

BETWEEN:

ALAIN BELLEMARE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on October 29, 2013 at Montreal, Quebec.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Applicant: Marc B. Bilodeau

Counsel for the Respondent: Philippe Gilliard

ORDER

UPON application for an Order extending the time within which a Notice of Objection may be filed with respect to the assessment dated December 3, 2010 made under the *Excise Tax Act*;

AND UPON hearing from the parties;

IT IS ORDERED that the application is dismissed, without costs.

Signed at Ottawa, Canada this 29th day of November 2013.

"Patrick Boyle"

Boyle J.

Citation: 2013 TCC 381
Date: 20131129
Docket: 2012-4968(GST)APP

BETWEEN:

ALAIN BELLEMARE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Boyle J.

[1] The taxpayer, Mr. Bellemare, wishes to object to a director's liability assessment issued against him on December 3, 2010 by the Minister of Revenue of Quebec ("MRQ") under section 323 of the *Excise Tax Act*. The assessment is with respect to a debt of Sinibelle Inc. ("Sinibelle"). However, having missed the time prescribed for filing an objection, Mr. Bellemare sought an extension from the tax authorities, which was denied. Mr. Bellemare has made application to this Court for the needed extension.

[2] Mr. Bellemare's spouse was the sole shareholder and director of Sinibelle. However, it is the Respondent's position that Mr. Bellemare was a de facto director of Sinibelle, and the assessment was issued on that basis.

[3] Prior to the assessment in question, Mr. Bellemare had been assessed as a director of 9092-8201 Québec Inc. ("9092") of which he was the sole director. The 9092 assessment is not related to the Sinibelle assessment except that they were both issued to Mr. Bellemare as director, and the 9092 assessment had not yet been paid when the Sinibelle assessment was issued. Also, before the Sinibelle assessment was issued, Mr. Bellemare had made a bankruptcy proposal that extended to his debt relating to the 9092 assessment.

[4] According to Mr. Bellemare's statements at the initial hearing of this application, upon receipt of the Sinibelle assessment he gave it to his spouse as she was the sole shareholder and director of Sinibelle. He then discussed it with his trustee in bankruptcy, who advised him that it must have been issued in error because he was not shown as a director of Sinibelle on the relevant corporate records.

[5] According to Mr. Bellemare, he received nothing further from the tax authorities regarding the Sinibelle assessment, nor did he hear anything further about it from his trustee in bankruptcy during the proposal period. Then, the week after the expiry of the one-year-and-90-day maximum period for filing an objection, Mr. Bellemare's bank debit card purchase at a grocery store was declined by his financial institution. Upon inquiring, his bank advised him that the tax authorities had seized his account. In fact, the authorities seized his accounts at both Caisse Desjardins and Banque Nationale on March 12, 2012.

[6] It is clear that Mr. Bellemare only made application for an extension of the time within which to object after that incident, that is, more than one year after the normal 90 day period for objecting had passed. For that reason, the tax authorities were correct in not permitting him to late file an objection to his Sinibelle assessment.

[7] It is also clear that, after receiving the tax authorities' decision on his late-filing application, Mr. Bellemare then also missed the thirty-day period time for applying to this Court for permission to file an objection late. He missed this thirty-day time limit by only a matter of days. The thirty-day period, along with the one-year-and-90-day period, is fixed by law and this Court has no jurisdiction not to apply it on grounds of equity, fairness or otherwise. For both of these reasons, Mr. Bellemare's application to file an objection late must be dismissed by this Court.

[8] However, at the initial hearing, Mr. Bellemare was concerned that it appeared that the tax authorities had waited to take any collection steps, or even to send him statements of account or reminders regarding the Sinibelle tax debt, with a view to frustrating his right to object to the assessment.

[9] The Court took his concern seriously in the circumstances. Canadians would be rightly disappointed if it turned out that the tax authorities lie in wait for appeal periods to expire before continuing their communication with the taxpayers or beginning collection proceedings. Mr. Bellemare certainly had a history with the tax authorities. Taxpayers may come to court without entirely clean hands. However, the

Respondent is the government and Canadians rightly expect the government to act in good faith throughout, for proper purposes, and with clean hands. If it were otherwise, our tax collection system, which relies firstly and largely on voluntary compliance and self-reporting and assessment, would quickly erode.

[10] The initial hearing was adjourned to allow the Respondent to produce evidence with regard to whether Mr. Bellemare was correct in stating that there had been no follow-up steps taken until after all his rights of appeal had expired, and if Mr. Bellemare was not correct, to submit evidence of the steps taken.

[11] The hearing resumed months later after the Respondent filed the affidavit of a Ministère du Revenu du Québec collections officer. The affiant also testified at the continued hearing and tendered documentary evidence.

[12] It does not appear that the MRQ, acting on behalf of the Canada Revenue Agency (“CRA”), took any steps to collect the debt at issue until after the period for objecting had expired as can be seen from the following:

- (i) There were no statements of account or letters showing the amount of the Sinibelle assessment after it was originally issued.
- (ii) The legal hypothec on Mr. Bellemare’s house was not amended to increase it beyond the amount of the 9092 assessment. This could not be satisfactorily explained, even though the house was sold and the MRQ received an amount equal to the 9092 assessment out of the proceeds.
- (iii) While the Respondent’s witness thought the claim in bankruptcy would have been amended to add the amount of the later Sinibelle assessment, no amended claim in bankruptcy was put in evidence nor had the witness inquired about the actions or reasoning of her predecessor on the file. Mr. Bellemare does not recall seeing a revised claim referring to the Sinibelle assessment.
- (iv) The letter sent by the MRQ to Mr. Bellemare after his proposal was annulled does not refer to the Sinibelle assessment nor does the amount referred to therein include the amount of the Sinibelle assessment.
- (v) There was no evidence that the bank accounts seized after the objection period expired had been newly opened by Mr. Bellemare or only recently been discovered by the MRQ.

[13] In short, having adjourned the hearing so that the Respondent could answer Mr. Bellemare's concern, having read the affidavit filed, having heard the Respondent's witness, and having read the correspondence tendered in evidence, I continue to share Mr. Bellemare's concern. It certainly appears to be a remarkable coincidence that the MRQ's collection steps began the week after Mr. Bellemare's objection period expired. This remains a coincidence that the MRQ is unable to explain satisfactorily.

[14] This Court has no jurisdiction to remedy Mr. Bellemare's concern should it be proven true, nor does this Court have any jurisdiction to tell the CRA or the Ministère du Revenu du Québec how to conduct itself in administering Canadian tax legislation. However, having listened to Mr. Bellemare's concern and given the Respondent full opportunity to respond, I continue to be concerned. I would hope that the appropriate persons delve into this to determine if internal processes, policies or training the CRA and/or the Ministère du Revenu du Québec should be improved.

[15] Mr. Bellemare is clearly out of time for obtaining from this Court an extension of the time within which he may file his objection to his Sinibelle assessment. This Court must therefore dismiss his application. The application is accordingly dismissed.

Signed at Ottawa, Canada this 29th day of November 2013.

"Patrick Boyle"

Boyle J.

CITATION: 2013 TCC 381
COURT FILE NO.: 2012-4968(GST)APP
STYLE OF CAUSE: ALAIN BELLEMARE AND THE QUEEN
PLACE OF HEARING: Montreal, Quebec
DATE OF HEARING: October 29, 2013
REASONS FOR ORDER BY: The Honourable Justice Patrick Boyle
DATE OF REASONS FOR ORDER: November 29, 2013

APPEARANCES:

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Counsel for the Respondent: Philippe Gilliard

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