:

> (1) At any time a party may deliver a notice to any other party, in whose pleadings or affidavit reference is made to a document requiring that other party to produce that document.
>
> (2) The party receiving the notice shall deliver, within ten days, a notice stating a place where the document may be inspected and copied during normal business hours or stating that the party objects to produce the document and the grounds of the objection. (Form 80)

[20] Section 80 provides that a notice may be delivered at any time, which means not necessarily at the time of inspection of the documents contained in the list of documents referred to in section 85 of the Rules. It is therefore necessary, in order for section 80 to apply that a notice be delivered to the party of whom the production of a document is requested. I have gone through the correspondence between counsel that was submitted in evidence and I have not found any notice that may have been delivered in relation to the documents requested in this motion. A request to produce a copy of the November 1, 1997 agreement was sent by letter on April 13, 2006, by the applicant's counsel. A further request for the same document was made in a letter of April 18, 2006, and yet another request was made the day after. The request was later abandoned for the year 1999, but the document was subsequently provided in response to requests with regard to other taxation years. In the exchange of correspondence and the discussions between counsel, I have found, in a letter dated August 8, 2006, from the applicant's counsel to the respondents' counsel, reference to certain documents, but the matter really addressed was the applicant's counsel's position that he is entitled to particulars on a certain issue. This is how it is phrased:

> It is quite legitimate for the applicant to ask Mr. Schryver at what date and how he became a director of Jenkinson Corporation and if he can document his claim.

[21] I do not consider that to be a valid notice to the respondents requesting the production of documents. A valid notice to the respondents should have taken the form that it did in this motion, namely, a clear reference to the documents requested so that they may be easily identified.

[22] The only other reference I was able to find in the exchange of correspondence to a notice under section 80 of the Rules was for the production of

an appraisal report of Wise Blackman & Associates which is not the subject of this motion.

[23] A notice to produce a document under section 80 of the Rules, in my opinion, should not be contained in the middle of a paragraph in an exchange of correspondence between counsel. It should take the form of a notice identifying the documents and asking for their production within the ten days required under that section, so that the evidence in support of a motion for non-compliance with the request need not contain unrelated matters which are better left to be dealt with between counsel.

[24] I find that no such notice was delivered to the respondents for the production of the documents requested in this motion. That is a condition precedent to the making of a motion for an order to comply. In addition, the documents required to be produced must have been referred to in the pleadings or in an affidavit. In this case, none of the answers to the demand for particulars have been filed with the Court and the only pleadings so far are the notices of appeal, in which I have found no references to these particular documents other than the statement that the respondent Schryver is the sole shareholder of the respondent corporation and Jenkinson. The matter of the production of those documents can be addressed when the parties exchange their lists of documents pursuant to sections 81, 82 and 85 of the Rules.

[25] The motion herein for an order compelling the respondents to produce for inspection the documents referred to above is dismissed.

[26] The applicant also seeks an order compelling the respondents to supply particulars pursuant to section 52 of the Rules which reads as follows:

> Where a party demands particulars of an allegation in the pleading of an opposite party, and the opposite party fails to supply them within thirty days, the Court may order particulars to be delivered within a specified time.

[27] As was the case with the demand for the production of documents, the applicant's counsel has made, through correspondence, various demands for particulars, some of which were in reference to the allegations in the notices of appeal while others were in general terms and not necessarily in reference to the allegations. These demands were intermingled with comments, arguments and opinions of counsel, particularly counsel for the applicant, so that it is difficult to list the demands or even to determine if a particular demand was in fact answered.

I am at a loss as to how counsel intends to file with this court in such a way that, as regards form, they can be considered a part of the pleadings, free of the comments and exchanges of counsel, answers to demands for particulars. That being said, I also have a hard time reconciling the demand for particulars contained in this motion with that made by the applicant's counsel in his letters to the respondents' counsel. In my view, the form and the wording used in a demand for particulars should be repeated in the same format for the purposes of the motion, otherwise, the demanding party may not be able to establish with certainty that the particulars demanded were in fact the subject of a formal demand, which I find to be the case here. A demand for particulars should be drafted with precision and stand alone in order to ensure clarity and certainty on the hearing of a motion to compel compliance with the demand, and the same is true of the answers in order that these may become part of the pleadings in an acceptable form.

[28] The applicant's counsel referred this Court to the Federal Court of Appeal decision in *Gulf Canada Ltd. v. The "Mary Mackin"*, [1984] 1 F.C. 884 (QL). That court, addressing the matter of the issues and principles that are to be considered in deciding whether to issue an order for particulars, stated the following:

> The principles governing an application of this kind were well stated by Sheppard J.A. in the case of Anglo-Canadian Timber Products Ltd. v. British Columbia Electric Company Limited, [(1960), 31 W.W.R. 604 (B.C.C.A.).] where he stated at pages 605 and 606:
>
> > Hence it appears that an examination for discovery follows upon the issues having been previously defined by the pleadings and the purpose of such discovery is to prove or disprove the issues so defined, by a cross-examination on the facts relevant to such issues.
> >
> > On the other hand the purpose of particulars is to require a party to clarify the issues he has tried to raise by his pleading, so that the opposite party may be able to prepare for trial, by examination for discovery and otherwise. The purpose of particulars was stated in Thorp v. Holdsworth (1876) 3 Ch 637, 45 LJ Ch 406, by Jesse, M.R. at p. 639, as follows:
> >
> > > "The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of Order XIX, was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to

> definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."

That purpose of particulars was stated in Spedding v. Fitzpatrick (1888) 38 Ch 410, 58 LJ Ch 139, by Cotton, L.J. at p. 413, as follows:

> "The object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to be taken by surprise."

Also the particulars operate as a pleading to the extent that "They tie the hands of the party, and he cannot without leave go into any matters not included" (Annual Practice, 1960, p. 460) and they may be amended only by leave of the court (Annual Practice, 1960, p. 461).

When pleadings are so vaguely drawn that the opposing party cannot tell what are the facts in issue or, in the words of Cotton, L.J. in *Spedding v. Fitzpatrick*, supra, "what case he has to meet," then in such circumstances the particulars serve to define the issue so that the opposite party may know what are the facts in issue. In such instances the party demanding particulars is in effect asking what is the issue which the draftsman intended to raise and it is quite apparent that for such a purpose an examination for discovery is no substitute in that it presupposes the issues have been properly defined.

This case was cited with approval in a later decision of the British Columbia Court of Appeal in the case of *Cansulex Limited v. Perry et al*. [Judgment dated March 18, 1982, British Columbia Court of Appeal, file C785837, not reported.] In that case, Lambert J.A. referred to the Anglo-Canadian Timber decision as being one of the decisions which "... delineate the difference between what is properly the subject matter of a Demand for Particulars and what is more properly the subject-matter of a Demand for Discovery of material that should be obtained on an Examination for Discovery". (See, page 8 of the reasons of Lambert J.A.) Mr. Justice Lambert added:

> At the heart of the distinction between the two lies the question whether the material demanded is intended to, and does, delineate the issues between the parties, or whether it requests material relating to the way in which the issues will be proved.

> He then went on at pages 10 and 11 of his reasons to enumerate with approval the function of particulars as set out in the White Book dealing with the English Practice. The Supreme Court Practice, 1982, Vol. 1, page 318 details this function as follows:
>
> (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved ....
> (2) to prevent the other side from being taken by surprise at the trial
> (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial ....
> (4) to limit the generality of the pleadings ....
> (5) to limit and decide the issues to be tried, and as to which discovery is required ....
> (6) to tie the hands of the party so that he cannot without leave go into any matters not included ....
>
> Because Rule 408(1) [Federal Court Rules, C.R.C., c. 663] requiring "... a precise statement of the material facts on which the party pleading relies" and Rule 415 permitting applications for further and better particulars of allegations in a pleading are substantially similar to the corresponding sections in the English Rules, I think the above quoted six functions of particulars should apply equally to an application such as the present one under our Rules.

[29] The courts have drawn a distinction between particulars for the purpose of pleadings and particulars for the purpose of trial. This Court dealt with this matter in *Satin Finish Hardwood Flooring (Ontario) Ltd. v. Canada*, [1995] T.C.J. No. 240 (QL), where at paragraphs 20 and 21 it stated:

> In the third place, where particulars are sought before pleading it must be for the purpose of enabling the opposite party to formulate an intelligent response. There is a fundamental difference between particulars required for the purpose of pleading and particulars needed for the purposes of trial. That distinction was clearly expressed by Marceau J. in *Embee Electronic Agencies v. Agence Sherwood Agencies Inc.*, 43 C.P.R. (2d) 285 at 286-287. To the same effect, see *Madden v. Madden* [1947] O.R. 866, (Ont. C.A.) per Laidlaw J.A. at 873-874; *Coca-Cola Co. v. O'Keefe's Beverages Limited* [1922] 23 OWN 175 per Riddell J. at 176.
>
> Whether or not the type of particulars sought by the respondent may be necessary for the purposes of the trial, they are not necessary for the purposes of preparing a reply. Moreover, given the somewhat unique nature of income tax litigation, the Minister of National Revenue is well aware of all of the facts he needs to respond to the notice of appeal. He should know why he assessed. If the respondent needs more

> details of the appellant's business for the purposes of trial they can be obtained on an examination for discovery.

