

Federal Court



Cour fédérale

Date: 20240226

Docket: T-753-23

Citation: 2024 FC 252

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 26, 2024

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

ANIMAL EXPERT MAISONNEUVE INC.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Animal Expert Maisonneuve Inc., is a pet store. It is seeking an order in the nature of mandamus from this Court compelling the respondent to accept the filing of a tax return for the taxation year ending January 31, 2015 [2015], to review it and to determine the tax payable. The applicant filed its application for judicial review on April 12, 2023.

[2] The parties agree that the applicant did not file its tax return for 2015 within the prescribed time limit, i.e. within six months of the end of the fiscal year ending January 31, 2015. In 2016, since the Canada Revenue Agency [CRA] did not receive the applicant's tax return, it prepared a tax return with the information it had on the applicant, including goods and services tax (GST) returns. The CRA assessed the applicant on June 17, 2016, and a few months later, it sent a legal warning letter to the applicant regarding the tax debt. Following this letter, in January and February 2017, a CRA officer communicated with the applicant's sole administrator. After the back and forth with the CRA, the applicant, through its accountant, unsuccessfully attempted to file its 2015 tax return on two occasions, May 9, 2017, and September 14, 2017. During these two filing attempts, the CRA system displayed an error message refusing the return and asking the applicant to contact the CRA for assistance.

[3] The CRA attempted to reach the applicant by telephone on multiple occasions in 2018, largely unsuccessfully. It did communicate with the applicant a few times in October 2018, where the applicant claimed that the tax return for 2015 had already been filed with the CRA even though his was not the case. The three-year reassessment period provided for in paragraph 152(3.1)(b) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp)) [ITA], expired on June 17, 2019.

[4] The applicant acknowledges that the Minister may refuse to review a tax return filed after the three-year period, but argues that the attempts to file the 2015 tax returns on May 9 and September 14, 2017, were within the reassessment period. The applicant argues that the error message, which states that [TRANSLATION] "[t]he CRA cannot process the return for this tax year as it has already received this return", would have misled a reasonable taxpayer into believing

that the return had been received earlier. The applicant argues that the error message was inaccurate because the CRA had prepared the return, not the applicant. On this basis, the applicant submits that it is entitled to the filing and review of its tax return. According to the applicant, it is owed the duty to review the income tax return for 2015 and is therefore asking this Court to issue an order in the nature of mandamus, as the conditions set out by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)* (CA), [1994] 1 FC 742 [*Apotex*], have been satisfied.

[5] Conversely, the respondent argues that the Minister never had an obligation to review the applicant's 2015 tax return as it was not submitted before the reassessment deadline expired, and that the electronic filing attempts made on May 9 and September 14, 2017, do not constitute a valid filing of the applicant's tax return. The respondent notes that the applicant acknowledges that once the normal reassessment period has expired, the Minister has no authority to reassess. The respondent submits that no order in the nature of mandamus should be granted by this Court, as the conditions in *Apotex* have not been met. The respondent points out that it would be unfair to all diligent taxpayers to reward the applicant's negligence by granting the requested order because, among other things, the evidence unequivocally demonstrates that despite its many discussions with the CRA, neither the applicant nor its accountant at the time took the necessary steps to ensure that the 2015 income tax return was filed within the normal reassessment period.

[6] The applicant is attempting to persuade this Court that its two attempts to file in 2017 and the language used in the error message warrant, among other things, the granting of an order in the nature of mandamus for the CRA to accept the filing and review the 2015 tax return. After

examining the evidence on the record and the applicable law, I am not satisfied that an order in the nature of mandamus would be appropriate in this case. For the reasons that follow, this application for judicial review is dismissed.

II. Analysis

[7] By way of preliminary matter and with the consent of the parties, the style of cause in this matter is amended to reflect the correct respondent, the Attorney General of Canada.

[8] As a further preliminary matter, the evidence shows that a copy of the income tax return for 2015 in the applicant's name was sent to the CRA by registered mail on April 17, 2020. On July 22, 2020, the CRA sent a letter to the applicant, under subsection 152(4) of the ITA, refusing to reassess it for 2015 because its tax return had been filed out of time.

[9] At the hearing, the Court questioned both parties about the impact, if any, of filing the 2015 tax return in 2020 and the subsequent refusal of the CRA to process that return. The applicant stated that its was only made aware of the 2020 filing attempt during these proceedings. Both parties agreed that the attempted filing in 2020 ultimately had no bearing on this application because it was filed out of time, and that the actions that are material in this case are the attempted filings made in 2017, as they were made within the applicable time limit.

[10] Returning to the matter at hand, I agree with the respondent that the criteria for seeking an order in the nature of mandamus have not been met. The determinative issue, in my view, is

that, on the basis of the facts in question, the Minister has no legal obligation to review the 2015 return as it was not filed within the time limit prescribed by the ITA.

[11] The parties agree that the criteria for issuing an order in the nature of mandamus are set out in *Apotex*, namely, (i) there must be a public legal duty to act; (ii) the duty must be owed to the applicant; (iii) there is a clear right to performance of that duty; (iv) no other adequate remedy is available to the applicant; (v) the order sought will be of some practical value or effect; (vi) there is no equitable bar to the relief sought; and (vii) the balance of convenience must lie in favour of issuing the order (*Apotex* at pp 766–69).

[12] The requirements for obtaining a mandamus order are cumulative and must be met by the party seeking the order (*9027-4218 Québec Inc v Canada (National Revenue)*, 2019 FC 785 at para 66).

[13] The applicant argues that the text of the error message received by its accountant was unclear and would have misled a reasonable taxpayer. In his affidavit, an employee of the applicant claims that when the error messages were sent to him, he believed that the tax returns for 2015 had been filed. The applicant focuses on the words [TRANSLATION] “this return” and [TRANSLATION] “has already received”, and argues that these indicated that the CRA already had the applicant’s tax returns. The full error message reads as follows:

[TRANSLATION]

The CRA cannot process the return as filed, as it has already received the return. If you are submitting an amended return, you must indicate this in your software. For assistance, contact the CRA’s Corporation Internet Filing Helpdesk at 1-800-959-2804.

T2 return refused. Please rectify the above error and resubmit.

[14] While I sympathize with the applicant, I do not find, given the numerous discussions with the CRA and its attempts to call, that the wording of the error message constitutes sufficient grounds to conclude that the Minister had a legal obligation to review the return. It appears from the record that the applicant was repeatedly informed of the existence of the tax return for 2015 prepared by the CRA in 2016. Furthermore, in September 2017, after the applicant's second attempt to file its tax return, the CRA called the applicant to request a copy of the return, but the applicant never returned the call. The CRA made several other attempts to reach the applicant in 2018. During one of these successful attempts in September 2018, the CRA again informed the applicant that the 2015 return had not been filed. The applicant had numerous opportunities to discuss the matter with the CRA, but most of the time, it did not answer or return the CRA's calls. The applicant was also provided with sufficient information to take action to rectify the situation, but ultimately failed to act in a timely manner on the basis of the information provided to it by the CRA.

III. Conclusion

[15] The applicant has not shown that this application meets the tests in *Apotex* for an order of mandamus to be issued. The Minister had no legal obligation to accept the filing of the 2015 tax return and to review it, despite the two filing attempts. Accordingly, the application for judicial review is dismissed.

[16] The respondent is seeking costs, to which he is entitled following the dismissal of the application. The parties have agreed on the amount of \$2,500 on the issue of costs. I am of the view that this amount is reasonable and justified.

JUDGMENT in T-753-23

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. Costs in the amount of \$2,500 are awarded to the respondent.

“Vanessa Rochester”

Judge

Certified true translation
Daniela Guglietta

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-753-23

STYLE OF CAUSE: ANIMAL EXPERT MAISONNEUVE INC. v THE
MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 25, 2024

JUDGMENT AND REASONS: ROCHESTER J

DATED: FEBRUARY 26, 2024

APPEARANCES:

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