

Docket: 2007-4769(GST)APP

BETWEEN:

CHRISTIAN ALCINDOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Marc-Antoine Pierre-Louis 2007-4755(GST)APP,
Ronald Béliard 2007-4756(GST)APP,
Jean-Guy Pagé 2007-4757(GST)APP,
and **Robert Berger 2007-4758(GST)APP,**
on February 25, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Richard Généreux

JUDGMENT

The application for an order extending the time in which to serve a notice of objection to the notice of assessment dated June 28, 2006, bearing the number PM-12739, and made under subsection 323(1) of the *Excise Tax Act*, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 11th day of June 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 16th day of July 2008.

Brian McCordick, Translator

Docket: 2007-4755(GST)APP

BETWEEN:

MARC-ANTOINE PIERRE-LOUIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Ronald Béliard 2007-4756(GST)APP,
Jean-Guy Pagé 2007-4757(GST)APP,
Robert Berger 2007-4758(GST)APP,
and **Christian Alcindor 2007-4769(GST)APP,**
on February 25, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Richard Généreux

JUDGMENT

The application for an order extending the time in which to serve a notice of objection to the notice of assessment dated June 28, 2006, bearing the number PM-12747, and made under subsection 323(1) of the *Excise Tax Act*, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 16th day of June 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 16th day of July 2008.

Brian McCordick, Translator

Docket: 2007-4756(GST)APP

BETWEEN:

RONALD BÉLIARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Marc-Antoine Pierre-Louis 2007-4755(GST)APP,
Jean-Guy Pagé 2007-4757(GST)APP,
Robert Berger 2007-4758(GST)APP,
and **Christian Alcindor 2007-4769(GST)APP,**
on February 25, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Richard Généreux

JUDGMENT

The application for an order extending the time in which to serve a notice of objection to the notice of assessment dated June 28, 2006, bearing the number PM-12741, and made under subsection 323(1) of the *Excise Tax Act*, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 11th day of June 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 16th day of July 2008.

Brian McCordick, Translator

Docket: 2007-4757(GST)APP

BETWEEN:

JEAN-GUY PAGÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Marc-Antoine Pierre-Louis 2007-4755(GST)APP,
Ronald Béliard 2007-4756(GST)APP,
Robert Berger 2007-4758(GST)APP,
and **Christian Alcindor 2007-4769(GST)APP,**
on February 25, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Richard Généreux

JUDGMENT

The application for an order extending the time in which to serve a notice of objection to the notice of assessment dated June 28, 2006, bearing the number PM-12743, and made under subsection 323(1) of the *Excise Tax Act*, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 11th day of June 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 16th day of July 2008.

Brian McCordick, Translator

Docket: 2007-4758(GST)APP

BETWEEN:

ROBERT BERGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Marc-Antoine Pierre-Louis 2007-4755(GST)APP,
Ronald Béliard 2007-4756(GST)APP,
Jean-Guy Pagé 2007-4757(GST)APP,
and **Christian Alcindor 2007-4769(GST)APP,**
on February 25, 2008, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Richard Généreux

JUDGMENT

The application for an order extending the time in which to serve a notice of objection to the notice of assessment dated June 28, 2006, bearing the number PM-12745, and made under subsection 323(1) of the *Excise Tax Act*, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 11th day of June 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 16th day of July 2008.

Brian McCordick, Translator

Citation: 2008 TCC 345
Date: 20080611
Dockets: 2007-4769(GST)APP,
2007-4755(GST)APP, 2007-4756(GST)APP,
2007-4757(GST)APP, 2007-4758(GST)APP

BETWEEN:

CHRISTIAN ALCINDOR,
MARC-ANTOINE PIERRE-LOUIS,
RONALD BÉLIARD,
JEAN-GUY PAGÉ,
ROBERT BERGER,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] These are applications for an order extending the time in which to serve a notice of objection to notices of assessment bearing the numbers PM-12739, PM-12747, PM-12741, PM-12743 and PM-12745, and dated June 28, 2006. By these notices of assessment, issued under subsection 323(1) of the *Excise Tax Act* ("the Act"), the Minister of Revenue of Québec, acting as agent for the Minister of National Revenue (hereinafter "the Minister"), claimed from each Appellant the amount of \$3,734.82, consisting of the net tax that Les Ateliers L'Essor Inc. should have remitted on June 30, 2004, for the period from April 1, 2003 to March 31, 2004, under subsection 228(2) of the Act, plus interest and penalties.

[2] The application for an extension of time was submitted on the Appellants' behalf by Nancy Boisrond on June 4, 2007, more than eight months after the expiration of the 90-day period in which objections to notices of assessment are to be filed. On October 30, 2007, the Minister confirmed to each Appellant, in the following terms, that it was rejecting the application for an extension:

[TRANSLATION]

You have not shown that you were unable to act or that you intended to object within the allotted time. Furthermore, given the reasons set out in the application, and the circumstances of this case, it would not be just and equitable to grant the application.

[3] Mr. Alcindor, Mr. Berger, Mr. Béliard, Mr. Pierre-Louis and Mr. Pagé had filed notices of objection dated November 13, 2006 in the cases of Mr. Alcindor, Mr. Berger, Mr. Pierre-Louis and Mr. Pagé, and dated October 23, 2006 in the case of Mr. Béliard. The notices were not accepted because they were not submitted within the time allotted by the Act.

[4] Les Ateliers L'Essor Inc. was incorporated on May 8, 1980, under Part 2 of the *Canada Corporations Act*. It was a non-profit corporation that operated a centre for workers with disabilities. The corporation went bankrupt on April 27, 2005, and its registration was struck off upon request on June 9, 2006.

[5] On March 31, 2004, all the Appellants were directors of Les Ateliers L'Essor Inc. On October 15, 2004, all the Appellants resigned simultaneously from the corporation's board of directors.

The Appellants' positions

[6] Mr. Alcindor retired from a job with the Canada Revenue Agency in 2003. Before his retirement, he worked in the field of excise tax, and was familiar with the process of making assessments and filing notices of objection and notices of court appeals. Mr. Alcindor claims that he did not receive the notice of assessment dated June 28, 2006, and admits that he relied on Nancy Boisrond, the CEO of Les Ateliers L'Essor Inc., who had taken it upon herself to retain the services of Manon Bélanger, an attorney, to settle all disputes stemming from that company's bankruptcy. In his testimony, Mr. Alcindor specified that Ms. Boisrond had agreed to pay Ms. Bélanger's legal fees, which is why he did not communicate with her directly to discuss the GST matter.

[7] Mr. Béliard also testified. He confirmed that he received the notice of assessment issued bearing his name and that he never met with Ms. Bélanger prior to that.

[8] Mr. Pierre-Louis also confirmed that he received the notice of assessment and that he submitted it to Ms. Boisrond's father, the founder of Les Ateliers L'Essor Inc., so that he would give it to Ms. Boisrond. He did not discuss the tax matter with Ms. Bélanger either.

[9] Mr. Berger confirmed that he received the notice of assessment dated June 28, 2006, and that he filed a notice of objection, which was rejected because it was not filed in time. Moreover, he confirmed that he never spoke with the lawyer whose services Ms. Boisrond had retained. He said that Ms. Boisrond's mandate was to completely close out the operations of Les Ateliers L'Essor Inc.

[10] Nancy Boisrond testified for Mr. Pagé, who was unable to attend. She confirmed that Mr. Pagé received the notice of assessment dated June 28, 2006. She confirmed that she had possession of all the assessments issued to the directors and that, in late June or early July 2006, she mandated Ms. Bélanger to look after the directors' matters. It is in this context that Ms. Bélanger looked after the Commission des normes du travail matter, among others. Ms. Boisrond stated that there was some confusion surrounding what Ms. Bélanger was retained to do, and that she did not look after the matter of the taxes claimed from the directors.

Analysis

[11] The liability of the directors of a corporation that fails to remit an amount of net tax stems from the application of subsection 323(1) of the Act, which reads:

323. (1) **Liability of directors** – If a corporation fails to remit an amount of net tax as required under subsection 228(2) or (2.3) or to pay an amount as required under section 230.1 that was paid to, or was applied to the liability of, the corporation as a net tax refund, the directors of the corporation at the time the corporation was required to remit or pay, as the case may be, the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay the amount and any interest on, or penalties relating to, the amount.

[12] The time within which a person who is a director must be assessed, as established by subsection 323(5) of the Act, is two years after the person last ceased to be a director.

[13] In the instant case, all the notices of assessment against the directors are dated June 28, 2006, which is less than two years after October 2004, when the directors resigned.

[14] A court entertaining an application to extend the time within which to file a notice of objection can only grant the application if the conditions set out in paragraphs 304(5)(a) and (b) are met. Those provisions read:

Legislation

304(5) **When application to be granted** – No application shall be granted under this section unless

- (a) the application was made under subsection 303(1) within one year after the expiration of the time otherwise limited by this Part for objecting or making a request under subsection 274(6), as the case may be; and
- (b) the person demonstrates that
 - (i) within the time otherwise limited by this Act for objecting,
 - (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 object to the assessment or make the request,
 - (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, and
 - (iii) the application was made under subsection 303(1) as soon as circumstances permitted it to be made.

[15] In the instant case, it has been admitted that the conditions set out in paragraph 303(5)(a) and subparagraph 303(5)(b)(iv) of the Act are met.

[16] The first criterion that must be met in order for an application for an extension of time to be granted is that the taxpayer must have been unable to act or give a mandate to act in the taxpayer's name within the time limit for objecting. According to the documentary and testimonial evidence presented to me, there is no indication of any reason that would have prevented the Appellants from acting and filing their respective notices of objection within the time limit. They all received the notice of assessment dated June 28, 2006 (Mr. Alcindor is deemed to have received it) and they did nothing to look after the matter. They relied on Ms. Boisrond, who, on her own initiative and at her own expense, apparently mandated an attorney to look after all the directors' files following the bankruptcy of Les Ateliers L'Essor Inc.

[17] The attorney in question did not testify to explain the nature of the mandate that she was given and specify the date on which she received it. The evidence did not disclose the date that she received the mandate; it is not known whether this occurred when the company went bankrupt on April 28, 2005, or in March 2006 as Mr. Alcindor claimed, well before the issuance of the notices of assessment on June 28, 2006, or even in the summer of 2006, when it was still possible to file notices of objection. In any event, the Appellants never contacted the attorney to check on the status of their matter. Even Mr. Alcindor, who is familiar with the objection process, did not contact the attorney to ensure that his notice of objection had been duly filed.

[18] The Appellants did not do anything until they received the final notices demanding payment, and it was only then that the Appellants began to submit their notices of objection. By then, it was too late.

[19] The second criterion that must be met is the intention to object to the assessment. Here again, it is unclear whether the Appellants intended to object to the assessment. They relied on Ms. Boisrond to look after the tax authorities' claims. The evidence does not disclose the nature of the instructions that the Appellants gave Ms. Boisrond. Was she supposed to look after the tax authorities' claims and see to their payment, or was she supposed to contest the validity of the assessments? In my opinion, the Appellants have not clearly shown that they intended to object to the assessments that were issued.

[20] The third criterion that must be met in an application of this nature is that it must be just and equitable to grant the application. The assessments appear to be well-founded in law, and there do not appear to be any palpable errors in this matter. In addition, there is no distinction to be made in relation to the activities of Les Ateliers L'Essor Inc. or its non-profit status. It is not the purpose of this provision to give additional time to those who did not comply with the time limit for filing their notice of objection because they forgot, were careless, or lacked discipline.

[21] The fourth and last criterion applicable to the case at bar is that the application must have been made as soon as circumstances permitted. In the instant case, the application for an extension of time was made more than six months after the Appellants received a confirmation that their notices of objection had not been accepted. The reasons for this lack of diligence were not provided at the hearing.

[22] Based on the foregoing, I find that the Appellants did not meet the conditions set out in subparagraphs 304(5)(b)(i), (ii) and (iii) of the Act, that is to say, they have not shown, on a balance of probabilities, that within the time otherwise limited, they were unable to act or mandate someone to act on their behalf, or they intended to file an objection, nor have they shown that it would be just and equitable to grant the application and that the application was made as soon as circumstances permitted.

[23] Mr. Alcindor's argument that he did not receive the notice of objection dated June 28, 2006, whereas the other Appellants acknowledge receiving it, cannot be accepted. First of all, it should be mentioned that Mr. Alcindor did not bring up this fact earlier in his correspondence with the Canada Revenue Agency or in his application for an extension of the time in which to file a notice of objection. He provided no reason at the hearing that would account for his failure to receive the assessment in question (e.g., a move, prolonged absence, illness, etc.) Under subsections 335(10) and (11) of the Act, "[w]here any notice or demand that the Minister is required or authorized . . . to send or mail to a person is mailed to the person, the day of mailing shall be presumed to be the date of the notice or demand", and "[w]here a notice of assessment has been sent by the Minister as required under this Part, the assessment shall be deemed to have been made on the day of mailing of the notice of assessment." The taxpayer need not have received a notice in order for it to be valid. Isaac J.A. of the Federal Court of Appeal addressed this issue in *Canada v. Schafer*, [2000] G.S.T.C. 82, at paragraph 12 in the following words:

. . . Therefore, the only requirement is that the Minister demonstrate that the notice was sent. There is no requirement that the notice be received in order to start the limitation period running. . . .

[24] For these reasons, the Appellants' application is dismissed.

Signed at Ottawa, Canada, this 11th day of June 2008.

"Réal Favreau"

Favreau J.

Translation certified true
on this 16th day of July 2008.

Brian McCordick, Translator

CITATION: 2008 TCC 345

COURT FILE NOS.: 2007-4769(GST)APP, 2007-4755(GST)APP,
2007-4756(GST)APP, 2007-4757(GST)APP,
2007-4758(GST)APP

STYLE OF CAUSE: CHRISTIAN ALCINDOR ET AL. and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 25, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: June 11, 2008

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Richard Généreux

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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