

Docket: 2008-270(GST)G

BETWEEN:

EXPRESS MANOR HOLDINGS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard with the motions of *477730 B.C. Ltd.* (2008-644(GST)G), *T.S. Kwon Holdings Ltd.* (2008-645(GST)G), *Central Manor Holdings Ltd.* (2008-1076(GST)G), *City Center Manor Holdings Ltd.* (2008-1159(GST)G), *Traveller's Inn (Canada) Ltd.* (2008-1260(GST)G), *Blanshard Manor Holdings Ltd.* (2008-1380(GST)G), *Oceanfront Grand Resort & Marina Holdings Ltd.* (2008-1542(GST)G), on February 20, 2009, at Victoria, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant: Jean-Pierre Najib Asfar

Counsel for the Respondent: Sara Fairbridge

ORDER

Upon motion, on behalf of the Appellant, for an order granting leave to the Appellant to be represented by Mr. Jean-Pierre Najib Asfar, Chief Executive Officer of the company, pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*;

Upon having read the notice of motion and supporting affidavit;

And upon having heard the evidence of Mr. Asfar and the submissions of both parties;

It is ordered that Mr. Jean-Pierre Najib Asfar be allowed to represent the Appellant in this appeal.

It is further ordered that the corporate Appellant file a resolution of the company appointing Mr. Asfar as its agent for the purpose of conducting the appeal.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

Docket: 2008-644(GST)G

BETWEEN:

477730 B.C. LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard with the motions of *Express Manor Holdings Ltd.* (2008-270(GST)G), *T.S. Kwon Holdings Ltd.* (2008-645(GST)G), *Central Manor Holdings Ltd.* (2008-1076(GST)G), *City Center Manor Holdings Ltd.* (2008-1159(GST)G), *Traveller's Inn (Canada) Ltd.* (2008-1260(GST)G), *Blanshard Manor Holdings Ltd.* (2008-1380(GST)G), *Oceanfront Grand Resort & Marina Holdings Ltd.* (2008-1542(GST)G), on February 20, 2009, at Victoria, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant: Jean-Pierre Najib Asfar

Counsel for the Respondent: Sara Fairbridge

ORDER

Upon motion, on behalf of the Appellant, for an order granting leave to the Appellant to be represented by Mr. Jean-Pierre Najib Asfar, Chief Executive Officer of the company, pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*;

Upon having read the notice of motion and supporting affidavit;

And upon having heard the evidence of Mr. Asfar and the submissions of both parties;

It is ordered that Mr. Jean-Pierre Najib Asfar be allowed to represent the Appellant in this appeal.

It is further ordered that the corporate Appellant file a resolution of the company appointing Mr. Asfar as its agent for the purpose of conducting the appeal.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

Docket: 2008-645(GST)G

BETWEEN:

T.S. KWON HOLDINGS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard with the motions of *Express Manor Holdings Ltd.* (2008-270(GST)G), *477730 B.C. Ltd.* (2008-644(GST)G), *Central Manor Holdings Ltd.* (2008-1076(GST)G), *City Center Manor Holdings Ltd.* (2008-1159(GST)G), *Traveller's Inn (Canada) Ltd.* (2008-1260(GST)G), *Blanshard Manor Holdings Ltd.* (2008-1380(GST)G), *Oceanfront Grand Resort & Marina Holdings Ltd.* (2008-1542(GST)G), on February 20, 2009, at Victoria, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant: Jean-Pierre Najib Asfar

Counsel for the Respondent: Sara Fairbridge

ORDER

Upon motion, on behalf of the Appellant, for an order granting leave to the Appellant to be represented by Mr. Jean-Pierre Najib Asfar, Chief Executive Officer of the company, pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*;

Upon having read the notice of motion and supporting affidavit;

And upon having heard the evidence of Mr. Asfar and the submissions of both parties;

It is ordered that Mr. Jean-Pierre Najib Asfar be allowed to represent the Appellant in this appeal.

It is further ordered that the corporate Appellant file a resolution of the company appointing Mr. Asfar as its agent for the purpose of conducting the appeal.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

Docket: 2008-1076(GST)G

BETWEEN:

CENTRAL MANOR HOLDINGS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard with the motions of *Express Manor Holdings Ltd.* (2008-270(GST)G), *477730 B.C. Ltd.* (2008-644(GST)G), *T.S. Kwon Holdings Ltd.* (2008-645(GST)G), *City Center Manor Holdings Ltd.* (2008-1159(GST)G), *Traveller's Inn (Canada) Ltd.* (2008-1260(GST)G), *Blanshard Manor Holdings Ltd.* (2008-1380(GST)G), *Oceanfront Grand Resort & Marina Holdings Ltd.* (2008-1542(GST)G), on February 20, 2009, at Victoria, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant: Jean-Pierre Najib Asfar

Counsel for the Respondent: Sara Fairbridge

ORDER

Upon motion, on behalf of the Appellant, for an order granting leave to the Appellant to be represented by Mr. Jean-Pierre Najib Asfar, Chief Executive Officer of the company, pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*;

Upon having read the notice of motion and supporting affidavit;

And upon having heard the evidence of Mr. Asfar and the submissions of both parties;

It is ordered that Mr. Jean-Pierre Najib Asfar be allowed to represent the Appellant in this appeal.

It is further ordered that the corporate Appellant file a resolution of the company appointing Mr. Asfar as its agent for the purpose of conducting the appeal.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

Docket: 2008-1159(GST)G

BETWEEN:

CITY CENTER MANOR HOLDINGS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard with the motions of *Express Manor Holdings Ltd.* (2008-270(GST)G), *477730 B.C. Ltd.* (2008-644(GST)G), *T.S. Kwon Holdings Ltd.* (2008-645(GST)G), *Central Manor Holdings Ltd.* (2008-1076(GST)G), *Traveller's Inn (Canada) Ltd.* (2008-1260(GST)G), *Blanshard Manor Holdings Ltd.* (2008-1380(GST)G), *Oceanfront Grand Resort & Marina Holdings Ltd.* (2008-1542(GST)G), on February 20, 2009, at Victoria, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant: Jean-Pierre Najib Asfar

Counsel for the Respondent: Sara Fairbridge

ORDER

Upon motion, on behalf of the Appellant, for an order granting leave to the Appellant to be represented by Mr. Jean-Pierre Najib Asfar, Chief Executive Officer of the company, pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*;

Upon having read the notice of motion and supporting affidavit;

And upon having heard the evidence of Mr. Asfar and the submissions of both parties;

It is ordered that Mr. Jean-Pierre Najib Asfar be allowed to represent the Appellant in this appeal.

It is further ordered that the corporate Appellant file a resolution of the company appointing Mr. Asfar as its agent for the purpose of conducting the appeal.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

Docket: 2008-1260(GST)G

BETWEEN:

TRAVELLER'S INN (CANADA) LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard with the motions of *Express Manor Holdings Ltd.* (2008-270(GST)G), *477730 B.C. Ltd.* (2008-644(GST)G), *T.S. Kwon Holdings Ltd.* (2008-645(GST)G), *Central Manor Holdings Ltd.* (2008-1076(GST)G), *City Center Manor Holdings Ltd.* (2008-1159(GST)G), *Blanshard Manor Holdings Ltd.* (2008-1380(GST)G), *Oceanfront Grand Resort & Marina Holdings Ltd.* (2008-1542(GST)G), on February 20, 2009, at Victoria, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant: Jean-Pierre Najib Asfar

Counsel for the Respondent: Sara Fairbridge

ORDER

Upon motion, on behalf of the Appellant, for an order granting leave to the Appellant to be represented by Mr. Jean-Pierre Najib Asfar, Chief Executive Officer of the company, pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*;

Upon having read the notice of motion and supporting affidavit;

And upon having heard the evidence of Mr. Asfar and the submissions of both parties;

It is ordered that Mr. Jean-Pierre Najib Asfar be allowed to represent the Appellant in this appeal.

It is further ordered that the corporate Appellant file a resolution of the company appointing Mr. Asfar as its agent for the purpose of conducting the appeal.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

Docket: 2008-1380(GST)G

BETWEEN:

BLANSHARD MANOR HOLDINGS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard with the motions of *Express Manor Holdings Ltd.* (2008-270(GST)G), *477730 B.C. Ltd.* (2008-644(GST)G), *T.S. Kwon Holdings Ltd.* (2008-645(GST)G), *Central Manor Holdings Ltd.* (2008-1076(GST)G), *City Center Manor Holdings Ltd.* (2008-1159(GST)G), *Traveller's Inn (Canada) Ltd.* (2008-1260(GST)G), *Oceanfront Grand Resort & Marina Holdings Ltd.* (2008-1542(GST)G), on February 20, 2009, at Victoria, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant: Jean-Pierre Najib Asfar

Counsel for the Respondent: Sara Fairbridge

ORDER

Upon motion, on behalf of the Appellant, for an order granting leave to the Appellant to be represented by Mr. Jean-Pierre Najib Asfar, Chief Executive Officer of the company, pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*;

Upon having read the notice of motion and supporting affidavit;

And upon having heard the evidence of Mr. Asfar and the submissions of both parties;

It is ordered that Mr. Jean-Pierre Najib Asfar be allowed to represent the Appellant in this appeal.

It is further ordered that the corporate Appellant file a resolution of the company appointing Mr. Asfar as its agent for the purpose of conducting the appeal.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

Docket: 2008-1542(GST)G

BETWEEN:

OCEANFRONT GRAND RESORT &
MARINA HOLDINGS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard with the motions of *Express Manor Holdings Ltd.* (2008-270(GST)G),
477730 B.C. Ltd. (2008-644(GST)G),
T.S. Kwon Holdings Ltd. (2008-645(GST)G), *Central Manor Holdings Ltd.*
(2008-1076(GST)G), *City Center Manor Holdings Ltd.* (2008-1159(GST)G),
Traveller's Inn (Canada) Ltd. (2008-1260(GST)G), *Blanshard Manor Holdings Ltd.*
(2008-1380(GST)G), on February 20, 2009, at Victoria, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant: Jean-Pierre Najib Asfar
Counsel for the Respondent: Sara Fairbridge

ORDER

Upon motion, on behalf of the Appellant, for an order granting leave to the Appellant to be represented by Mr. Jean-Pierre Najib Asfar, Chief Executive Officer of the company, pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)*;

Upon having read the notice of motion and supporting affidavit;

And upon having heard the evidence of Mr. Asfar and the submissions of both parties;

It is ordered that Mr. Jean-Pierre Najib Asfar be allowed to represent the Appellant in this appeal.

It is further ordered that the corporate Appellant file a resolution of the company appointing Mr. Asfar as its agent for the purpose of conducting the appeal.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

Citation: 2009 TCC 167
Date: 20090323
Dockets: 2008-270(GST)G
2008-644(GST)G
2008-645(GST)G
2008-1076(GST)G
2008-1159(GST)G
2008-1260(GST)G
2008-1380(GST)G
2008-1542(GST)G

BETWEEN:

EXPRESS MANOR HOLDINGS LTD.,
477730 B.C. LTD.,
T.S. KWON HOLDINGS LTD.,
CENTRAL MANOR HOLDINGS LTD.,
CITY CENTER MANOR HOLDINGS LTD.,
TRAVELLER'S INN (CANADA) LTD.,
BLANSHARD MANOR HOLDINGS LTD.,
OCEANFRONT GRAND RESORT & MARINA HOLDINGS LTD.,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Jorré J.

[1] The motions in all eight of these appeals were heard together.

[2] In all eight of these appeals, Mr. Jean-Pierre Najib Asfar has made a motion pursuant to subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)* (the “*Rules*”) that he be allowed to act as the representative of the eight corporate Appellants in lieu of counsel.

[3] Subsection 30(2) of the *Rules* states:

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.

[4] In the notice of motion, the key ground for the application was that the Appellants were unable to secure competent counsel willing to take on the case. At the hearing of the motion the Appellants' key ground was that the finances of the companies were such that they could not, at this time, afford to retain counsel.

Facts

[5] At the hearing, Mr. Asfar testified.

[6] He is a hotelier and is the sole shareholder of all eight companies. He is also the Chief Executive Officer (the "CEO") of all eight companies.

[7] He testified that the companies — as well as related companies he has — are currently experiencing negative cash flow. For the last three and a half years he has operated his businesses by refinancing the properties to get through the winter period.

[8] Last September/October, lending froze and although he has made many efforts he has been unable to obtain refinancing at this time. He has also been unsuccessful in selling some non-core properties of the companies.

[9] He further testified that he did find two lawyers who were prepared to take his cases but who wanted a \$100,000 retainer.

[10] He stated that in the current circumstances the companies could not finance such a large retainer and, he believes, a much higher ultimate bill.

[11] He did not bring documentary evidence of the companies' financial state.

[12] He did say, however, that if he had the cash he would hire counsel.

[13] Based on the pleadings, it would appear that the GST assessments in issue relate at least in part to whether certain room rentals are exempt supplies due to the length of the stay.

[14] While the nature of the other arguments is not entirely clear, the Appellants also intend to raise arguments relating to the validity of the GST.

[15] For all eight Appellants, as a group, it would appear that there is some \$800,000 in issue.

Analysis

[16] While I am convinced that conduct of the Appellants' case would benefit from counsel, I am satisfied that, on the evidence before me, given the circumstances, the companies are unable to finance counsel.

[17] Whatever the effects of the recent amendment to subsection 30(2) of the *Rules*, the financial situation of the companies is a valid reason to grant Mr. Asfar, the sole shareholder and CEO of the eight Appellants, permission to represent the eight Appellants (see *Chase Bryant Inc. v. The Queen*, 2003 DTC 145, *Dundurn Street Lofts Inc. v. The Queen*, 2008 TCC 558 and *Thomson Motors Co. Ltd. v. The Queen*, 2002 DTC 2006).

[18] I wish to thank the parties and I want to thank counsel for the Respondent for her excellent submissions regarding the new rule.

[19] Finally, Mr. Asfar indicated that he would have the companies hire counsel if they could afford to do so. If the financial situation improves, I urge him to do so.

Signed at Ottawa, Canada, this 23rd day of March 2009.

"Gaston Jorré"

Jorré J.

CITATION: 2009 TCC 167

COURT FILE NOS.: 2008-270(GST)G, 2008-644(GST)G,
2008-645(GST)G, 2008-1076(GST)G,
2008-1159(GST)G, 2008-1260(GST)G,
2008-1380(GST)G and 2008-1542(GST)G

STYLES OF CAUSES: EXPRESS MANOR HOLDINGS LTD.,
477730 B.C. LTD., T.S. KWON
HOLDINGS LTD., CENTRAL MANOR
HOLDINGS LTD., CITY CENTER
MANOR HOLDINGS LTD.,
TRAVELLER'S INN (CANADA) LTD.,
BLANSHARD MANOR HOLDINGS LTD.
and OCEANFRONT GRAND RESORT &
MARINA HOLDINGS LTD., v. THE
QUEEN

PLACE OF HEARING: Victoria, British Columbia

DATE OF HEARING: February 20, 2009

REASONS FOR ORDER BY: The Honourable Justice Gaston Jorré

DATE OF ORDER: March 23, 2009

APPEARANCES:

Agent for the Appellants: Jean-Pierre Najib Asfar
Counsel for the Respondent: Sara Fairbridge

COUNSEL OF RECORD:

For the Appellants:
Name:
Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada