

[ENGLISH TRANSLATION]

Dockets: 2004-3927(IT)G
2004-2690(IT)G
2004-1100(IT)G

BETWEEN:

HASANAIN PANJU
2950995 CANADA INC.
153114 CANADA INC.,

Appellants

and

HER MAJESTY THE QUEEN

Respondent

Motion heard on March 24, 2010, in Montréal, Quebec.
Before: The Honourable Justice Lucie Lamarre

Appearances:

Counsel for Hasanain Panju:	Mélissa Rivest
Counsel for 2950995 Canada Inc. and 153114 Canada Inc.:	Jacques Plante Gordon Kugler Stéphane Martin
Counsel for the Respondent:	Martin Gentile Mélanie Bélec

ORDER

The respondent's motion requesting that this Court order a consolidation of proceedings in the three appeals under section 26 of the *Tax Court of Canada Rules (General Procedure)* (**Rules**) is dismissed with costs, according to Tariff B of the Rules against the respondent in favour of each of the appellants, while taking into account that the corporations 2950995 Canada Inc. and 153114 Canada Inc. will only

have the right to one set of costs, since they are both represented by the same counsel and proceed on common evidence.

Signed at Montréal, Quebec, this 26st day of March 2010.

"Lucie Lamarre"

Lamarre J.

Citation: 2010 TCC 175
Date: 20100326
Dockets: 2004-3927(IT)G
2004-2690(IT)G
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BETWEEN:

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153114 CANADA INC.,

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REASONS FOR ORDER

Lamarre J.

[1] The respondent filed a motion requesting that this Court order a consolidation of proceedings in the three dockets mentioned in the heading, relying on section 26 of the *Tax Court of Canada Rules (General Procedure)* (**Rules**), which reads as followed:

Instruction relating to the consolidation of proceedings

26. Where two or more proceedings are pending in the Court and
 - a) they have in common a question of law or fact or mixed law and fact arising out of one and the same transaction or occurrence or series of transactions or occurrences, or

- b) for any other reason, a direction ought to be made under this section,
the Court may direct that,
- c) the proceedings be consolidated or heard at the same time or one immediately after the other, or
- d) any of the proceedings be stayed until the determination of any other of them.

[2] The two appellant corporations, 2950995 Canada Inc. and 153114 Canada Inc., are two placement management corporations (**corporations**) that were controlled during the taxation years in dispute (1999) by Micheline Charest (**Charest**) and Ronald Weinberg (**Weinberg**), respectively, both co-founders of the corporation Cinar Corporation (**Cinar**). The corporations appealed before our Court from the assessments by the Minister of National Revenue (Minister) for the 1999 taxation year, disallowing capital losses related to what they allege are illegal appropriations of funds that the third appellant, Hasanain Panju (**Panju**) allegedly made.

[3] However, the corporations brought an action before the Superior Court of Québec against Panju in 2007, and this case is still pending before that Court.

[4] Panju was also assessed by the Minister to include in his income amounts that he reportedly illegally took from Cinar during the 1996, 1997, 1998, and 1999 taxation years. From counsel for Panju's comments, I understand that the assessments are based on proceedings that were apparently instituted by Cinar against Panju, and were reportedly resolved out-of-court by a confidential agreement.

[5] Apparently, the assessments against Panju relate to 150 transactions involving him and Cinar. Panju appealed from those assessments on the grounds that it is wrong to claim that he received all the sums of money attributed to him in these assessments. Regarding the sums that he received, they were allegedly loans that Weinberg and Charest made under a verbal agreement. He therefore argues that he is not taxable on the assessed amounts.

[6] By order of this Court on November 24, 2009, the hearing of the assessment appeals concerning the corporations is scheduled to be heard on common evidence for a 10 days starting on April 26, 2010.

[7] The hearing of the appeals in Panju's case is still not scheduled. According to the respondent, it would be useful to consolidate the proceedings for each of these appeals since, according to her counsel, it falls to this Court to decide if Panju legally or illegally appropriated funds belonging to the corporations, since he adds that this decision will directly impact the amount of allowable capital loss that these corporations claim.

[8] Still according to the respondent, the consolidation of proceedings would allow them to avoid the multiplication and duplication of proceedings since Panju and Weinberg are subject to examinations in each appeal. The respondent further argues that consolidating the proceedings would allow for the appeals to be decided more quickly, taking into account a lengthy common documentary evidence.

[9] The respondent also argues that since the position of the corporations is diametrically opposed to that of Panju, consolidating the proceedings would prevent decisions from being made on the basis of contradictory facts relating to the same events, therefore ensuring the proper administration of justice.

[10] Lastly, the respondent argues that consolidating the proceedings would allow the appeals to be decided in a less onerous manner.

