

Docket: 2012-631(IT)I

BETWEEN:

WILLIAM A. LAWRENCE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard on June 8, 2012 at Halifax, Nova Scotia

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Gregory B. King

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**ORDER**

Upon consideration of a motion by the Respondent for an Order quashing the Appellant's Notice of Appeal from the Notice of Determination dated November 10, 2011 on the grounds that the Appellant did not have standing to file a Notice of Objection;

And upon hearing the representations of counsel for the Respondent;

And upon hearing representations of the Appellant;

The motion is granted and the purported appeal is quashed.

Signed at Ottawa, Canada, this 20<sup>th</sup> day of September 2012.

“V.A. Miller”

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V.A. Miller J.

Citation : 2012TCC331

Date: 20120920

Docket: 2012-631(IT)I

BETWEEN:

WILLIAM A. LAWRENCE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR ORDER**

V.A. Miller J.

[1] The Respondent has brought a motion for an Order to quash this appeal on the basis that the Appellant did not file a valid notice of objection.

[2] At the beginning of the hearing of this appeal, I allowed the Respondent to file an Amended Reply to the Notice of Appeal. However, my decision in this motion was not based on the amended reply.

[3] The question raised by the motion is whether the Appellant has standing to file a notice of objection for tax years prior to his assignment in bankruptcy?

[4] I have concluded that the Appellant does not have standing and that the motion to quash the appeal is granted.

[5] The facts are short and straightforward.

[6] The Appellant filed an assignment into bankruptcy on November 16, 2006. He was discharged from bankruptcy on June 27, 2008.

[7] By letter dated July 7, 2011, the Appellant asked the Minister of National Revenue (the “Minister”) to determinate whether he was eligible to claim the Disability Tax Credit (“DTC”) for 2010 and prior years.

[8] By notice dated November 10, 2011, the Minister determined that the Appellant was eligible for the DTC for the 2001 to 2016 taxation years. The Minister adjusted the Appellant's income tax returns for the post-bankruptcy years (2006 to 2010) and issued reassessments for those years. The Minister informed the Appellant that a request for a reassessment of his 2006 (pre-bankruptcy) and prior years could only be made by the trustee.

[9] The Appellant filed a notice of objection dated November 28, 2011 for the 2006 (pre-bankruptcy) to 2001 taxation years. He was informed by letter dated December 21, 2011 that his notice of objection could not be accepted. The Appellant has appealed.

### **Analysis and Decision**

[10] Section 71 of the *Bankruptcy and Insolvency Act (BIA)* reads as follows:

Vesting of property in trustee

**71.** On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

[11] The definition of property in the *BIA* is extremely wide and includes the right to bring an action. It reads:

“property” means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property;

[12] The taxation years at issue in this motion were prior to the Appellant's assignment into bankruptcy and all rights of action (the “Rights”) passed to and vested in the trustee on the date of bankruptcy in accordance with section 71 of the *BIA*. (*Biron v. R.*, 2002 D.T.C. 6958 (FCA)) On bankruptcy, the Appellant ceased to have the legal capacity to file a notice of objection concerning his 2001 to 2006 (pre-bankruptcy) taxation years.

[13] When the Appellant was discharged from bankruptcy on June 27, 2008, these Rights did not automatically revert to him. In *MLA Northern Contracting Ltd. v.*

*LeBrun (2007)*, 39 C.B.R. (5<sup>th</sup>) 95 (S.C.J.), affirmed 2008 ONCA 339, T.A. Plantana J. made the following observations:

**65** A discharged bankrupt has no right or entitlement to deal with his or her prior assets. The discharge of the Trustee and of the bankrupt does not have the automatic effect of reverting proprietary rights to the bankrupt. As noted in *Solomon*, "once property is vested in the trustee, it does not revert back to the bankrupt on discharge."<sup>25</sup> There is no question that the claimed interest in question existed prior to the bankruptcy and that it was not claimed as part of the bankruptcy. I agree with the position that regardless of whether this was disclosed or not, LeBrun's Claimed MLA Interests passed to, and vested with, the Trustee on the date of bankruptcy and there is no automatic reversion of that asset back to LeBrun.

[14] In the present case, there was no evidence that the trustee had been discharged in this matter.

[15] Likewise, there was no evidence that the Appellant had applied to have the Rights reassigned to him. (See *Moffoot v. E. Sands & Associates Inc.*, 2011 BCSC 1167).

[16] I conclude that the Appellant did not have standing to file a notice of objection and his Notice of Appeal is quashed.

Signed at Ottawa, Canada, this 20<sup>th</sup> day of September 2012.

“V.A. Miller”

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V.A. Miller J.

CITATION: 2012TCC331

COURT FILE NO.: 2012-631(IT)I

STYLE OF CAUSE: WILLIAM A. LAWRENCE AND  
THE QUEEN

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: June 8, 2012

REASONS FOR ORDER BY: The Honourable Justice Valerie Miller

DATE OF ORDER: September 20, 2012

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Gregory B. King

COUNSEL OF RECORD:

For the Appellant:

    Name:

    Firm:

For the Respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada