

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20101020

Docket: A-153-09

Citation: 2010 FCA 278

**CORAM: NOËL J.A.
SHARLOW J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

THOMAS RALPH JARROLD

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on October 20, 2010.

Judgment delivered from the Bench at Vancouver, British Columbia, on October 20, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on October 20, 2010)

SHARLOW J.A.

[1] Mr. Jarrold is appealing a judgment of the Tax Court of Canada (2009 TCC 164) dismissing his appeal from an assessment made in 2006 under section 323 of the *Excise Tax Act*, R.S.C. 1985, c. E-15, for goods and services tax (GST) collected between 1991 and 1993 by T. Jarrold & Associates Ltd. but not remitted. We have concluded, for the reasons that follow, that this appeal must be dismissed.

[2] Mr. Jarrold argues that the Tax Court judge erred in law in his application of the due diligence defence in subsection 323(3) of the *Excise Tax Act* when he dismissed as irrelevant Mr. Jarrold's attempts to pay the company's liability for GST it had collected. He points to two decisions of the Tax Court in which the due diligence defence was met by actions taken by the corporate director to pay the liability after initial failure to remit: *Franck v. Canada*, 2005 TCC 392, and *Parfeniuk v. Canada*, [1996] G.S.T.C. 22, 4 G.T.C. 3086.

[3] During the years in which the liability arose, 1991 to 1993, Mr. Jarrold was dealing with extremely difficult personal and business circumstances, including a very high corporate debt load. He says that once he learned that his employees had failed to file GST returns, he took steps to try to arrange a payment plan for the unremitted GST, but without success. He argues that, given the circumstances he faced, he did everything that could possibly have been done. We note that, while the record discloses that Mr. Jarrold attempted to negotiate with the Minister to work out a payment schedule for the debt, it also discloses that he failed to provide the Minister with the information required to complete those arrangements.

[4] We do not read the reasons of the Tax Court judge as concluding that Mr. Jarrold's efforts to put a payment plan in place after the initial default by the company were legally irrelevant. It seems to us that he took those steps into account but found them to be insufficient given the evidence establishing Mr. Jarrold's legal and factual control of the company, which put him in the best possible position to know of the company's financial difficulties and therefore its risk of defaulting

in its remittance obligations, his failure to take any steps at all to prevent the company's failure to remit, and ultimately his failure to follow through on finalizing a payment plan. Having carefully reviewed the submissions of Mr. Jarrold and the record on appeal, we conclude that it was reasonably open to the Tax Court judge to conclude that the due diligence test was not met on the facts of this case.

[5] Mr. Jarrold also says that he should not be liable for the unremitted GST of the company because the Minister took too long to assess – over ten years – which put him at an insurmountable disadvantage. He submits that he cannot reasonably be expected to contest the assessments after that length of time. There is a statutory time limit imposed on the Minister for assessing a person under section 323. It is found in subsection 323(5), and requires the assessment to be made within two years after the person last ceased to be a director of the corporate tax debtor. That time limitation never began to run because Mr. Jarrold remained a director. Mr. Jarrold is essentially asking this Court to devise a further time limitation based on reasonableness. We cannot accede to that request in the face of the decision of the Supreme Court of Canada in *Canada v. Addison v. Leyen Ltd.*, 2007 SCC 33, [2007] 2 S.C.R. 793.

[6] The appeal will be dismissed with costs.

“Karen Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-153-09

STYLE OF CAUSE: THOMAS RALPH JARROLD v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 20, 2010

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LAYDEN-STEVENSON J.A.

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Thomas Ralph Jarrold FOR THE APPELLANT
(self-represented)

Shannon Currie FOR THE RESPONDENT
Bruce Senkpiel

SOLICITORS OF RECORD:

N/A FOR THE APPELLANT
(self-represented)

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada