Federal Court Cour fédérale

Date: 20250815

Dockets: T-1197-25
T-1198-25
T-1226-25

Citation: 2025 FC 1381

St. John's, Newfoundland and Labrador, August 15, 2025

PRESENT: Associate Judge Trent Horne

Docket: T-1197-25

BETWEEN:

SPENNIE HOLDINGS INC

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-1198-25

AND BETWEEN:

SMK PROPERTY INC

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-1226-25

AND BETWEEN:

ASLK GROUP INC

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicants in these three applications for judicial review are represented by the same counsel. Each of the applicants were involved in transactions involving what is described in the pleadings as "Gemini Shares."

[2] The Minister of National Revenue ("Minister") issued reassessments for certain of the applicants' taxation years.

[3] Pursuant to subsection 165(3) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) ("ITA"), a taxpayer may object to an assessment by serving the Minister with a notice of objection. This subsection of the ITA further provides that "on receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action."

[4] The Minister confirmed each of the assessments and issued notices of confirmation.

[5] A taxpayer who has served a notice of objection may appeal to the Tax Court of Canada ("Tax Court") to have the assessment vacated or varied after either the Minister has confirmed the assessment or reassessed, or 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed (ITA section 169). The Tax Court may dispose of an appeal by dismissing it, or allowing it and vacating the assessment, varying the assessment, or referring the assessment back to the Minister (ITA section 171).

[6] The applicants have not commenced an appeal in the Tax Court, rather have commenced applications for judicial review.

[7] The applicants assert that the process by which the notices of confirmation were issued was procedurally unfair. Among other things, the notices of application quote correspondence from the Canada Revenue Agency ("CRA") Appeals Division that states:

> This issue involves multiple clients who received notices of assessment or reassessment like yours. We are examining how all the files were treated. We will inform you when we reach a decision. In the meantime, we will hold your file.
>
> ……
>
> an appeals officer will contact you or your authorized representative to review all the facts and discuss your objection. The officer will make sure you understand how we reached your decision and can provide you with any related documents.
>
> [Emphasis in original.]

[8] More particularly, the applicants assert that the process was unfair because:

(a) CRA never informed the applicants or their authorized representatives that the author of the confirmation notices, or any other appeals officer, had been assigned to the objections;

(b) CRA never informed the applicants or their authorized representatives that it had completed its examination of how all the similar files were treated and that it had reached a decision in respect of this review;

(c) CRA never informed the applicants or their authorized representatives that it would cease to "hold" the applicants' files;

(d) no CRA officer ever contacted the applicants or their authorized representatives to review all the facts and discuss the objection;

(e) no CRA officer took steps to "make sure the applicant understands how CRA reached its decision"; and

(f) no CRA officer offered to provide the applicants with any related documents.

[9] The applicants further allege that there was improper sub-delegation of CRA's delegated authority.

[10] The notices of application allege that ASLK Inc, a separate legal entity from ASLK Group Inc, is involved in an appeal in the Tax Court. Pascal Tétrault is a General Counsel at the Department of Justice and is lead counsel for His Majesty the King in that appeal. It is alleged that, during the discoveries in the ASLK Inc appeal, Mr Tétrault opined that disputes over the reassessments of the applicants should proceed to the Tax Court and be heard with the ASLK Inc

appeal, and stated that the reassessments would be confirmed. Confirmation notices for all three applicants were received about three weeks later and were issued by the same appeals officer. It is asserted that Mr Tétrault was involved in the confirmations, and that this constituted improper sub-delegation of authority. The applicants also plead that the decisions to confirm were made to unduly delay the ASLK Inc appeal.

[11] The applicants do not dispute that complaints regarding the assessment of tax – the quantum of tax payable – are within the exclusive jurisdiction of the Tax Court. The applicants also acknowledge that the Minister has no discretion in determining tax liability because the outcome is dictated by the non-discretionary rules of the ITA. They argue that the process by which the confirmation notices were issued was procedurally unfair, and that the Minister's decision to issue the confirmation notices can be subject to judicial review in the Federal Court. The respondent disagrees, and has brought a motion to strike.