[11] The corporations are represented by different counsel before our Court and before the Superior Court of Québec. Panju is clearly represented by his own counsel.

[12] The corporations are against consolidating the proceedings, in part because if the motion is granted, the hearing of their appeal would be undeniably adjourned, and they are eminently ready to proceed. Further, they believe that the capital losses that are subject to the assessments under appeal cannot be affected by whether or not Panju's assessments are upheld. Panju was taxed on taxable benefits, whether or not they were given by Cinar.

[13] In Panju's opinion, it is also against consolidating the proceedings, since it is considered that the debate between Panju and the corporations must be made before the Superior Court of Québec. It is also considered that Panju does not need to hear all the issues in the proceeding between the Minister and the corporations that do are not related to his own assessments. In terms of money and time, consolidating the proceedings would uselessly prolong the debate with him and would be far too onerous.

[14] The purpose consolidating proceedings generally aims to avoid the multiplication of proceedings, to ensure the quick conduct of proceedings at a lower cost. The following factors can be taken into account: similar causes of action, parallel evidence and the outcome of one case as likely resolving the other case (see *John E. Canning Ltd. v. Tripap Inc.*, 1999 CanLII 8029 (FC), at paragraph 27).

[15] In my opinion, consolidating the proceedings as requested by the respondent would not ensure a quick conduct of proceedings at a lower cost. On the one hand, the hearing of the corporations' appeals is already set out in the court roll for a period of 10 days starts from April 26, 2010. The Court set this time at the parties' request, including the respondent. It is far too late now to file such a motion. Consolidating the proceedings would not only delay the corporations' proceedings to an undetermined date, but would also result in significantly prolonging the duration of the proceeding, at a far more onerous cost for both the corporations and Panju. In fact, the corporations' appeals also relate to other points unrelated to Panju (I am thinking of the carryover of non-capital losses from past years in relation to advertising expenses and memberships for equally large amounts). Regarding Panju, the assessed amounts refer to transactions with Cinar that are not, from what I can understand, necessarily related to the sums that Panju allegedly took from the corporations, if that was the case. Further, there are other points in dispute in the Panju matter that do not concern the corporations (I am thinking of the issue of prescription, *inter alia*). The issue of whether Panju is liable for taxes on the sums from Cinar's account through the years 1996 to 1999 is not the same than that of establishing whether the corporations suffered capital losses in 1999, resulting in appropriations of funds by Panju in those corporations.

[16] Through his motion, the respondent also indirectly requested that our Court rule on the issue dispute that is currently pending between the corporations and Panju before the Superior Court of Québec. In my opinion, this debate is beyond the issue in dispute before our Court, which is not the appropriate forum to do so. The corporations claimed capital losses, which are related to the sums that may have been illegally appropriated by Panju. It will be up to the trial judge, who will hear the corporations' appeals before this Court, to determine whether there are such losses on a balance of probabilities, and if so, if they can be claimed in 1999 or only in the year where the Superior Court rules on the litigation between the corporations and Panju.

[17] For the assessments made against Panju, they were done based on the proceedings instituted by Cinar against Panju. This proceeding is resolved, and the terms of the settlement are confidential. This is not a reason to impose a much longer trial on the corporations at an undetermined date before this Court on the transactions

between Panju and Cinar. The Minister will have the burden of showing that he had the power to assess the new assessment beyond the normal period. On the balance of probabilities, it will then be up to Panju to show that he is not taxable on the amounts that are included on his income.

[18] Lastly, the respondent's argument that the proceedings could result in contradictory findings of fact if they are not heard together does not convince me. In fact, as I mentioned above, for the corporations, it involves determining whether Panju illegally appropriated funds belonging to them, which would justify their claim for capital losses. For Panju, it is to determine whether he is taxable on the sums he received from Cinar. Seeing as the debate is not the same, I do not believe that consolidating the proceedings can be justified, based on the fact that there could be two decisions leading to contradictory findings of fact.

[19] After hearing the allegations from counsel for all the parties, the respondent has not convinced me that the benefits that could result from consolidating the proceedings outweigh the inconveniences cited by the corporations and Panju. The respondent has not convinced me of the merit of consolidating the proceedings, especially at this stage, as the corporations' hearing of the appeals has already been scheduled for hearing for several months now.

[20] For these reasons, the motion is dismissed with costs according to Tariff B of the Rules against the respondent in favour of each of the appellants, while taking into account that the corporations will only have the right to one set of costs, since they are both represented by the same counsel and proceed on common evidence.

Signed at Montréal, Quebec, this 26th day of March 2010.

"Lucie Lamarre"

Lamarre J.

CITATION: 2010 TCC 175

COURT FILE NOS.: 2004-3927(IT)G
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DATE OF HEARING: March 24, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATED: March 26, 2010

APPEARANCES:

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Gordon Kugler
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