[30] It therefore follows that only particulars required in order to formulate an intelligent response will be ordered on a motion for particulars brought before the reply has been filed. Particulars are not to be ordered regarding the manner in which issues are to be proved. In *McPherson v. The Queen*, 97 DTC 1497, it was held that particulars may be ordered where the respondent has raised an alternative argument that was based on information not in the possession of the Minister, but such is not the case here.

[31] I have reviewed the demands for particulars made by the applicant and the responses to these demands that have been provided so far and I am at a loss as to why the applicant requires additional information in order to plead "intelligently" with respect to the notices of appeal. In my opinion, the particulars demanded either constitute evidence or, in most cases, are not required for the purpose of preparing a reply. All that information can properly be disclosed during an examination for discovery and it will still be open to the applicant to renew her motion for particulars before trial or to amend her pleadings under the Rules if necessary. Counsel for the applicant was concerned over a possible trial by ambush. May I remind him that the elements of surprise and trial by ambush are long gone, and I would point out that, should they arise, the courts have in many cases and when warranted, granted adjournments with costs payable by the defaulting party. The motion for an order compelling the respondents to answer a demand for particulars is dismissed.

[32] Lastly, the applicant is seeking an order extending the time for filing the replies to the notices of appeal in all of these appeals. A reply must be filed with the registry within 60 days after service of the notice of appeal (subsection 44(1) of the Rules). An extension is possible if an appellant consents, before or after the expiration of the 60-day period, to the filing of that reply after the 60-day period within a specified time (paragraph 44(1)(*a*) of the Rules) or if the Court allows, on application made before or after the expiration of the 60-day period, the filing of that reply after the 60-day period within a specified time.

[33] The notices of appeal are all dated March 14, 2006 and were filed on March 14, 2006. The evidence should have disclosed the date on which the applicant was served therewith. It is clear, though, from the evidence, that in a letter from the respondents' counsel dated July 28, 2006, a request was made to the applicant's counsel to file its replies by August 15, 2006, and that a further such request was

made in a subsequent letter, dated August 4, 2006. Counsel for the applicant has acknowledged that the respondent' consent for late filing expired on August 15, 2006. More than seven months beyond that date went by before this application was made on March 23, 2007.

[34] This Court and the Federal Court of Appeal in *Canada (Attorney General v. Hennelly*, [1999] F.C.J. No. 846 (F.C.A.); *Stanfield v. The Queen*, 2004 DTC 2923 (T.C.C.) and 2005 DTC 5211 (F.C.A.); and *Telus Communications (Edmonton) Inc. v. R. (No. 1)*, [2003] G.S.T.C. 182, have applied the following four-part test when determining whether to order an extension of time for filing a reply:

(1) There is a reasonable explanation for the delay;
(2) No prejudice to the other party arises;
(3) The main action has some merit;
(4) The respondent has a continuing intention to file the document.

[35] The application was not strongly argued by the applicant's counsel at the hearing nor was it vehemently opposed by the respondents' counsel. I can only infer from the evidence that the applicant always intended to file the replies and that the explanation for the delay is reasonable in that the applicant's counsel was seeking particulars and had been attempting since August to determine the respondents' counsel's availability for a date to have the application heard. I would remind counsel that this latter factor is not a prerequisite for filing an application for an extension of time. As regards prejudice, none was argued by the respondents' counsel. Finally, the reassessment raises issues of fair market value in regard to the sale of the claims and the matter of whether certain expenses were incurred for the purpose of earning income. On that basis, I am prepared to grant the application and allow the respondent to file the replies to the notices of appeal within 60 days from the date of this order.

[36] Neither party has raised the question of the effect of the proposals in bankruptcy made by the respondent corporation on the status of these proceedings concerning the respondent corporation, and neither will I.

[37] The respondents are entitled to costs which I fix at $1,000.

Signed at Ottawa, Canada, this 22nd day of June 2007.

« François Angers »

Angers J.

CITATION:	2007TCC305
COURT FILE NOS.:	2006-835(IT)G, 2006-836(IT)G, 2006-837(IT)G, 2006-838(IT)G, 2006-839(IT)G
STYLES OF CAUSE:	Comtax Commodity Tax Consultants Inc. v. Her Majesty the Queen Jacky Schryver v. Her Majesty the Queen
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	April 4, 2007
REASONS FOR ORDER BY:	The Honourable Justice François Angers
DATE OF ORDER:	June 22, 2007

APPEARANCES:

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Counsel for the Respondents:	Guy Paul Martel

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