

BETWEEN:

1532099 ONTARIO LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion dealt with by way of written submissions

By: The Honourable Justice Susan Wong

Parties:

Agent for the Appellant: Motlagh Shirazi
Counsel for the Respondent: Cherylyn Dickson

ORDER

Upon motion by the Appellant seeking leave to have its sole director and officer Motlagh Shirazi represent the Appellant in this appeal;

And upon consideration of the Appellant's notice of motion, affidavit and supporting materials and the written submissions of the Respondent;

IT IS ORDERED THAT:

1. The motion is dismissed on the following basis:
 - a) the time for the Respondent to file and serve her written representations in respect of this motion is abridged to February 4, 2020;
 - b) the Appellant shall retain counsel to represent it in this appeal;
 - c) a Notice of Appointment with respect to new counsel shall be filed by the close of business three months from the date of issuance of this order;

- d) the parties' October 10, 2019 joint request to amend the timetable order shall be held in abeyance until new counsel is appointed; and
- e) costs will be in the cause.

Signed at Ottawa, Canada, this 13th day of February 2020.

“Susan Wong”

Wong J.

Citation: 2020 TCC 30
Date: 20200213
Docket: 2018-2756(GST)G

BETWEEN:

1532099 ONTARIO LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Wong J.

Introduction

[1] The Appellant in this General Procedure matter brings a motion for leave to have its sole director and officer Motlagh Shirazi represent the Appellant in this appeal. The Respondent opposes the Appellant's motion.

[2] The amount in dispute is \$165,231.22, being net tax of \$132,184.96 and penalties of \$33,046.26. No election has been made under subsection 18.3001(c) of the *Tax Court of Canada Act* so this appeal is properly in the General Procedure.

[3] The issues under appeal are unreported GST/HST, disallowed input tax credits, and gross negligence penalties for the reporting periods from July 1, 2013 to March 31, 2016.

[4] The Appellant's notice of motion with supporting materials was filed on December 24, 2019 and made returnable on the same date. No date for hearing was obtained from the Registry in advance of filing the motion, as required by section 66 of the *Tax Court of Canada Rules (General Procedure)*. Since the parties have both filed written materials, the Appellant's motion will be treated as a motion in writing under section 69 of the *Rules*.

Legislative Framework

[5] The relevant provisions are subsection 17.1(1) of the *Act* and subsection 30(2) of the *Rules*, which read as follows:

17.1 (1) A party to a proceeding in respect of which this section applies may appear in person or be represented by counsel, but where the party wishes to be represented by counsel, only a person who is referred to in subsection (2) shall represent the party.

30. (2) Where a party to a proceeding is not an individual, that party shall be represented by counsel except with leave of the Court and on any conditions that it may determine.

Factual Background

[6] The notice of appeal was filed on July 30, 2018, at which time the Appellant was represented by counsel.

[7] A timetable order was issued by this Court on May 10, 2019 and lists of documents were filed by both sides on July 31, 2019. On October 10, 2019, the parties made a written joint request to amend the timetable order (which has not yet been dealt with). The Appellant was represented by the same counsel throughout these stages of the litigation.

[8] On October 28, 2019, counsel for the Appellant served a Notice of Intention to Cease to Act on the Appellant. Proof of service was filed with the Court on the same date.

[9] The Appellant then brought the present motion.

Analysis

A. Based on *Masa Sushi* decision

[10] There are differing viewpoints as to whether a corporation may be represented by someone other than counsel in a General Procedure matter.

[11] To that end, I have reviewed the decisions of this Court in *Masa Sushi Japanese Restaurant Inc. v. The Queen*, 2017 TCC 239 and 2018 TCC 98, *Suchocki Accounting Ltd. v. The Queen*, 2018 TCC 88, *Sutlej Foods Inc. v. The*

Queen, 2019 TCC 20, and *BCS Group Business Services Inc. v. The Queen*, 2018 TCC 120, the latter of which I understand to presently be under appeal.

[12] I have also reviewed the legislative history of subsection 17.1(1) of the *Act* and subsection 30(2) of the *Rules*. That history is summarized in paragraphs 18 to 21 of the 2017 *Masa Sushi* decision.

[13] With respect to subsection 17.1(1) of the *Act*, I would add that the first and only iteration of this provision came into effect in 1988 pursuant to section 5 of the *Revised Statutes of Canada 1985*, c. 51 (4th Supp.).

[14] I would also add that when the current version of subsection 30(2) of the *Rules* was enacted in 2007, the Regulatory Impact Analysis Statement in the *Canada Gazette Part II*, Vol. 141, No. 13 stated that:

Section 30 of the *Rules* is being amended to provide that where a party to a proceeding is not an individual (such as a corporation), that party shall be represented by counsel except with leave of the Court and on any conditions that it may determine.

[15] I agree with the Court's analysis in paragraphs 22 to 27 of the 2017 *Masa Sushi* decision, i.e. that subsection 17.1(1) of the *Act* does not allow corporations to appear in person.

[16] With respect to subsection 30(2) of the *Rules*, there appears to be legislative intent to address situations involving corporations and who may represent them. However, there is no similar indication of legislative intent with respect to subsection 17.1(1) of the *Act*.

[17] I am unable to interpret subsection 17.1(1) of the *Act* to implicitly state that a corporation, like an individual, may appear in person without express words to that effect. Specifically, I agree with the Court's comments at paragraph 25 of *Masa Sushi* that an amendment to subsection 17.1(1) of the *Act* would probably be necessary. It is likely that the amendments to subsection 30(2) sought to fill that legislative gap.

[18] Therefore, as stated in paragraph 42 of *Masa Sushi*, I similarly conclude that the Appellant must be represented by counsel.

B. Based on common law factors

[19] If my above analysis is incorrect, then I would also conclude that the Appellant must be represented by counsel based on my consideration of the non-exhaustive list of factors for applying subsection 30(2) of the *Rules*, as set out in *WJZ Enterprises v. The Queen*, 2017 TCC 57 at paragraph 5:

- a) Whether the proposed representative is duly authorized by the corporation to act as its representative – The pleadings indicate the Mr. Shirazi is the sole director and officer, and his affidavit sworn on December 23, 2019 indicates that he is also the sole shareholder. Therefore, it appears that authorization to represent the Appellant is a relatively straightforward matter.
- b) Whether the proposed representative has a connection to the corporation – The pleadings and Mr. Shirazi’s affidavit indicate that he is the Appellant’s sole director, officer, and shareholder, i.e. the present application does not seek to circumvent the Rule by hiring a non-lawyer agent with no connection to the Appellant.
- c) Whether the corporation can pay for counsel – The Appellant’s motion materials include a copy of an October 28, 2019 letter to the Appellant from its former counsel in which they advise the Appellant that there are outstanding legal fees in the amount of \$1,928.30. Otherwise, there is no evidence of the Appellant’s financial situation.
- d) Whether the proposed representative will be required to appear as advocate and as witness – As the Appellant’s sole director and officer, it is likely that Mr. Shirazi would have to appear as both advocate and a witness.
- e) Whether the proposed representative is reasonably capable of adequately representing the corporation in terms of being able to comprehend the issues, adequately bring forth evidence and deal with the law – I believe that Mr. Shirazi might be qualified to negotiate a possible resolution of this appeal prior to hearing, with the assistance of an accounting professional. However, I do not believe that he would be able to represent the Appellant in terms of adequately bringing forth evidence and dealing with the law.
- f) Where the company is a small one-person corporation – The Appellant appears to be a one-person corporation.

[20] Paragraph 13 of the Respondent's reply to the notice of appeal shows that the Minister of National Revenue used an indirect method to calculate the Appellant's sales. There is also an allegation that the Appellant did not maintain proper books and records, and that there was a comingling of the Appellant's and Mr. Shirazi's funds. In the October 28, 2019 letter to the Appellant from its former counsel, they refer to communication issues with the Appellant.

[21] With respect to factor (e) above, I believe that Mr. Shirazi would have particular difficulty marshalling the evidence where the audit methodology is indirect (e.g. net worth, bank deposit analysis), while also applying the law as it pertains to the GST/HST, input tax credits, and gross negligence.

Conclusion

[22] The motion is dismissed on the following basis:

- a) the time for the Respondent to file and serve her written representations in respect of this motion is abridged to February 4, 2020;
- b) the Appellant shall retain counsel to represent it in this appeal;
- c) a Notice of Appointment with respect to new counsel shall be filed by the close of business three months from the date of issuance of this order;
- d) the parties' October 10, 2019 joint request to amend the timetable order shall be held in abeyance until new counsel is appointed; and
- e) costs will be in the cause.

Signed at Ottawa, Canada, this 13th day of February 2020.

“Susan Wong”

Wong J.

CITATION: 2020 TCC 30

COURT FILE NO.: 2018-2756(GST)G

STYLE OF CAUSE: 1532099 ONTARIO LTD. and THE QUEEN

PLACE OF HEARING: N/A

DATE OF HEARING: N/A

REASONS FOR ORDER BY: The Honourable Justice Susan Wong

DATE OF ORDER: February 13, 2020

APPEARANCES:

Agent for the Appellant: Motlagh Shirazi
Counsel for the Respondent: Cherylyn Dickson

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada