Date: 20090310

Dockets: A-299-07
A-300-07

Citation: 2009 FCA 69

Present: NOËL J.A.

A-299-07

BETWEEN:

ROBERT LANGLOIS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

A-300-07

BETWEEN :

RALPH E. FARAGGI

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of the parties.

Order delivered at Ottawa, Ontario, on March 10, 2009.

REASONS FOR ORDER BY: NOËL J.A.

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REASONS FOR ORDER

NOËL J.A.

[1] These reasons dispose of two applications brought pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 for a stay of the judgements rendered by this Court on January 12, 2008 dismissing the appellants' respective appeals from judgements of the Tax Court of Canada which upheld the validity of assessments issued against each of the appellants.

[2] The applications are brought pursuant to section 65.1 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, which provides in part:

Stay of execution — application for leave to appeal	**Demande d'autorisation d'appel**
65.1 (1) The Court, the court appealed from or a judge of either of those courts may, on the request of the party who has served and filed a notice of application for leave to appeal, order that proceedings be stayed with respect to the judgment from which leave to appeal is being sought, on the terms deemed appropriate.	**65.1** (1) La Cour, la juridiction inférieure ou un de leurs juges peut, à la demande de la partie qui a signifié et déposé l'avis de la demande d'autorisation d'appel, ordonner, aux conditions jugées appropriées, le sursis d'exécution du jugement objet de la demande.
Additional power for court appealed from	Pouvoir de la juridiction inférieure
(2) The court appealed from or a judge of that court may exercise the power conferred by subsection (1) before the serving and filing of the notice of application for leave to appeal if satisfied that the party seeking the stay intends to apply for leave to appeal and that delay would result in a miscarriage of justice.	(2) La juridiction inférieure ou un de ses juges, convaincu que la partie qui demande le sursis a l'intention de demander l'autorisation d'appel et que le délai entraînerait un déni de justice, peut exercer le pouvoir prévu au paragraphe (1) avant la signification et le dépôt de l'avis de demande d'autorisation d'appel.

[3] The two applications are framed in identical terms. The full text of the Notice of Motion reads as follows:

> **PLEASE TAKE NOTICE** that for the reasons set out in the Petitioners' affidavits and the Affidavits of Documents attached hereto, Petitioners request a complete or partial suspension of the execution of the Judgment rendered by the Federal Court of Appeal on December 12th, 2008 and of the tax assessments, until such time as the Supreme Court has ruled on the Motion for Leave to Appeal that is presently pending before that Court.

[4] Both the appellants assert in the affidavit filed in support of their respective application:

> …
>
> Revenue Canada has refused any relief at this point despite a request made for partial release of funds to enable me to exercise my right to request leave to appeal to the Supreme Court of Canada;
>
> I ask that $150,000 be liberated for my use during the period that the motion for leave remains pending, on such terms as the court sees fit;
>
> …

No other relief is sought in the affidavits filed in support of the motions.

[5] The written submissions filed in support of the motions are as follows:

> 1- The guiding principle in a motion for suspension is to prevent irreversible harm and to maintain the *statu quo*;
>
> 2- It is also important for Parties to be able to continue to defend themselves in the proceedings;
>
> 3- Petitioners must prove:

1- An arguable case *RJR-McDonald v. Canada*, [1994 1 S.C.R. 311;

2- Irremediable harm:

- *Distribution Percour Inc. v. Ville de Montréal and als*, REJB 1998-04900 (C.A.);
- *Corriveau v. Speer and al.*, REJB 2001-25682 (C.A.);
- *Congregation of the Followers of the Rabbis of Belz to strenghthen Torah v. Municipality of Val-Morin*, 500-09-016048-050 (C.A.), 30 juillet 2008;

4- The Motion for Leave to the Supreme Court shows a serious arguable case on any standard;

5- Given the relatively liberal standard set out in *RJR McDonald, supra*, the existence of a very serious case cannot be doubted;

6- This is not a constitutional case and no law is to be inoperable for any period of time; therefore the considerations of public interest in *Manitoba (A.G.) v. Metropolitain Stores Ltd.*, [1987] 1 S.C.R. 110 do not apply;

7- The cases cited in paragraph 3(2) *supra* are fully applicable on the issue of irreversible harm and the affidavits illustrate this;

[6] The relief claimed is stated as follows:

TO ALLOW the motion and its conclusions

[7] The respondent opposes the applications on the ground that this Court is without jurisdiction to grant the relief claimed and that in any event irreparable harm has not been demonstrated. It adds that the balance of convenience operates in its favour.

[8] With respect to the jurisdictional issue, the respondent relies on subsection 225.1(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) which provides that the filing of an appeal to the Tax Court results in a statutory stay preventing the Minister of National Revenue from collecting the amounts in controversy. The respondent points out that this stay is only operational until the decision of the Tax Court has been rendered and mailed to the taxpayer. It follows that even if this Court was to stay the decisions which it rendered in December 2008, pursuant to the authority conferred upon it by section 65.1 of the *Supreme Court Act*, this would leave the decisions of the Tax Court untouched and the power of the Minister to collect unaltered (compare *Canadian Pasta Manufacturers' Assn. v. Aurora Importing & Distributing Ltd.*, [1996] F.C.J. No. 1055; 203 N.R. 232 (Q.L.)).

[9] I need not decide whether the jurisdiction of this Court is so limited in order to dispose of the pending motions. The record shows that the appellants filed their applications for leave before the Supreme Court before the due date. The supporting Memorandum of Arguments was also filed in each case. Nothing more needs to be done from the appellants' perspective before their leave application is referred to a panel of judges and decided. In short, the Supreme Court is in a position to grant effective relief to the appellants, if it chooses to do so.

[10] It follows that no irreparable harm can be said to result from the existing state of affairs. The situation may change in the event that leave is granted but this is not an issue that can be addressed in the context of the present application.

[11] The applications will be dismissed with costs computed on the basis of a single application.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-299-07
STYLE OF CAUSE:	ROBERT LANGLOIS and HER MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	NOËL J.A.
DATED:	March 10, 2009

WRITTEN REPRESENTATIONS BY:

Julius H. Grey	FOR THE APPELLANT
Ian Demers	FOR THE RESPONDENT

SOLICITORS OF RECORD:

GREY CASGRAIN Montréal, Quebec	FOR THE APPELLANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT

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