

**Date: 20080213**

**Docket: T-2124-06**

**Citation: 2008 FC 180**

**Ottawa, Ontario, February 13, 2008**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**EBAY CANADA LIMITED and  
EBAY CS VANCOUVER INC.**

**Applicants**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

**FURTHER REASONS AND FINAL JUDGMENT**

[1] These Reasons are further to the Reasons delivered in this proceeding on September 18, 2007 (indexed as 2007 FC 930) and the Judgment given herein is a final Judgment.

[2] At the oral hearing of this matter, Counsel for the Applicants raised a matter not addressed in the Applicants' written Memorandum. Counsel for the Respondent agreed that the matter could be raised and that the Court should address the matter subject to the delivery of the Reasons and Partial Judgment aforesaid. This is referred to in paragraph 15 of my earlier reasons in which I said:

*The Applicants raised in oral argument but not in their written memorandum, an argument as to the sufficiency of the evidence on*

*the record directed to whether the Minister was conducting a genuine and serious inquiry into the group identified namely PowerSellers. The Applicants rely on a decision of Gauthier J. of this Court in Canada (MNR) v. Chambre immobilière du Grand Montréal, 2006 FC 1069. I am advised by Counsel that this decision is under appeal and is scheduled to be argued in the next two months. Counsel for both sets of parties agree that I should issue my decision in the present case while holding any further argument on this point in reserve for argument and determination later. Given the agreement of Counsel on this point, I will give partial judgment based on the issues argued before me, reserving on the issue as to the sufficiency of evidence as to a genuine and serious inquiry, but not reserving forever. I will reserve until the later of sixty (60) days following final determination whether judicially or otherwise, of the matter in the Federal Court of Appeal or ninety (90) days from the date of the issuing of these Reasons whichever is earlier. At or before that time the Applicants will be required to make an application for a fixing of the time and place for the hearing of argument on this issue or to advise that the this reserved issue has been abandoned or settled.*

*I will also reserve as to costs until Judgment has been given on all issues or the remaining issue has been abandoned or settled.*

[3] The Federal Court of Appeal has now given its decision on November 2, 2007 indexed as *Canada (MNR) v. Chambre Immobilière du Grand Montreal*, 2007 FCA 346. The Court reversed the decision of Justice Gauthier of this Court in a unanimous decision delivered by Trudel J.A. The parties have filed further written Arguments in the present proceeding, no oral hearing is required.

[4] In the present proceeding, the Applicants argue that the decision of the Federal Court of Appeal incorrectly interpreted the provisions of subsection 231.2(1) of the *Income Tax Act*, R.S.C. 1985 (5<sup>th</sup> supp.) c.1 and that there still remains under those provisions a requirement that the Minister must demonstrate that there exists “a genuine and serious inquiry”.

[5] The Federal Court of Appeal in the *Chambre Immobilière* case, *supra*, reviewed the jurisprudence and expressly found as summarized in paragraph 21 that whether a “genuine and serious” inquiry exists is not the appropriate test. Trudel J.A. said:

*21 Je suis d'avis que " l'enquête sérieuse et véritable " n'est pas le critère approprié pour l'examen d'une demande sous le paragraphe 231.2(3) de la Loi. La question à se poser n'est pas celle de savoir si le MRN a entrepris une enquête sérieuse et véritable, et encore moins sur chacune des personnes non désignées nommément du groupe. La question est plutôt la suivante : le juge des requêtes est-il convaincu que les renseignements ou documents concernant une ou plus d'une personne non désignées nommément (formant un groupe identifiable), sont exigés pour vérifier le respect de la Loi?*

[6] I am bound by that finding and do not propose to review the jurisprudence that the Federal Court of Appeal already considered in arriving at that conclusion.

[7] I am satisfied that there is sufficient evidence particularly the affidavit of Aziz Fazal to satisfy me that the information respecting the “PowerSellers” was required by the Minister to verify compliance by those persons with the *Income Tax Act*. Further, even if the test were that of a “genuine and serious inquiry”, I am satisfied that the affidavit of Fazal provides sufficient evidence to meet that test.

[8] Accordingly, I affirm the order which I gave *ex parte* on November 6, 2006 with the amendments as made in paragraph 1 of my Partial Judgment of September 18, 2007.

[9] As to costs, the Minister has asked that they be payable to the Respondent and suggested an amount of \$25,000.00 citing “unnecessary delay” which the Respondent says the Applicant caused between the date of the partial judgment and the date of this judgment. I find no such delay. The Respondent agreed that the Applicants could raise this further argument even though it was not in their written argument. The parties agreed to a timetable for the provision of further written argument and they adhered to that timetable. Accordingly, I award costs to the Minister to be taxed in accordance with the middle of Column IV; two days of hearing shall be allowed.

**FINAL JUDGMENT**

**For the Reasons provided here in together with those furnished on September 18, 2008:**

1. The Order of this Court dated November 6, 2006 in Court file No. T-1868-06 is affirmed except that the following words:

*“...having a Canadian address according to your records...”*

are varied to read:

*“...registered as having a Canadian address...”*

2. The Respondent is entitled to its costs to be taxed at the middle of Column IV; two days of hearing shall be allowed.

“Roger T. Hughes”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-2124-06

**STYLE OF CAUSE:** **EBAY CANADA LIMITED ET AL. v. MINISTER OF NATIONAL REVENUE**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 13, 2007

**FURTHER REASONS AND JUDGMENT:** Hughes, J

**DATED:** February 13, 2007

**APPEARANCES:**

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Mr. Matthew Latella

FOR THE APPLICANT  
EBAY CANADA LIMITED.

Mr. Henry A. Gluck

FOR THE RESPONDENT  
MINISTER OF NATIONAL REVENUE

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FOR THE APPLICANT

FOR THE RESPONDENT  
THE MINISTER OF NATIONAL REVENUE