II. Test on a Motion to Strike

[12] The test to strike an application for judicial review is a high one. There must be a "show stopper" or "knockout punch" – an obvious, fatal flaw striking at the root of the Court's power to entertain the application. This is also referred to as the "doomed to fail" standard (*Rahman v Public Service Labour Relations Board*, 2013 FCA 117 at para 7 ("*Rahman*"); *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 33).

[13] Where the issue raised by the moving party as the basis for dismissing the application is determined to be debatable, the circumstances do not warrant dismissal of the application at a

preliminary stage. Rather, the issue should be determined by the application judge (*David Suzuki Foundation v Canada (Health)*, 2017 FC 682 at para 7, aff'd 2018 FC 380; *David Bull Laboratories (Canada) Inc v Pharmacia Inc.*, [1995] 1 FCJ No 588 (FCA) at para 15 ("*David Bull*"); *Apotex Inc v Canada (Minister of Health)*, 2010 FC 1310 at paras 12-13).

[14] Authorities that preceded *Rahman* also articulated a difficult test to meet on a motion to strike a notice of application, requiring that the proceeding be "bereft of all possibility of success" (*LJP Sales Agency Inc v Canada (National Revenue)*, 2007 FCA 114 at para 7) or "bereft of merit" (*Verma v Canada*, 2006 FC 1353 at para 16).

[15] There are two justifications for such a high threshold. First, the Federal Courts' jurisdiction to strike a notice of application is founded not in the *Federal Courts Rules*, SOR/98-106 ("Rules"), but in the Courts' plenary jurisdiction to restrain the misuse or abuse of courts' processes (*David Bull* at page 600; see also *Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50 at paras 33-36 re the Courts' plenary powers to investigate, detect and, if necessary, redress abuses of its own processes). Second, applications for judicial review must be brought quickly and must proceed "without delay" and "in a summary way" (*Federal Courts Act*, RSC 1985, c. F-7, subsection 18.1(2) and section 18.4 ("Act")). An unmeritorious motion – one that raises matters that should be advanced at the hearing on the merits – frustrates that objective (*Assouline v Canada (Attorney General*), 2021 FC 458 at para 12).

III. Analysis

[16] The boundaries between the jurisdiction of the Federal Court and the Tax Court have been the subject of considerable litigation, including motions to strike.

[17] *Iris Technologies Inc v Canada*, 2024 SCC 24 ("*Iris*") involved a taxpayer who claimed refunds under the *Excise Tax Act*, RSC 1985, c E-15 ("ETA"). The Minister issued an assessment disallowing certain tax credits and assessed penalties. The taxpayer applied for judicial review in the Federal Court and sought a declaration that the Minister failed to afford procedural fairness. The notice of application was struck on the basis that it was, in essence, a collateral challenge to the correctness of the assessments, a matter within the exclusive jurisdiction of the Tax Court.

[18] Near the beginning of the decision, the Supreme Court in *Iris* noted that the Tax Court is not a one-stop judicial shop for the resolution of tax disputes (para 9). If there are allegations of improper purpose, an application for judicial review may be possible:

> [41] It is true that an allegation of improper purpose can, in some circumstances, sustain an application for judicial review in tax matters. By way of example, as Stratas J.A. wrote in *JP Morgan*, the Tax Court does not have jurisdiction to set aside an assessment "on the basis of reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness" (para. 83). Instead, jurisdiction to provide relief from reprehensible conduct of the Minister would fall to the Federal Court exercising its exclusive jurisdiction in judicial review under s. 18.1 of the *FCA*.

[19] On the facts of that case, the allegations of improper purpose were struck because Iris failed to allege facts in the notice of application that, if true, could support its allegation that the Minister acted with an improper purpose (*Iris* at para 41).

[20] Turning to these proceedings, there is no issue that the processes under the ETA and ITA are the same, and *Iris* cannot be distinguished on that basis. While the notices of application that are the subject of this motion are more detailed than the one in *Iris*, the pleaded facts do not support a conclusion that Mr Tétrault made, directed, or was involved in the decisions to issue the confirmations. At best, the allegations in the notices of application could only sustain a conclusion that Mr Tétrault was aware of the confirmation decisions before they were communicated to the applicants.

[21] To show a plaintiff has a reasonable cause of action, a statement of claim must plead material facts satisfying every element of the alleged causes of action. The plaintiff needs to explain the "who, when, where, how and what" giving rise to the defendant's liability (*Al Omani v Canada*, 2017 FC 786 at para 14 ("*Al Omani*"). *Al Omani* considered what particulars are required for a statement of claim. Since a notice of application must also set out all the legal bases and material facts that will support the application (*Gray v Canada (Attorney General)*, 2019 FC 301 at para 104; *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 ("*JP Morgan*") at para 39) this reasoning is equally applicable.

[22] Knowledge of a decision and involvement in the making of that decision are two very different things. I am not satisfied that the notices of application connect the dots between any

advance knowledge Mr Tétrault may have had about the confirmations and influence over what those confirmations were or participation in the process leading to them. I am also not satisfied that the notices of application contain facts that could support an inference that Mr Tétrault was covertly involved in or influenced the result of the decision-making process. The allegations are, on their face, speculative. As in *Iris*, the applicants have not alleged facts that, if true, could support an allegation that there was an improper sub-delegation of authority. A party cannot commence a proceeding with unsupported allegations in the hope that something will later turn up (*JP Morgan* at para 45).

[23] One of the applicants' central arguments is that they were denied procedural fairness in the confirmation process. The notices of application assert that the proceedings are not a collateral attack on the correctness of the assessments, rather are a challenge to the conduct of the Minister. Since the Tax Court does not have jurisdiction to set aside an assessment on the basis of reprehensible conduct by the Minister, the applicants say recourse to this administrative law remedy should be available in the Federal Court.

[24] This argument was expressly considered, and rejected, in *Iris*:

> [36] Does the allegation that the Minister breached procedural fairness in the audit and assessment process mean that judicial review, rather than a challenge to the correctness of the assessment, is the true nature of Iris' claim?
>
> [37] I agree with Rennie J.A. that it does not. Iris's procedural fairness claim is grounded in the timing of the Minister's assessment and the consequential failure to provide the taxpayer with an opportunity to respond to any of the Minister's proposed adjustments. Iris would have the opportunity to respond in the context of an appeal of the assessment to the Tax Court under s. 302 of the *ETA*. Given

> the allegations advanced here, an appeal to the Tax Court is thus an "adequate, curative remedy" (*JP Morgan*, at para. 82; see also C.A. reasons, at paras. 8-10).

[25] The applicants seek to distinguish *Iris* on the basis that they are challenging the process by which the decision was made, not product of that process.

[26] In considering a motion to strike, the Court must read the notice of application with a view to understanding the real essence of the application. The Court must gain "a realistic appreciation" of the application's "essential character" by reading it holistically and practically without fastening onto matters of form. The Court should be alert to skilful pleaders who can make Tax Court matters sound like administrative law matters when they are nothing of the sort (*JP Morgan* at paras 49-50).

[27] Whether framed as process or product, the relief sought in the notices of application is to quash the confirmation decisions and remit the matters back to the Minister for reconsideration. While this is not a direct challenge to the correctness of the assessments, it is effectively a collateral attack on those assessments by seeking to reopen and re-engage the confirmation process in order to seek a different outcome. After the process set out in section 165 of the ITA has been concluded, Parliament has specifically and exclusively delegated appeal authority to the Tax Court in section 171 of the ITA.

[28] Further, the Supreme Court in *Iris* found that, where allegations of procedural fairness are in play, an appeal to the Tax Court is an adequate, curative remedy (para 37). Since an Act of

Parliament (the ITA) expressly provides for an appeal to the Tax Court, proceedings for judicial review are not available in the Federal Court (section 18.5 of the Act).

[29] The applicants submit that they will be prejudiced if the notices of application are struck because they will be forced out of the informal and private objection process with the CRA into a formal and public Tax Court process, which will also be time consuming and expensive. This point is well made, however section 169 of the ITA is clear – appeals may be made to the Tax Court. There is no provision that contemplates substantive appeals in the Tax Court and separate procedural challenges in the Federal Court. To accept the applicants' position would create a two-tier appeal process for challenging assessments – an applicant could bring proceedings for judicial review on the basis of alleged procedural fairness and then have another bite at the apple by bringing an appeal to the Tax Court.

[30] The fact that an alternative is not preferable or has disadvantages does not mean it is unavailable or inadequate. I cannot agree that these applicants, or applicants generally, are left without a remedy if they are obliged to bring appeals in the Tax Court. Such proceedings may be expensive and public, but that does not mean that they are inadequate or that any defects in the assessment cannot be cured in the Tax Court.

[31] The applicants also make a compelling argument that, if the notices of application are struck, the conduct of the Minister during the objection process will be immune from judicial scrutiny. In circumstances of abusive conduct, the Minister would not be held to account, and the confirmation process could be reduced to a box checking exercise.

[32] The appeal path to the Tax Court was a decision made by Parliament. The Court cannot pick up the legislator's pen and create a parallel course of judicial review. Also recall that there may be circumstances where allegations of improper purpose can be subject to judicial review. Neither *Iris* nor *JP Morgan* completely preclude judicial review in matters involving tax assessments, rather indicate that there may be narrow and limited exceptions where that procedure is available. I am therefore not satisfied that the objection process is entirely immune from judicial scrutiny.

[33] Having regard to all the above, an appeal to the Tax Court is an available, adequate and effective remedy for the applicants. The notices of application are therefore struck.

[34] Striking a pleading without leave to amend is a power that must be exercised with caution. If a pleading shows a scintilla of a cause of action, it will not be struck out if it can be cured by amendment (*Al Omani* paras 32-35).

[35] Since these applicants have not, on this motion or otherwise, identified facts that could demonstrate improper sub-delegation authority, and have an adequate, curative remedy in the Tax Court, I am not satisfied that the defects in the pleading can be cured with better drafting. Then notices of application are struck without leave to amend.

IV. Costs

[36] The Court has full discretionary power over the amount and allocation of costs (subrule 400(1)).

[37] The respondent asks for increased costs on the basis that the notices of application contain improper and unfounded allegations against Mr Tétrault. The respondent relies on *Moosomin First Nation v Canada*, 2024 FC 1081 ("*Moosomin"*) where associate judge Duchesne (as he then was) awarded solicitor-client costs on a motion to compel where a party used the Court's process to demean, denigrate and intimidate other lawyers from competing against them in the market of providing legal services to First Nations and indigenous persons (para 25). While the allegations of interference against Mr Tétrault are both serious and unsupported by material facts, this is not the level of abuse and misconduct that was before the Court in *Moosomin*. That said, this is a relevant factor to consider in the assessment of costs, and justifies an increase beyond the middle of Column III of Tariff B.

[38] The motions in the three Court files were briefed and argued together. Costs are fixed at $3,600.00, which approximates an award at the high end of Column V. These costs will be divided equally among the three applicants.

[39] Since the proceedings will not continue, costs are payable forthwith.

JUDGMENT in T-1197-25, T-1198-25, and T-1226-25

THIS COURT'S JUDGMENT is that:

1. The notices of application in Court files T-1197-25, T-1198-25, and T-1226-25 are struck, without leave to amend.

2. Costs are payable by the applicant in T-1197-25 to the respondent, fixed at $1,200.00, payable forthwith.

3. Costs are payable by the applicant in T-1198-25 to the respondent, fixed at $1,200.00, payable forthwith.

4. Costs are payable by the applicant in T-1226-25 to the respondent, fixed at $1,200.00, payable forthwith.

5. A copy of this order shall be placed in each of Court files T-1197-25, T-1198-25, and T-1226-25.

"Trent Horne"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-1197-25, T-1198-25 AND T-1226-25
DOCKET:	T-1197-25
STYLE OF CAUSE:	SPENNIE HOLDINGS INC v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-1198-25
STYLE OF CAUSE:	SMK PROPERTY INC v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-1226-25
STYLE OF CAUSE:	ASLK GROUP INC v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 15, 2025
JUDGMENT AND REASONS:	HORNE A.J.
DATED:	AUGUST 15, 2025

APPEARANCES:

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Martin Lamoureux Zac DeLong	FOR THE RESPONDENT

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