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****Please note that the words in quotation marks in the French original represent either words that are not in common French usage or words with improper agreement or that were mispronounced.*

****Please note that a word followed by (sic) indicates an obvious error by the speaker.*

1 **DECISION RENDERED ORALLY BY THE**
2 **HONOURABLE JUSTICE GASTON JORRÉ:**

3
4 [This version of the transcript is a revision of the
5 transcript certified by the official stenographer that was
6 made by the Judge to improve the reasons' style and clarity.]

7
8 CLERK:

9
10 Hearing reconvened.

11
12 THE HONOURABLE JUSTICE:

13
14 I begin by noting that it is past 10:50 a.m. and there is
15 still no one present for the appellant.

16
17 The respondent has brought a motion to dismiss the appeal
18 for want of prosecution on the part of the appellant. For the
19 following reasons, I allow the motion.

20
21 Obviously, when a person does not proceed with a case, an
22 appeal may be dismissed for want of prosecution. However, in
23 this case, there is another circumstance that I must consider.

24
25 Yesterday afternoon, the Registry received a letter from
26 counsel for the appellant. A copy of that letter was also sent
27 to counsel for the respondent, but since he was away on
28 business, he only became aware of the letter this morning.

29

1 The letter was addressed to one of the Court's hearings
2 coordinators and it stated as follows:

3
4 [TRANSLATION]

5

6 We have been instructed and wish to advise the
7 Court that our client has just put itself under
8 the protection of the B.I.A. . . .

9

10 I assume that stands for *Bankruptcy and Insolvency Act*.

11
12 [TRANSLATION]

13

14 ... and that a trustee in bankruptcy has been
15 retained in that regard.

16

17 A notice of stay of proceedings will be filed in
18 the record very shortly and, therefore, we will
19 not be present in Court on March 28, 2013.

20 Sincerely . . .

21

22 And the letter is signed by counsel for the appellant. I
23 am satisfied that section 29 does not apply for the reasons
24 set out below.

25

26 Subsection 29(1) of the *Tax Court of Canada Rules*
27 (*General Procedure*) provides:

28

1 Where at any stage of a proceeding the interest
2 or liability of a person who is a party to a
3 proceeding in the Court is transferred or
4 transmitted to another person by assignment,
5 bankruptcy, death or other means, no other
6 proceedings shall be instituted until the
7 Registrar is notified of the transfer or
8 transmission and the particulars of it.

9

10 Subsections (2) and (3) set out what happens if the
11 section is applicable.

12

13 Although the letter says that the appellant has put
14 itself under the protection of the *Bankruptcy and Insolvency*
15 *Act*, it does not say that the appellant filed an assignment or
16 that a bankruptcy order was made. There is no evidence before
17 me that an assignment was filed or that an order was made.

18

19 Section 71 of the *Bankruptcy and Insolvency Act* provides
20 that property is not vested in the trustee until an assignment
21 is filed or a bankruptcy order is made.

22

23 Accordingly, there was no transmission of an interest and
24 section 29 of the General Procedure rules does not apply.

25

26 I would add that I do not know exactly what is being
27 referred to in the second paragraph of the letter received
28 from counsel for the appellant yesterday, namely, the

1 paragraph that says:

2

1 A notice of stay of proceedings will be filed in
2 the record very shortly

3
4 If it is a notice of intention pursuant to section 50.4
5 of the *Bankruptcy and Insolvency Act*, this seems to suggest
6 that it has yet to be filed. However, as I said, I do not know
7 what is being referred to.

8
9 I note that there is no evidence before me that a notice
10 of intention within the meaning of the *Bankruptcy and*
11 *Insolvency Act* has been filed.

12
13 Also, I would add that, even if there were a notice of
14 intention, it is not at all obvious to me that the stay of
15 proceedings in section 69 of the *Bankruptcy and Insolvency Act*
16 could apply in the case before me as section 69 stays any
17 remedies that may be pursued by creditors. This appeal is an
18 appeal by the taxpayer against an assessment. These are not
19 proceedings brought by a creditor. In any case, as I said,
20 there is no evidence that a notice of intention has been
21 filed.

22
23

1 In conclusion, section 29 of the General Procedure rules
2 does not apply and, given the appellant's failure to proceed
3 with its appeal, the appeal is dismissed.

4

5 Thank you.

6

7

8

9

10

11

12

13 Translation certified true
14 on this 17th day of July 2013.

15

16

17

18

19 Erich Klein, Revisor

CITATION: 2013 TCC 110

COURT FILE NO.: 2011-1947(GST)G

STYLE OF CAUSE: 9203-8371 QUÉBEC INC.
v. THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: March 28, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston
Jorré

DATE OF JUDGMENT: March 28, 2013

DATE OF REASONS FOR JUDGMENT
DELIVERED ORALLY: March 28, 2013

DATE OF REVISED TRANSCRIPT
OF REASONS FOR JUDGEMENT: April 17, 2013

APPEARANCES:

For the appellant: No one appeared

Counsel for the respondent: Louis Riverin

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario

