

Date: 20081216

Docket: A-186-08

Citation: 2008 FCA 407

**CORAM: LÉTOURNEAU J.A.
NOËL J.A.
BLAIS J.A.**

BETWEEN:

1072174 ONTARIO LTD.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on December 16, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on December 16, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 16, 2008)

NOËL J.A.

[1] This is an appeal from an interlocutory decision by the then Chief Justice of the Tax Court of Canada who denied the appellant's application to strike out certain paragraphs of the respondent's Reply to the Notice of Appeal. The Application was brought pursuant to section 53 and in the alternative paragraph 58(1)(a) of the *Tax Court of Canada Rules* (General Procedures).

[2] In the course of his reasons, Bowman C.J. acknowledged that there were inconsistencies in the respondent's pleading of assumptions. He also acknowledged that some allegations raise issues that may be outside the time limit for reassessment.

[3] However, he held that these questions were better left to be decided by the Trial Judge. We are satisfied that Bowman C.J. committed no reviewable error in reaching to this conclusion.

[4] The only issue which needs to be commented on is the appellant's contention that based on the recent decision of this Court in *Walsh v. the Queen*, 2007 FCA 222, it is plain and obvious that the respondent's pleadings regarding the denial of the Tax Credits (Reply, paras 26 and 36) cannot succeed as it is based on transactions (i.e. the purchase of vehicles) that are different from those contemplated by the assessments (i.e. the sale of the vehicles).

[5] Two things should be said in this regard. The first is that *Walsh* pertained to an assessment issued pursuant to the *Income Tax Act*, R.S.C. 1985, ch. 1 (5th Suppl.), whereas we are concerned here with the application of the *Excise Tax Act*. Second, the question whether the purchase and sale of cars by a car dealer should be viewed as distinct transactions in applying subsection 298(6.1) of the *Excise Tax Act*, R.S.C. 1985, C. E-15 is a matter that has yet to be considered.

[6] In these circumstances, it was open to Bowman C.J. to dismiss the appellant's motion on the basis that the Trial Judge will be better positioned to address the issues which they raise.

[7] The appeal will be dismissed with costs.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-186-08

(APPEAL FROM AN ORDER OF THE HONOURABLE CHIEF JUSTICE D.G.H. BOWMAN OF THE TAX COURT OF CANADA DATED APRIL 18, 2008, FILE NO. 2007-763 (GST) G)

STYLE OF CAUSE: 1072174 ONTARIO LTD. v. HER MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 16, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (LÉTOURNEAU, NOËL & BLAIS JJ.A.)

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

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