

Docket: 2007-3810(IT)G

BETWEEN:

WHITE STAR COPPER MINES LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion for an Order granting leave to the Appellant
to be represented by an Officer of the Appellant
heard on October 25, 2007 at Toronto, Ontario

Before: The Honourable Justice E.P. Rossiter

Appearances:

Agent for the Appellant: John Patrick Sheridan

Counsel for the Respondent: Samantha Hurst

ORDER

Upon hearing a Motion by the Appellant to permit John Patrick Sheridan, P. Eng., a Director and President of the Appellant, to represent it in the conduct of its appeal;

And having heard the submissions of the parties and reading the materials filed by the parties;

IT IS ORDERED THAT:

1. The motion is dismissed with no Order as to costs, in accordance with the attached Reasons for Order.

2. The Respondent shall have 60 days from the date of this Order in which to file a Reply to the Notice of Appeal.

Signed at Ottawa, Canada, this 7th day of November, 2007.

"E. P. Rossiter"

Rossiter, J.

Citation: 2007TCC669
Date: 20071107
Docket: 2007-3810(IT)G

BETWEEN:

WHITE STAR COPPER MINES LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Rossiter, J.

Issue

[1] The Appellant seeks leave of the Court, to allow the Appellant to be represented by John Patrick Sheridan P. Eng., a Director and President of the Appellant, in the conduct of its appeal.

Analysis

[2] Rule 30.(2) of the *Tax Court of Canada Rules (General Procedure)* states:

- (2) Where a party to a proceeding is not an individual, that party shall be represented by counsel except with leave of the Court and on any conditions that it may determine.

[3] There have been a variety of cases, which are helpful in determining the motion. I make particular reference to *Pratts Wholesale Ltd. v. Canada*, [1998] T.C.J. No. 171, a decision of Mr. Justice Beaubier wherein he quoted Mr. Justice Muldoon in *Kobetek Systems Ltd. v. Canada*, [1998] F.C.J. No. 16 as follows:

6 From these cases the following factors appear to be relevant to the determination of whether special circumstances exist: whether the corporation can pay for a lawyer; whether the proposed representative will be required to appear as advocate and as witness; the complexity of the legal issues to be determined (and therefore

whether it appears that the representative will be able to handle the legal issues) and whether the action can proceed in an expeditious manner.

Mr. Justice Beaubier stated in paragraph 7 as follows:

7 There is an overriding factor which this Court considers to be most important. It is this: a corporation is a creature of law which is formed for the technical advantage of its shareholders, directors and officers. That advantage may be historic, such as limited liability, or it may be more current, such as for income tax or other tax purposes. For example, the issue in this appeal relates to a claim respecting Scientific Research and Experimental Development expenditures. Thus the corporation offers certain advantages which may not be available to an individual. The offset is that there are consequent duties which may include technical requirements, such as resolutions or having a lawyer represent this entity which was created by legislation. Because it is a technical creation of the law, by its very nature a corporation should be represented by a lawyer in court in all but very exceptional circumstances.

[4] There are really four factors relevant to the determination of whether special circumstances exist:

1. whether the Corporation can pay for a lawyer;
2. whether the proposed representative will be required to appear as advocate and as witness;
3. the complexity of the legal issues to be determined (and therefore whether it appears that the representative will be able to handle the legal issues); and
4. whether the action can proceed in an expeditious manner.

[5] Justice Beaubier added, as an overriding factor, the special nature of a Corporation and, by its special nature, it should be represented by a lawyer in Court in all but the very exceptional circumstances. Mr. Justice Bowie in *RFA Natural Gas Inc. v. Canada*, [2000] T.C.J. No. 327 added a fifth factor - whether there was an election to have the matter removed from Informal Procedure to General Procedure.

[6] These factors have been referred to and relied upon by Associate Chief Justice Bowman, as he then was, in *Chase Bryant Inc. v. Canada*, [2002] T.C.J. No. 663 and Mr. Justice Little in *Thomson Motors Co. v. Canada*, [2002] T.C.J. No. 366. In the latter case, Mr. Justice Little added a sixth factor and that is whether an Officer is also the Director and sole shareholder of the Corporation.

[7] Is there evidence of special circumstances which justifies the Court in exercising its discretion to commit a non-lawyer to represent the company?

[8] The Court is not unmindful of the costs of litigation to the litigants. The reality is that we have rules which are in existence for the proper administration of litigation before this Court and factors have been developed in applying the applicable rules in this matter.

[9] One of the factors is whether or not the Corporation can pay a lawyer. The evidence as to the ability of the Corporation to pay a lawyer is as follows:

1. The Corporation owns property;
2. The property, according to the Corporation's President, Mr. Sheridan is very valuable;
3. The Corporation has sufficient funds to pay its taxes;
4. The Corporation does not want to encumber its assets in order to fund its appeal.

[10] There was no evidence provided with respect to the efforts of the Corporation to raise money to hire legal counsel, nor any evidence with respect to the finances or financial statements of the company other than the peripheral statement that the Corporation has sufficient funds to pay its taxes. The company was publicly traded but de-listed in approximately 1998. The company has 500 to 600 shareholders. Mr. Sheridan is the President and one of three Directors of the company and has no shareholder's interest in the company. According to the President, the company does not want to encumber its assets to fight the appeal. There is evidence that the Appellant has the financial ability to retain legal counsel because of the significant value, according to the President, of the company's land assets in and around Timmins, Ontario.

[11] Here we have no information as to whether or not the Agent, Mr. Sheridan, will be advocate and witness but I strongly suspect that he will certainly be both. The auditor/accountant of the Appellant is now deceased. The President, Mr. Sheridan, gave the appearance as a witness, as the person, very much in control of the affairs of the Appellant. The complexity of the case is not an issue, according to the Respondent, but then again complexity to counsel for the Respondent may be

something looked at from a different point of view by the Appellant. There is no evidence that the matter can really be dealt with in a more expeditious fashion, with or without counsel, although I suspect, that it will be dealt with in a more expeditious manner with counsel. The fifth factor is not an issue; the Agent of this case is the President and one of three Directors and is not a shareholder.

[12] The Appellant has not adduced evidence sufficient to convince me that special circumstances have been established, necessary to justify the Court in exercising its discretion, to permit to Mr. Sheridan to represent the Appellant.

[13] The motion is dismissed with no Order as to costs. I grant to the Respondent 60 days from the date of this Order in which to file a Reply to the Notice of Appeal.

Signed at Ottawa, Canada, this 7th day of November, 2007.

"E. P. Rossiter"

Rossiter, J.

CITATION: 2007TCC669

COURT FILE NO.: 2007-3810(IT)G

STYLE OF CAUSE: WHITE STAR COPPER MINES LIMITED
AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 25, 2007

REASONS FOR ORDER BY: The Honourable Justice E.P. Rossiter

DATE OF ORDER: November 7, 2007

APPEARANCES:

For the Appellant: John Patrick Sheridan

Counsel for the Respondent: Samantha Hurst

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada