

Docket: 2008-1090(GST)APP

BETWEEN:

DEAN A. PORTER HOLDINGS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on July 24, 2008 at Halifax, Nova Scotia

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant: Dean A. Porter
Counsel for the Respondent: Martin Hickey

ORDER

The application by the Appellant to extend the time within which an appeal to this Court may be filed under the *Excise Tax Act* is dismissed and the appeal filed, which identifies Dean A. Porter Holdings Incorporated and Dean A. Porter as the Appellants, is quashed.

Signed at Toronto, Ontario, this 26th day of August 2008.

“Wyman W. Webb”

Webb J.

Citation: 2008TCC477
Date: 20080826
Docket: 2008-1090(GST)APP

BETWEEN:

DEAN A. PORTER HOLDINGS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb J.

[1] The Appellant filed an application to extend the time within which an appeal to this Court may be filed under the *Excise Tax Act*. The reference line in the letter from the Appellant states that it is in relation to “Extension of Time to file Appeal re GST/HST Account of Dean A. Porter Holdings Incorporated”. However in the Notice of Appeal that was attached to the document filed on March 3, 2008 it would appear that both Dean A. Porter Holdings Incorporated and Dean A Porter were intended to be the Appellants. Dean A. Porter had been assessed personally as a director of Dean A. Porter Holdings Incorporated for its unremitted HST.

[2] Dean A. Porter testified at the Hearing and he confirmed that he did not intend to appeal the assessment of HST against Dean A. Porter Holdings Incorporated. In any event, no notice of objection had been filed by Dean A. Porter Holdings Incorporated in relation to the HST that had been assessed against this company. Filing a notice of objection is a prerequisite to filing an appeal to this Court (*Douglas Whitford v. The Queen* 2008 TCC 359).

[3] The issue with respect to the appeal for Dean A. Porter of his personal liability as a director of Dean A. Porter Holdings Incorporated is whether the application to

extend the time within which he may appeal to this Court has been properly made within the time as specified in the *Excise Tax Act*.

[4] Dean A. Porter was assessed personally as a director of Dean A. Porter Holdings Incorporated for its unremitted HST on September 13, 2004. Dean A. Porter filed a notice of objection to this assessment and the confirmation by the Minister of the assessment was initially sent to Dean A. Porter by registered mail on June 26, 2006. As the letter was returned unopened by Canada Post, it was sent by regular mail on August 9, 2006. Dean A. Porter confirmed at the hearing that he had received this notice of confirmation in August of 2006.

[5] The first document filed with this Court by either Dean A. Porter or Dean A. Porter Holdings Incorporated was a letter that was sent on March 7, 2007. This letter stated as follows:

Re: Extension of Time to file Appeal re GST/HST Account of Dean A. Porter Holdings Incorporated

I am writing to you to have the time extended for filing an appeal re: GST/HST account of Dean A. Porter Holdings Incorporated. The "Notice of Decision" has been received.

The Reasons I did not file an appeal within the time limit.

(A) Waiting for clarification on some issues that would have an impact on the case.

(B) Busy providing an income for my family, which is the #1 priority.

Yours respectfully,

Dean Alison Porter.

(The emphasis was in the letter.)

[6] There is no indication in this letter that he is appealing the assessment that was issued against Dean A. Porter as a director of Dean A. Porter Holdings Incorporated. Only the corporation is referred to in the Re: line and in the body of the letter. As well, the Notice of Appeal was not attached to this application, which is a requirement of section 305 of the *Excise Tax Act*. This section provides as follows:

305. (1) Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the

Tax Court for an order extending the time within which an 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 (1) shall set out the reasons why the appeal to the Tax Court was not instituted within the time otherwise limited by this Part for doing so.

(3) **An application made under subsection (1) shall be made by filing in the Registry of the Tax Court, 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) After receiving an application made under this section, the Tax Court shall send a copy of the application 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 otherwise limited by this Part for appealing;** and

(b) the person demonstrates that

(i) within the time otherwise limited by this Part for appealing,

(A) the person was unable to act or to give a mandate to act in the person's name, or

(B) the person 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 it to be made, and

(iv) there are reasonable grounds for appealing from the assessment.

(emphasis added)

[7] In June of 2007 Dean A. Porter faxed the same page to the registry office and the Notice of Appeal was not attached to this fax. As noted above, there was no reference in this one page that Dean A. Porter was appealing the assessment issued against him as a director of Dean A. Porter Holdings Incorporated. The next

document that was filed with this Court was not filed until March 2008 and this document did include the Notice of Appeal identifying Dean A. Porter Holdings Incorporated and Dean A. Porter as the Appellants. Since the time otherwise limited for appealing is ninety days after the date that notice of confirmation of the assessment was sent to Dean A. Porter, this document filed in March 2008, would have been filed after the one year limitation period referred to in paragraph 305(5)(a) of the *Excise Tax Act*.

[8] Therefore since there was no indication in the documents that were filed with this Court in March and June 2007 that Dean A. Porter was appealing the assessment issued against him as a director of a Dean A. Porter Holdings Incorporated and since the Notice of Appeal was not attached to any documents filed in 2007 and was not filed until March 2008, there is no valid application for an extension of time to file a Notice of Appeal in relation to the assessment issued against Dean A. Porter as a director of Dean A. Porter Holdings Incorporated. Since no notice of objection was filed by Dean A. Porter Holdings Incorporated, Dean A. Porter Holdings Incorporated has no right to appeal to this Court.

[9] As a result, the application to extend the time within which an appeal to this Court may be filed under the *Excise Tax Act* is dismissed and the appeal filed, which identifies Dean A. Porter Holdings Incorporated and Dean A. Porter as the Appellants, is quashed.

Signed at Toronto, Ontario, this 26th day of August 2008.

“Wyman W. Webb”

Webb J.

CITATION: 2008TCC477

COURT FILE NO.: 2008-1090(GST)APP

STYLE OF CAUSE: DEAN A. PORTER HOLDINGS INC. AND
THE QUEEN

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: July 24, 2008

REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb

DATE OF ORDER: August 26, 2008

APPEARANCES:

Agent for the Appellant: Dean A. Porter
Counsel for the Respondent: Martin Hickey

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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