

Dockets: 2017-4214(IT)G
2017-4213(IT)APP

BETWEEN:

SUCHOCKI ACCOUNTING LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion and application hearing held on March 6, 2018,
at Edmonton, Alberta.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant: Michael Suchocki

Counsel for the Respondent: Chang Du

ORDER

Upon motion made by the agent for the Appellant, Michael Suchocki, the owner and director of the Appellant, to represent his own corporation in these matters before the Court;

Upon application made for an order extending the time within which an appeal from the assessments made under the *Income Tax Act* for the 2014 and 2015 taxation years may be instituted;

And upon hearing the submissions of the parties;

For the attached reasons given orally at the hearing, the Court orders as follows:

1. The motion is dismissed.

2. The application to extend the time within which an appeal may be instituted for the 2014 and 2015 taxation years is allowed.
3. Files 2017-4213(APP) and 2017-4214(IT)G shall be consolidated.
4. The Appellant shall have 90 days from the date of this order to file and serve a fresh as amended notice of appeal in both matters, on a peremptory basis, in compliance with the rules of the Court.
5. The Respondent shall have 60 days from the date of filing of the fresh as amended notices of appeal to file and serve replies.
6. Costs on the motion are payable by the Appellant to the Respondent, in any event of the cause.

The Court advised that should the Appellant elect to file and serve fresh as amended notices of appeal under the informal procedure, it would not require the Appellant to be represented by a lawyer.

Signed at Ottawa, Canada, this 8th day of May 2018.

“Patrick Boyle”

Boyle J.

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EDITED VERSION OF TRANSCRIPT
OF ORAL REASONS FOR ORDER

Let the attached edited transcript of the reasons for order delivered orally at the hearing on March 6, 2018 at Edmonton, Alberta, be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes.

Signed at Ottawa, Canada, this 8th day of May 2018.

“Patrick Boyle”

Boyle J.

Citation: 2018 TCC 88
Date: 20180515
Dockets: 2017-4214(IT)G
2017-4213(IT)APP

BETWEEN:

SUCHOCKI ACCOUNTING LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR ORDER

(Motion and application heard and decision rendered orally at the hearing
on March 6, 2018 at Edmonton, Alberta)

Boyle J.

[1] I am dismissing the Appellant's motion for the corporation to be represented by a **non-lawyer** in this general procedure case.

[2] Firstly, I agree with the reasons and the decision of Justice Graham in *Masa Sushi Japanese Restaurant Inc. v. The Queen*, 2017 TCC 239, that the *Tax Court of Canada Act* does not permit anyone other than a lawyer to represent a corporation in a general procedure matter.

[3] This is clear from the expressed language of section 17.1 of the *Tax Court of Canada Act*. Just as the Tax Court could not allow an individual in a general procedure case to be represented by their spouse, child or any other person who may be better equipped than the individual to do that unless they are a lawyer, the Court cannot allow a corporation to be represented in Court by a shareholder, officer, director or any other person who is not a lawyer.

[4] This may be unfortunate, but it is the law as passed by Parliament and neither I, nor the Court's rules, can change or overlook that. I would certainly hope that this limitation will be reviewed by the legislators given the fact its application can hinder what in some cases may be the most efficient and effective way for an appeal to be heard and the trial process to proceed. It is my view that such a matter

of process may be better left to the discretion of the judge who will be responsible for the trial.

[5] Secondly, and in any event, even if I am wrong with respect to the section 17.1 requirement that a corporation be represented by counsel in a general procedure appeal, Rule 30(2) would leave the matter in my discretion, including as to the conditions that may apply with respect to any particular representative in any particular case.

[6] There is case law of this Court that helpfully identifies some of the matters to be considered in exercising my discretion in this regard. These are discussed in the decision of Chief Justice Rossiter in *White Star Copper Mines Limited v. The Queen*, 2007 TCC 669:

1. Whether the corporation can pay for a lawyer: In this case, there is no evidence to suggest that it could not. Indeed, I am told a lawyer has already been spoken with.
2. Whether the proposed representative will be an advocate and a witness in the hearing: Mr. Suchocki can be expected to be the primary witness for the Appellant. The general rule is that a lawyer cannot also be a witness in a proceeding. In many jurisdictions, lawyers are expected to recuse themselves if it becomes necessary for them to give evidence.
3. The complexity of the legal issues and whether it appears the representative will be able to handle them: In this case, the notice of appeal filed is not an acceptable notice of appeal. It does not focus on the relevant facts, legislation and issues in dispute between the parties that are to be decided by the Court. It primarily consists of reasons and advocacy. It is argumentative. It is responsive to something that the Court does not have. It does not inform the Court of the issues to be decided in the appeal, nor is it sufficient to allow the Respondent to reply to it. This alone convinces me that this corporation should be represented by a lawyer in this hearing. Mr. Suchocki's motion, material and performance this morning reinforced that.
4. Whether the action can proceed in an expeditious manner without a lawyer representing the corporation: The Appellant has already needed a Court order to extend the time within which to file his appeal. Mr. Suchocki did not arrive at Court this morning ready to proceed at the designated time. His motion materials were deficient

and he indicates he still has trouble understanding why the Court or the Respondent is having these problems with his materials.

5. Importantly, a non-lawyer being authorized to represent a corporation should only be done in very exceptional circumstances: In this case, the Appellant has not adduced sufficient evidence to convince me that special or exceptional circumstances exist in this particular case.

[7] The motion is dismissed with costs.

[8] In addition, the order will provide that the Appellant has 90 days to file a fresh as amended notice of appeal by counsel. This is to be done on a peremptory basis, which means if the 90 days expire, your appeal will be dismissed, absent extenuating circumstances such as earthquakes and deaths.

[9] The Respondent will have 60 days from the filing of the fresh as amended notice of appeal to file its reply.

[10] The application to extend the appeal with respect to 2014 and 2015 is allowed.

[11] It will be in the fresh as amended notice of appeal that the corporate Appellant will have the right to elect the informal option, and if it does so, that fresh as amended notice of appeal is not required to be filed by a lawyer, but nonetheless must comply with the rules of the Court on pleadings, and that will be on a peremptory basis as well.

These amended reasons for order are issued in substitution for the reasons for order dated May 8, 2018.

Signed at Montreal, Quebec, this 15th day of May 2018.

“Patrick Boyle”

Boyle J.

CITATION: 2018 TCC 88

COURT FILE NOS.: 2017-4214(IT)G
2017-4213(IT)APP

STYLE OF CAUSE: SUCHOCKI ACCOUNTING LTD. v. THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: March 6, 2018

REASONS FOR ORDER BY: The Honourable Justice Patrick Boyle

DATE OF ORDER: May 8, 2018

DATE OF AMENDED REASONS FOR ORDER: May 15, 2018

APPEARANCES:

Agent for the Appellant: Michael Suchocki

Counsel for the Respondent: Chang Du

COUNSEL OF RECORD:

For the Appellant:

Firm:

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada