

Date: 20080211

**Dockets: T-1978-06
T-1982-06
T-1990-06**

Citation: 2008 FC 175

Docket: T-1978-06

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

COMTAX INTERNATIONAL INC.

Respondent

Docket: T-1982-06

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

2261669 CANADA INC.

Respondent

Docket: T-1990-06

AND BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

JACKY SHRYVER

Respondent

REASONS FOR ORDERS

HARRINGTON J.

[1] The financial affairs of 2261669 Canada Inc. (the Company) have been brought to the attention of three courts: the Quebec Superior Court, the Tax Court of Canada and the Federal Court.

[2] The Minister is of the view that the company owes taxes relating to various tax years and has issued Notices of Assessments which total close to \$7,000,000. The Company has filed notices of appeal which are currently before the Tax Court.

[3] The Company filed a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 which was accepted by a majority of its creditors in September 2006. The Minister, whose claim has been deemed contingent by the Trustee, opposes the approval of the proposal by the Bankruptcy

Court, in this case, the Quebec Superior Court. That matter has been held in abeyance for some time pending negotiations between the parties.

[4] What is before this Court are motions first filed in November 2006 requiring the Company, its principal and two other companies to provide certain documentation and information as authorized by section 231.7 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) as amended. One of the companies, 5075 de Sorel Management Limité, has complied. The Company, its principal Jacky Schryver and Comtax International Inc. have not. The motions have appeared on the role for the general sittings in Montreal from time to time, and then adjourned by consent, as the parties have had ongoing discussions and as the Minister is currently carrying out an audit of the Company.

[5] However, the Minister now submits the time has come for a formal order to assist in the audit and to advance the case. The respondents submit the motion is premature because: a) the company may not owe taxes; b) the proposal may be accepted by the Bankruptcy Court; and c) the information and documentation could lead to the Minister approaching the respondents' customers which could have the effect of damaging business relations.

[6] It is a peculiarity of sections 91, 92, 96 and 101 of our *Constitution Act* that jurisdiction over this federal matter is divided among three courts, but that is what the Parliament has enacted. The Superior Courts of the province have jurisdiction over the *Bankruptcy and Insolvency Act*, the Tax Court of Canada over federal tax assessments, and the Federal Court over federal tax enforcement issues.

[7] The current state of the proceedings before the Bankruptcy Court does not constitute a stay of the proceedings before this Court. Section 231.7(1) of the *Income Tax Act* permits this Court to order a person to provide access, assistance, information or documentation legitimately required by the Minister. The Minister is entitled to obtain further information relevant to the tax debt notwithstanding that a proposal has been filed under the *Bankruptcy and Insolvency Act* (*Canada (Minister of National Revenue – M.N.R. v. Stern*, [2004] F.C.J. No. 935, 9 C.B.R. (5th) 64, [2004] 4 C.T.C. 52, 2004 D.T.C. 6470 and cases cited therein). The respondents have been under notice for some 15 months now, the information has not been provided and no issue of solicitor/client privilege has been raised.

[8] This Court must take the Notices of Assessments as valid, until set aside. (*Canada (Minister of National Revenue-M.N.R.) v. MacIver*, [1999] F.C.J. No. 182, 172 F.T.R. 273, [1999] 4 C.T.C. 203; 99 D.T.C. 5524; *Canada (Minister of National Revenue-M.N.R.) v. Services M.L. Marengère Inc.*, [1999] F.C.J. No. 1840, 176 F.T.R. 1, [2000] 1 C.T.C. 229, 2000 D.T.C. 6032; and *Canada (Minister of National Revenue – MNR) v. Arab*, [2005] F.C.J. No. 333, 276 F.T.R. 18, [2005] 2 C.T.C. 107, 2005 D.T.C. 5134)

[9] The respondents submit that the granting of the orders sought will result in the company bringing on a motion to the Bankruptcy Court that the proposal be accepted. So be it. They further submit that if the Minister successfully opposes the proposal, then in the resulting bankruptcy ordinary creditors, including the Minister, will receive a smaller dividend than they would under the

proposal. Maybe yes, maybe no, but it is certainly not up to this Court to give tax recovery advice to the Minister.

[10] The alleged prejudice the respondents who have not made a proposal in bankruptcy would suffer is non-specific and highly speculative. The requirements of the *Income Tax Act* have been met, and I see no reason why the order should not issue.

“Sean Harrington”

Judge

Ottawa, Ontario
February 11, 2008

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1978-06

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE v.
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STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE v.
JACKY SHRYVER

PLACE OF HEARING: Montréal, QC

DATE OF HEARING: February 4, 2008

REASONS FOR ORDERS: HARRINGTON J.

DATED: February 11, 2008

APPEARANCES:

Me Louis Sébastien FOR THE APPLICANT

Me Guy Martel FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE APPLICANT
Deputy Attorney General of Canada

Stikeman Elliott FOR THE RESPONDENT
Barristers & Solicitors
Montréal, QC