

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20090929

Docket: A-363-09

Citation: 2009 FCA 280

PRESENT: NOËL J.A.

BETWEEN:

MERCHANT (2000) LTD.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Hearing held by teleconference
Between Ottawa, Ontario, Calgary and Edmonton, Alberta,
on September 29, 2009.

Order delivered at Ottawa, Ontario, on September 29, 2009.

REASONS FOR ORDER:

NOËL J.A.

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REASONS FOR ORDER

NOËL J.A.

[1] The appellant moves to stay a status/show cause order issued by the Tax Court of Canada on August 28, 2009 pending the disposition of the appeal which it has filed against that order. The order in question requires the appellant, as represented by its sole director, E.F. Anthony Merchant, to appear peremptorily before a Tax Court Judge on October 1, 2009 to show cause why it should not be held in contempt of Court.

[2] The appellant alleges that Rossiter A.C.J. did not have the jurisdiction to issue the order and made a variety of errors in issuing it. It claims to have met the three prong tests set out in *RJR* --

MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 (*RJR -- MacDonald*) for the issue of a stay.

[3] In my respectful view, the motion cannot succeed. First, it is apparent that the grant of the stay would amount to quashing the peremptory order which is the subject matter of the appeal. This cannot be done by a single judge sitting on a stay application.

[4] In any event, the appellant has failed to demonstrate that it will suffer irreparable harm if the stay is not granted. In this respect, the only harm alleged by the appellant is that absent a stay, its appeal from the order of the Tax Court will be rendered moot.

[5] That the appeal may be rendered moot does not necessarily amount to irreparable harm. The appellant must explain why it will suffer irreparable harm as a result of its appeal becoming moot (*eBay Canada Limited v. Canada (National Revenue)*, 2008 FCA 141, para. 33). That it has failed to do.

[6] In particular, it is apparent that in the event that the status/show cause proceeds as ordered, and the outcome is adverse to the appellant, it will be in a position to appeal that decision and make all the arguments which it now wishes to make. The only issue is one of timing. Absent some other demonstration, the mere fact that a party will be compelled to make its argument after the substantive issue is decided rather than before, does not amount to irreparable harm.

[7] The motion is dismissed with costs.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-363-09

STYLE OF CAUSE: Merchant (2000) Ltd. v. Her Majesty the Queen

MOTION DEALT BY TELECONFERENCE WITH APPEARANCE OF PARTIES

REASONS FOR ORDER BY: Noël J.A.

DATED: September 29, 2009

APPEARANCES:

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FOR THE APPELLANT

Mark Heseltine

FOR THE RESPONDENT

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