

Federal Court



Cour fédérale

Date: 20110221

Docket: T-248-11

Citation: 2011 FC 209

Vancouver, British Columbia, February 21, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Applicant

and

LORDCO PARTS LTD.

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This is an application brought pursuant to subsection 231.2(3) of the *Income Tax Act*¹ for an order authorizing the Minister of National Revenue to impose on the respondent, Lordco Parts Ltd., a requirement to produce information and documents relating to certain persons whose identities are unknown to the Minister. The Minister seeks the identity of these persons to verify their compliance

¹ *Income Tax Act* R.S.C. 1985 (5th Supp.), c. 1, as amended, s. 231.2(3)

with the *Income Tax Act*. For the reasons specified below, the Court is in accord with the position of the Minister.

[2] This application is made without notice as permitted by subsection 231.2(3) of the *Income Tax Act*.

II. Background

[3] Lordco Parts Ltd. is a company incorporated pursuant to the laws of British Columbia, having a registered and records office at 22866 Dewdney Trunk Road, Maple Ridge, British Columbia. Lordco is a distributor and retailer of automotive parts and accessories (Affidavit of B. Wong at para. 5).

[4] In 2008, the CRA completed a corporate business audit of Lordco with respect to its 2005 and 2006 taxation years. In the course of the corporate business audit, CRA noted that Lordco had established an incentive program which includes a bi-annual promotional cruise for its customers. The bi-annual cruises are organised and hosted by Lordco. Concerns were raised regarding the reporting and taxation of any of the benefits arising from these bi-annual cruises for those individuals who participated in the cruises (Affidavit of B. Wong at paras. 6 and 7).

[5] In July 2009, CRA commenced an employer compliance audit for Lordco with respect to the 2006 and 2007 calendar years. The employer compliance audit was expanded to include the 2008 and 2009 calendar years in January 2011 (Affidavit of B. Wong at paras. 8 and 20).

[6] The employer compliance audit included the consideration of the issue of whether individuals received and reported a taxable benefit on their 2007 and/or 2009 returns for the non-business portion of the cruises, organized and hosted by Lordco, which took place in 2007 and 2009 in furtherance of its incentive program (Affidavit of B. Wong at para. 8 and 23).

A. Lordco's Cruise in 2007

[7] Based on information obtained by CRA regarding the promotional cruise organized and hosted by Lordco in 2007, the cruise promotion operates generally as follows: Lordco customers earn rebates based on the volume of their purchases of Lordco products. A customer may purchase tickets for the promotional cruise with these rebates. If the value of the customer's rebates were not sufficient to cover the price of the cruise, Lordco permitted the customer to pay the balance of the price with cash (Affidavit of B. Wong at para. 10).

[8] Customers were permitted to purchase tickets for the 2007 cruise with customer rebates earned between November 1, 2005 and June 30, 2007. As many of these customers were companies, not specific individuals, the companies nominated individual employees to attend the cruise as representatives (Affidavit of B. Wong at para. 11).

[9] Based on a review of the 2007 cruise itinerary, CRA determined that 30% of the cruise was for business purposes while 70% of the cruise was for non-business. As such, an individual attending the 2007 cruise may have had obligations to report a taxable benefit under the *Income Tax Act* with respect to the non-business portion of the cruise (Affidavit of B. Wong at para. 12).

[10] CRA takes the position that Lordco was required to issue and file T4A slips for individuals who attended the cruise because it was the primary payer for the 2007 cruise through the rebates. T4A slips are issued by a payer to an individual who has received what is commonly referred to as “other income”, such as lump-sum payments, research grants, and non-cash gift benefits. CRA uses the T4A slips to verify that the individual has properly reported the taxable benefit on his or her tax return. Lordco failed to issue and file T4A slips for the individuals who attended the 2007 cruise (Affidavit of B. Wong at para. 13).

[11] CRA wishes to verify whether the individuals attending the 2007 cruise reported the taxable benefit relating to the non-business portion of the cruise. In order to do so CRA must identify the individual taxpayers who attended the 2007 cruise. As Lordco did not issue any T4A slips for the cruise, CRA cannot identify these individuals to begin the process of verifying whether they received a taxable benefit and properly reported it so that CRA may accurately determine the amount of tax payable (Affidavit of B. Wong at para. 14).

[12] On August 10, 2010, CRA issued a named requirement to provide information and documents under subsection 231.2(1) of the *Income Tax Act* seeking, among other things, a list of individuals who attended the 2007 cruise along with the companies they represented, the individuals’ addresses and the registration forms (Affidavit of B. Wong at para. 17).

[13] By letter dated September 9, 2010, Lordco declined to provide the names, addresses, and registration forms of the individuals who attended the cruise. Citing subsection 231.2(2) of the *Income Tax Act*, Lordco asserted that the requirement could not compel such information as the

information sought for the individuals related to unnamed persons (Affidavit of B. Wong at para. 18).

[14] Lordco did provide with its letter a list of the companies which purchased cruise packages (the Reconciliation List). The Reconciliation List shows that 516 companies purchased cruise packages and that a total of 1059 cruise packages were sold (Affidavit of B. Wong at para. 19).

B. Lordco's Cruise in 2009

[15] The CRA auditor, Mr. Bernie Wong, was advised by Lordco's controller, Mr. Rick Sayers, that Lordco also organized and conducted a cruise in 2009 further to its bi-annual travel incentive promotion (Affidavit of B. Wong at para. 21).

[16] Lordco's cruise in 2009 was organized in a similar manner as the 2007 cruise in that customers purchased cruise tickets with rebates earned from Lordco. Based on the cruise in 2007, the companies which purchased cruise tickets for 2009 may have nominated individuals to attend the cruise as representatives. As such, an individual who attended the 2009 cruise may have obligations to report a taxable benefit under the *Income Tax Act* with respect to any non-business portion of the cruise (Affidavit of B. Wong at para. 22).

[17] To verify Lordco's tax obligations with respect to 2009, Mr. Wong requested information and documents from Lordco with respect to the 2009 cruise in order to verify whether Lordco was required to issue T4A slips to individuals who attended the 2009 cruise, and if so, whether the

individuals who attended the cruise received and reported a taxable benefit on their 2009 tax return (Affidavit of B. Wong at para. 23).

[18] Mr. Sayers responded on behalf of Lordco, to the request for the information by letter dated February 8, 2011. With respect to the 2009 cruise information, Mr. Sayers advised that “as with prior years, I am unable to supply a list of the actual attendees as we consider this third party information” (Affidavit of B. Wong at para. 25).

[19] CRA does not know the identities of the individuals who attended the cruises. CRA is unable to complete the employer compliance audit and verify whether the individuals who attended the cruises have any tax obligations arising under the tax legislation, and the amount of that obligation. As well, CRA is unable to issue information slips to the individuals who attended the cruises on behalf of Lordco, if required (Affidavit of B. Wong at para. 26).

[20] Lordco organized the cruises and in doing so, received information about each individual who attended the cruise by way of the registration forms. Lordco would also have information regarding the company customer each individual attended on behalf of. As such, obtaining the list of individuals who attended the 2007 and 2009 cruises from Lordco appears to be the most efficient and reasonable way of identifying these individuals (Affidavit of B. Wong at para. 27).

[21] The CRA seeks to determine if the unnamed persons, that is, the unidentified individuals who attended the cruises, are complying with their duties and obligations under the *Income Tax Act*. The CRA specifically seeks to identify the individuals who attended the cruise, and verify that such

individuals correctly reported for tax purposes any taxable benefit gained on the cruises and paid the required taxes that may have arisen. Once the individuals are identified, the CRA intends to issue T4A slips to the individuals showing the amount of the cruise as a taxable benefit (Affidavit of B. Wong at para. 28).

[22] Therefore, to determine whether the individuals who attended the cruises have complied with their obligations under *the Income Tax Act*, the CRA seeks judicial authorization to send a requirement to provide information and documents relating to unnamed persons to Lordco, pursuant to subsection 231.2(2) of the ITA, for the following information and documents:

- a. A list of the names of the individuals who attended the 2007 cruise along with the company that they represented.
- b. A list of the addresses of the individuals who attended the 2007 cruise.
- c. The registration forms for the individuals who attended the 2007 cruise.
- d. A list of the names of the individual who attended the 2009 cruise along with the company that they represented.
- e. A list of the addresses of the individuals who attended the 2009 cruise.
- f. The registration forms for the individuals who attended the 2009 cruise.

(Affidavit of B. Wong at para. 31)

[23] The CRA intends to address the requirement to the attention of Mr. Sayers who is the controller for Lordco (Affidavit of B. Wong at Exhibit "I").

[24] The individuals are an identifiable group because the information and documents sought are limited to those individuals who attended the cruises hosted and organized by Lordco in 2007 and 2009 (Affidavit of B. Wong at para. 32).

[25] As the 2007 cruise relates to the 2007 taxation year, any reassessments issued to the individuals who attended the cruise may be statute-barred as early as the end of February 2011 (Affidavit of B. Wong at para. 33).

[26] The documents and information sought by the CRA in the unnamed requirement are not for the purposes of any criminal investigation (Affidavit of B. Wong at para. 35).

III. Issue

[27] The only point in issue is whether the evidence proffered by the Minister satisfies the criteria set out in subsection 231.2(3) of the *Income Tax Act* such that an order be granted imposing on the respondent, Lordco Parts Ltd., a notice to produce information and documents in the form sought by the Minister.

IV. Analysis

A. *The statutory framework*

[28] The Canadian income tax system is a self-reporting and self-assessing system that depends on the honesty and integrity of taxpayers for its success.² However, situations occur where this self-

² *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627 at 636; See also *eBay Canada Limited and eBay CS Vancouver Inc. v Minister of National Revenue* (“eBay stay decision”), 2008 FCA 141 at para. 2.

reporting system is contravened to avoid paying their full share of tax as required under the *Income Tax Act* by failing to comply with the rules set out in the Act.³

[29] The Minister has the task of administering and enforcing the Act and has been given broad powers to carry out this mandate. One of the provisions enacted by Parliament to assist the Minister is section 231.2 of the *Income Tax Act*.⁴

[30] Subsection 231.2(1) of the Act provides that the Minister may, for any purpose related to the administration or enforcement of the Act, require a person to provide any information or additional information or any documents to the Minister within a reasonable time from the service of a written notice requiring the same. Such a notice is colloquially known as a “requirement to provide information and documents” or an “RFI”.

[31] In *R. v. McKinlay Transport Ltd.*, the Supreme Court of Canada held that subsection 231.2(1) of the *Income Tax Act* provides the “least intrusive means by which effective monitoring of compliance with the *Income Tax Act* can be effected”.⁵ The Court upheld the constitutionality of requirements for information and documents, holding that such requirements did not violate section 8 of the *Charter of Rights and Freedoms*.⁶

³ *Minister of National Revenue v. Greater Montreal Real Estate Board* (“GMREB”), 2007 FCA 346 at 46-47, leave to appeal refused: 2008 CanLII 18937; *eBay* stay decision at para. 2.

⁴ GMREB at paras. 46-47; *eBay* stay decision at para. 3.

⁵ *McKinlay* at p. 649.

⁶ *Ibid* at 648-649.

[32] The obtaining of information relevant to the tax liability of some specific person or persons whose tax liability is under review by the Minister is recognized as a purpose related to the administration or enforcement of the *Income Tax Act*.⁷

[33] The Minister is also permitted to request from a third party information and documents relating to one or more persons unknown to him through the issuance of a requirement;⁸ however, the Minister must first seek and obtain the authorization of a judge before he may issue the requirement.⁹ The Act allows the Minister to make the application for the judicial authorization on a without notice basis.¹⁰

[34] Subsection 231.2(3) of the *Income Tax Act* sets out two criteria that are to be satisfied before a judge may authorize the Minister to impose on a third party a requirement relating to one or more unnamed persons. First, pursuant to subsections 231.2(3)(a) of the *Income Tax Act*, the judge is to be satisfied on the evidence that the person or group is ascertainable. Second, pursuant to subsections 231.2(3)(b) of the *Income Tax Act*, the judge is to be satisfied on the evidence that the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under the Act.

[35] The Minister's application is to be granted if the judge is satisfied that the information or documents are required for a tax audit conducted in good faith.¹¹

⁷ *Ibid* at 639.

⁸ Subsection 231.2(3) of the *Income Tax Act*.

⁹ *Ibid*. See also: *eBay* stay decision at paras. 6-8; *Artistic Ideas Inc. v. Canada Customs and Revenue Agency*, 2004 FC 573 at paras. 24-26, upheld on appeal: 2005 FCA 68.

¹⁰ Subsection 231.2(3) of the *Income Tax Act*; subsection 289(3) of the *Excise Tax Act*.

¹¹ *GMREB* at para. 48; see also *eBay Canada Limited and eBay CS Vancouver v Minister of National Revenue*, 2008 FCA 348 at paras. 62-63, 69.

[36] Where judicial authorization is granted, the Minister is required by subsections 231.2(4) of the *Income Tax Act* to serve the order together with the requirement upon the respondent.

[37] Pursuant to subsections 231.2(5) of the *Income Tax Act*, the respondent may apply to the court for a review of the authorization within 15 days of service of the notice. Subsections 231.2(6) of the *Income Tax Act* permit the court to cancel, confirm, or vary the authorization upon review.

B. Statutory conditions for judicial authorization are met

[38] It is submitted that the evidence presented by the Minister on this application satisfies the two criteria necessary for judicial authorization allowing the Minister to issue an unnamed person requirement:

- a. the person or group referred to is ascertainable; and
- b. the requirement is made to verify compliance by persons in the group with any duty or obligation under the Act.

C. The person or group is ascertainable

[39] The Minister is attempting to ascertain the identity of the group of unnamed persons who attended the 2007 and/or 2009 cruise organized and hosted by Lordco.

[40] The group of unnamed persons is ascertainable because each member of the group was an individual who attended the 2007 and/or 2009 cruise organized and hosted by Lordco.

[41] As such, the group of unnamed persons is finite and is ascertainable.

[42] The Minister has ascertained a group of taxpayers, which the CRA is unable to identify, in order to verify their income, particularly with respect to taxable benefits, and ensure the accuracy of the amount of tax payable.

[43] The Minister needs the information and documents sought in the requirement to be imposed upon the respondent to permit the Minister to identify the unnamed persons who comprise this group. Upon identifying these persons, the Minister intends to verify that each person has complied with their obligations under the *Income Tax Act* for the 2007 and/or 2009 calendar year.

[44] As such, the information and documents are required in good faith for the purpose of verifying compliance by the unnamed persons with their respective obligations under the *Income Tax Act*.

ORDER

THIS COURT ORDERS that

1. The Minister be authorized to impose on the respondent, Lordco Parts Ltd., a requirement to provide information and documents under subsection 231.2(1) of the *Income Tax Act* in the form attached to this Order as Appendix “A” (the Requirement);
2. The Minister serve the Requirement and a copy this Order on the respondent at his registered and records office, namely 22866 Dewdney Trunk Road, Maple Ridge, BC, V2K 3K6. The Requirement shall be addressed to the respondent’s controller, Rick Sayers.
3. The respondent may, within 15 days after the service of the Order apply to have this Order reviewed and possibly varied or reversed pursuant to subsections 231.2(5) and 231.2(6) of the *Income Tax Act* which state:

231.2(5) Where an authorization is granted under subsection 231.2(3), a third party on whom a notice is served under subsection 231.2(1) may, within 15 days after the service of the notice, apply to the judge who granted the authorization or, where the judge is unable to act, to another judge of the same court for a review of the authorization.

231.2(6) On hearing an application under subsection 231.2(5), a judge may cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs 231.2(3)(a) and 231.2(3)(b) have been met and the judge may confirm or vary the authorization if the judge is satisfied that those conditions have been met.

“Michel M.J. Shore”

Judge

APPENDIX "A"



Canada Revenue
Agency

Agence du revenu
du Canada

HAND DELIVERY

LORDCO PARTS LTD
22866 DEWDNEY TRUNK ROAD
MAPLE RIDGE, B.C.
V2X 3K6

Burnaby Fraser Tax Services Office
c/o 9755 King George Boulevard
Surrey, BC V3T 5E1
Contact: Bernie Wong
Employer Compliance Audit 461-01
Telephone: (604) 862-1871
Fax: (604) 587-2754

Attention: Rick Sayers, Controller

February 21, 2011

Dear Sir:

Re: Requirement to provide information and documents issued pursuant to the order of the Federal Court of Canada pronounced February 21, 2010 [Docket number T-248-11]

Pursuant to paragraphs 231.2(1)(a) and (b) of the *Income Tax Act*, for purposes related to the administration or enforcement of the *Act*, you are required to provide the following information and documents:

1. Within fifteen (15) days from the date of service of this Requirement:
 - a. A list of the names of each individual who attended Lordco Parts Ltd.'s cruise that took place from September 19-29, 2007, including the following information for each individual:
 - i. the address of each individual; and
 - ii. the name of the company represented by each individual.
 - b. The registration form for each individual who attended the 2007 cruise.
2. Within thirty (30) days from the date of service of this Requirement:
 - a. A list of the names of each individual who attended Lordco Parts Ltd.'s cruise that took place in 2009, including the following information for each individual:
 - i. the address of each individual; and
 - ii. the name of the company represented by each individual.
 - b. The registration form for each individual who attended the 2009 cruise.

Subsection 238(1) of the *Income Tax Act* provides that a person who fails to comply with this Requirement is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000, and not more than \$25,000 or both the fine and imprisonment not exceeding twelve months. In addition to the criminal penalties resulting from subsection 238(1) of the *Income Tax Act* for failure to comply with this requirement, subsection 231.7(1) of the *Income Tax Act* allows the Canada Revenue Agency to request a specific compliance order from the Court in the event of non compliance. Failure to comply with that specific compliance order could lead to a finding of contempt of Court.

The documents and information required are to be forwarded to the undersigned at the Canada Revenue Agency, Burnaby Fraser Tax Services Office, c/o 9755 King George Boulevard, Surrey, British Columbia, V3T 5E1 Attention: **Bernie Wong, Section 461-01**. Photostatic or certified copies of the documents will be sufficient.

Yours truly,

Isabel Shannon, Manager Revenue Collections, Burnaby Fraser Tax Services Office,
An officer authorized pursuant to subsection 220(2.01) of the Income Tax Act to exercise powers
or perform duties of the Minister under Section 231.2 of the Income Tax Act.

Served personally on _____
Position _____
Date _____ Time _____
Officer executing service _____

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-248-11

STYLE OF CAUSE: MNR v. LORDCO PARTS LTD.

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: February 21, 2011

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: February 21, 2011

APPEARANCES:

Erica Louie	FOR THE APPLICANT
No one appearing	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Myles J. Kirvan Deputy Attorney General of Canada Vancouver, BC	FOR THE APPLICANT
n/a	FOR THE RESPONDENT