

Docket: 2006-1615(GST)G

BETWEEN:

GLENKO PROPERTIES INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on October 9, 2007 at Saskatoon, Saskatchewan

Before: The Honourable D.W. Beaubier, Deputy Judge

Appearances:

Counsel for the Appellant: Owen B. Griffiths

Counsel for the Respondent: Karen Janke

JUDGMENT

The Motion of the Respondent is granted and the purported Notice of Appeal is dismissed in its entirety in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario this 15th day of October, 2007.

"D.W. Beaubier"

Beaubier, D.J.

Citation: 2007TCC612
Date: 20071015
Docket: 2006-1615(GST)G

BETWEEN:

GLENKO PROPERTIES INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Beaubier, D.J.

[1] This is a Motion by the Respondent originally dated June 29, 2007 to dismiss the Appellant's Notice of Appeal dated November 29, 2005. The Notice of Appeal was filed in the Court on December 1, 2005 and given the above described 2006 number.

[2] The Motion is granted respecting Notices of Confirmation of Assessments 3502 and 68940 under the *Excise Tax Act* because they are not assessments of the Appellant.

[3] The third assessment purportedly appealed is described as follows:

b) ...

1) Assessment # 17986, *Goods and Services Tax Act*;

There is no "*Goods and Services Tax Act*"; the other two assessments were described as under the *Excise Tax Act* and this appeal was given Tax Court number 2006-1615 with a GST suffix. Such Court numbers are supposed to issue in chronological

succession no matter what suffix. The problems with this one which was filed in 2005 are unknown to this judge.

[4] The alleged appeal was filed on a timely basis pursuant to subsection 169(1) of the *Income Tax Act* because, while it was before the date of the Notice of Confirmation (January 13, 2006), it was filed more than six months after the date of the Notice of Assessment #17986, April 14, 2005.

[5] The question is whether the Notice of Appeal respecting Assessment #17986 is a nullity in view of the description in subparagraph b) 1 and the contents of the Notice of Appeal.

[6] There was no timely application for an extension of time to appeal Assessment #17986 despite Respondent counsel's timely letters to two counsel of the Appellant urging an application for an extension. After all time for such an application expired, on January 5, 2007 the Appellant's second counsel filed an amending document correcting the words "*Goods and Services Tax Act*" in subparagraph b) 1) to the description in the Notice of Assessment dated April 14, 2005, namely *Income Tax Act*. But you cannot amend a nullity.

[7] In a Reply dated January 15, 2007, the Respondent correctly described the particulars and Notice of Confirmation.

[8] The only reference to the *Income Tax Act* in the original Notice of Appeal is in paragraph c) 4). Under the heading "c) Material facts relied upon" it states:

4) The appellant pleads and the fact is that the assessments made pursuant to the *Income Tax Act* and the *Excise Tax Act* were unjust, without foundation in fact or law, and failed to properly consider information and evidence provided by the taxpayer;

[9] Rule 21 of the *Tax Court of Canada Rules (General Procedure)* describes how a proceeding "shall be instituted" in an appeal from an assessment under the *Income Tax Act*. It refers to Form 21(1)(a). Paragraphs a) and b) of Form 21(1)(a) read:

NOTICE OF APPEAL

(a) In the case of an individual state home address in full and in the case of a corporation state address in full of principal place of business in the province in which the appeal is being instituted,

(b) Identify the assessment(s) under appeal: include date of assessment(s) and, if the appeal is under the *Income Tax Act*, include taxation year(s) or, if the appeal is under the *Excise Tax Act*, the *Customs Act*, the *Air Travellers Security Charge Act* or the *Excise Act, 2001*, include the period to which the assessment(s) relate(s),

[10] The purported Notice of Appeal filed on December 1, 2005 did not state (1) the pertinent date of assessment, (2) that it was under the *Income Tax Act*, or (3) the taxation year or years.

[11] The Appellant's counsel was notified of various deficiencies in this document by a clerk of the Tax Court and by counsel for the Respondent. Nothing was done within the time set out in the *Income Tax Act*.

[12] This Court adopts the reasoning of Sheridan, J. of this Court in *Tuck v. R.*, 2007 CarswellNat 2138 respecting the Respondent's allegation that the alleged Notice of Appeal is phrased scandalously and vexatiously. More important, however, is the fact that this Notice of Appeal did not comply with Rule 21 respecting Assessment #17986. It is a nullity without the two additional, but mistaken allegations about the *Excise Tax Act* in paragraph (b). The Notice of Appeal's reference in b) 1) to the "Goods and Services Tax Act" was not to anything within the jurisdiction of this Court. It is a nullity.

[13] The Motion of the Respondent is granted and the purported Notice of Appeal is dismissed in its entirety.

Signed at Toronto, Ontario this 15th day of October, 2007.

"D.W. Beaubier"

Beaubier, D.J.

CITATION: 2007TCC612

COURT FILE NO.: 2006-1615(GST)G

STYLE OF CAUSE: Glenko Properties Inc. v. The Queen

PLACE OF HEARING: Saskatoon, Saskatchewan

DATE OF HEARING: October 9, 2007

REASONS FOR JUDGMENT BY: The Honourable D.W. Beaubier,
Deputy Judge

DATE OF JUDGMENT: October 15, 2007

APPEARANCES:

Counsel for the Appellant: Owen B. Griffiths
Counsel for the Respondent: Karen Janke

COUNSEL OF RECORD:

For the Appellant:

Name: Owen B. Griffiths

Firm: Amicus Law Associates

For the Respondent:

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada