

Docket: 2003-4609(IT)APP

BETWEEN:

EURO SOFTWARE CANADA MONDIAL (ESCM) INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on common evidence with the application of
Logic Alliance Inc. (2003-4610(IT)APP)
on April 6, 2004, at Québec, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Agent for the Applicant: Marcel Lachance

Counsel for the Respondent: Stéphanie Côté

ORDER

Upon application for an order extending the time within which an appeal from the assessments made pursuant to the *Income Tax Act* for the 1996 and 1997 taxation years may be instituted;

The application is allowed for the attached reasons; the Court orders that the time within which an appeal may be instituted be extended until the date of this order and that the Notice of Appeal submitted with the application be considered as a valid

Notice of Appeal; the Respondent will have 60 days from the date of this order to submit a Reply to the Notice of Appeal.

Signed at Ottawa, Canada, this 29th day of April 2004.

“Alain Tardif”

Tardif J.

Translation certified true
on this 30th day of March 2009.
Bella Lewkowicz, Translator

Docket: 2003-4610(IT)APP

BETWEEN:

LOGIC ALLIANCE INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

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on April 6, 2004, at Québec, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Agent for the Applicant: Marcel Lachance

Counsel for the Respondent: Stéphanie Côté

ORDER

Upon application for an order extending the time within which an appeal from the assessment made pursuant to the *Income Tax Act* for the 1996 taxation year may be instituted;

The application is allowed for the attached reasons; the Court orders that the time within which an appeal may be instituted be extended until the date of this order and that the Notice of Appeal submitted with the application be considered as a valid

Notice of Appeal; the Respondent will have 60 days from the date of this order to submit a Reply to the Notice of Appeal.

Signed at Ottawa, Canada, this 29th day of April 2004.

“Alain Tardif”

Tardif J.

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Citation: 2004TCC296
Date: 20040429
Dockets: 2003-4609(IT)APP
2003-4610(IT)APP

BETWEEN:

EURO SOFTWARE CANADA MONDIAL (ESCM) INC.,
LOGIC ALLIANCE INC.,

Applicants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR ORDER

Tardif J.

[1] This is an application to extend the time for the appeal instituted by the taxpayer's agent. The application pertains to an assessment for the 1996 taxation year.

[2] For several years, the taxpayer entrusted all its tax files to Marcel Lachance, its agent in the case at bar.

[3] In support of the application to extend the time, Mr. Lachance explained that he had had two surgeries requiring two stays in the hospital and a prolonged convalescence.

[4] Even though he was carrying on his business from his residence, he explained that health reasons and the resulting preoccupations were the reasons why he could not submit the Notice of Appeal within the 90-day deadline.

[5] He said he clearly expressed to various stakeholders in discussions in regard to the objection the taxpayer's intention to submit a Notice of Appeal before the Tax Court of Canada in the event that the assessment was upheld.

[6] The intention to institute an appeal before the Tax Court of Canada can also be inferred from the submission of the application for an extension of time.

[7] Parliament foresaw the possibility of instituting an appeal from an assessment after the 90-day deadline, provided certain conditions, as described in section 167, are met:

167(1) Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the 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 167(1) shall set out the reasons why the appeal was not instituted within the time limited by section 169 for doing so.

(3) An application made under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, in accordance with the provisions of the *Tax Court of Canada Act*, three copies of the application accompanied by three copies of the notice of appeal.

(4) The Tax Court of Canada shall send a copy of each application made under this section 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 limited by section 169 for appealing; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer

- (A) was unable to act or to instruct another to act in the taxpayer's name, or
- (B) 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, and
 - (iv) there are reasonable grounds for the appeal.

[8] Making a decision with respect to whether an application is well-founded calls for an analysis and assessment of the facts submitted. These facts may be interpreted in a permissive or restrictive manner.

[9] For example, a restrictive approach is one that requires irrefutable evidence, such as a dated written document with proof of receipt by the agency that the taxpayer indeed intended to institute an appeal within the 90-day deadline.

[10] This kind of approach is contrary to the spirit of the Act; moreover, it would have a ridiculous effect as the notice or an announcement of the intention to institute an appeal could then be considered an actual Notice of Appeal, at which point it would be futile to provide for the possibility of submitting a Notice of Appeal after the 90-day deadline.

[11] If Parliament provided for the possibility of an appeal being instituted after the 90-day deadline, it seems clear to me that situations or circumstances exist where this right may be granted. Subscribing to the Respondent's arguments would prevent all taxpayers from obtaining the right to institute an appeal after the 90-day deadline.

[12] Caution is required when assessing the grounds submitted by the Respondent in opposition to an application for permission to obtain an extension, as it constitutes an indirect means of obtaining confirmation of the merits of the assessment and thus depriving the taxpayer of the right to speak with respect to the content of the file. The right to contest the merits of an assessment is fundamental and all initiatives undertaken to compromise this right must be carefully evaluated.

[13] When an application for an extension of time to file a Notice of Appeal after the 90-day deadline is based on serious and reasonable grounds, I believe it must be allowed, unlike frivolous applications whose main objective is to gain time.

[14] In this case, the taxpayer had relied on the professionalism of its accountant for a long time. It had no reason to mistrust or suspect his actions with respect to his mandate.

[15] The taxpayer must hold the accountant in the highest regard as their business relationship has lasted many years. Mr. Lachance was stricken with a serious health problem that totally prevented him from taking action. He was not trying to get out of anything; he assumed complete responsibility for the delay in filing the Notice of Appeal after the 90-day deadline.

[16] The grounds for this application seemed to me to be serious and valid in explaining and justifying the delay. With respect to the intention to institute an appeal before the Tax Court of Canada, again an analysis of the actions leaves no doubt as to the taxpayer's intention to institute an appeal.

[17] This is in no way an application based on frivolous grounds for the purpose of gaining time.

[18] By contesting the application for an extension of time, the Respondent basically intended to obtain confirmation of the merits of the assessment without having to submit any arguments with respect to the content of the assessment.

[19] The application is allowed and the Court orders that the time within which an appeal may be instituted be extended until the date of this order and that the Notice of Appeal submitted with the application be considered as a valid Notice of Appeal; the Respondent will have 60 days from the date of this order to submit a Reply to the Notice of Appeal.

Signed at Ottawa, Canada, this 29th day of April 2004.

“Alain Tardif”

Tardif J.

Translation certified true
on this 30th day of March 2009.
Bella Lewkowitz, Translator

CITATION: 2004TCC296

COURT FILE NOS.: 2003-4609 (IT) APP and
2003-4610(IT)APP

STYLES OF CAUSE: Euro Software Canada Mondial (ESCM) Inc.
v. Her Majesty the Queen
Logic Alliance Inc v. Her Majesty the Queen

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: April 6, 2004

REASONS FOR ORDER BY: The Honourable Justice Alain Tardif

DATE OF ORDER: April 29, 2004

APPEARANCES:

For the Applicants: Marcel Lachance

Counsel for the Respondent: Stéphanie Côté

COUNSEL OF RECORD:

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