

Docket: 2003-2648(GST)APP

BETWEEN:

FENTON GROUP INVESTMENT CO. LIMITED,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on October 22, 2003 at Winnipeg, Manitoba

Before: The Honourable Justice L.M. Little

Appearances:

For the Applicant:

The Applicant himself

Agent for the Respondent:

Julien Bedard

Student-at-Law

ORDER

Upon application for an Order extending the time within which a Notice of Appeal to the Reassessment may be filed;

And upon hearing what was alleged by the parties;

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

Signed at Vancouver, British Columbia, this 28th day of November 2003.

"L.M. Little"

Little, J.

Citation: 2003TCC867
Date:20031128
Docket: 2003-2648(GST)APP

BETWEEN:

FENTON GROUP INVESTMENT CO. LIMITED,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Little, J.

A. FACTS:

[1] The Applicant is a company incorporated under the laws of the Province of Manitoba.

[2] By Notice of Assessment dated May 8, 2001 the Minister of National Revenue (the "Minister") assessed the Applicant tax under the *Excise Tax Act* (the "Act") for the periods between January 1, 1999 and December 31, 2000.

[3] The Applicant filed a Notice of Objection to the Notice of Assessment within the time limit specified in subsection 301(1) of the *Act*.

[4] On November 22, 2002 the Minister issued a Notice of Reassessment (the "Reassessment"). The said Reassessment reassessed the Applicant to impose net tax of \$4,051.00, a penalty of \$219.14 and interest of \$206.86.

[5] The Reassessment was sent to the Applicant in a registered letter dated November 22, 2002. The registered letter contained the following statement:

Section 306 of the Excise Tax Act provides that you may appeal the Assessment to the Tax Court of Canada within 90 days from the date of this Notice.

[6] The Applicant did not file a Notice of Appeal to the Reassessment within the 90-day time period specified by the *Act*.

[7] On July 11, 2003 the Applicant filed a document entitled "Application to Extend Time" with the Court. (Note: The document that was filed with the Court was dated by the Applicant July 24, 2004 but was stamped by an official of the Court in Ottawa on July 11, 2003.)

[8] The document that was filed with the Court by the Applicant contained the following statement:

All the necessary steps were taken to resolve the dispute until May 30, 2003, however I didn't receive any resolvable response as of the date of this application.

B. ISSUE:

[9] Should the Applicant be granted an extension of time within which to file a Notice of Appeal to the Reassessment?

C. ANALYSIS:

[10] Section 305 of Part IX of the *Act* reads as follows:

305. (1) Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

(2) An application made under subsection (1) shall set out the reasons why the appeal to the Tax Court was not instituted within the time otherwise limited by this Part for doing so.

(3) An application made under subsection (1) shall be made by filing with the Registrar of the Tax Court or by sending to the Registrar by registered

mail three copies of the application accompanied by three copies of the notice of appeal.

(4) After receiving an application made under this section, the Tax Court shall send a copy of the application to the office of the Deputy Attorney General of Canada.

(5) No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for appealing; and

(b) the person demonstrates that

(i) within the time otherwise limited by this Part for appealing,

(A) the person was unable to act or to give a mandate to act in the person's name, or

(B) the person had a bona fide intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted it to be made, and

(iv) there are reasonable grounds for appealing from the assessment.

[11] I have concluded that the request made by the Applicant for an extension of time within which to file a Notice of Appeal does not comply with subsection 305(2) of the *Act* as it does not set out the reasons why the appeal to the Court was not filed within the time specified in section 306 of the *Act*.

[12] I have also concluded that:

(a) the Applicant did not demonstrate that it was unable to act within the time specified for appealing under section 306 of the *Act*;

- (b) the Applicant did not establish that it had a *bona fide* intention to appeal within the time specified in section 306 of the *Act*; and
- (c) the application to extend the time was not made as soon as circumstances permitted as required by subparagraph 305(5)(b)(iii) of the *Act*.

[13] I have concluded that the Applicant has not complied with subparagraphs 305(5)(b)(ii) and 305(5)(b)(iii) of the *Act* and it has not provided reasons that demonstrate that it would be just and equitable to grant the application and that there are reasonable grounds for appealing the Reassessment.

[14] The application is dismissed.

Signed at Vancouver, British Columbia, this 28th day of November 2003.

"L.M. Little"

Little, J.

CITATION: 2003TCC867

COURT FILE NO.: 2003-2648(GST)APP

STYLE OF CAUSE: Fenton Group Investment Co. Limited
and Her Majesty the Queen

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: October 22, 2003

REASONS FOR ORDER BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: November 28, 2003

APPEARANCES:

For the Applicant: The Applicant himself

Agent for the Respondent: Julien Bedard, Student-at-Law

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada