

Dockets: 2017-3199(IT)G
2018-977(GST)G

BETWEEN:

MASA SUSHI JAPANESE RESTAURANT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Dockets: 2017-3204(IT)G
2018-978(GST)G

BETWEEN:

2075957 ONTARIO INC. (o/a KATSU JAPANESE RESTAURANT),

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motions dealt with by way of written submissions.

By: The Honourable Justice Patrick Boyle

ORDER

Upon considering the motions made by Masa Sushi Japanese Restaurant Inc. and 2075957 Ontario Inc. for an order to permit their respective president and director, Hai-Guang Liu and Ka Leung Lo, to represent them in the conduct of these appeals;

And upon considering the Respondent's submissions opposing the Appellants' motions;

The Court orders that the motions are dismissed, with costs, in accordance with the attached reasons for order.

Signed at Ottawa, Canada, this 30th day of May 2018.

“Patrick Boyle”

Boyle J.

Citation: 2018 TCC 98
Date: 20180530
Dockets: 2017-3199(IT)G
2018-977(GST)G

BETWEEN:

MASA SUSHI JAPANESE RESTAURANT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

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Dockets: 2017-3204(IT)G
2018-978(GST)G

BETWEEN:

2075957 ONTARIO INC. (o/a KATSU JAPANESE RESTAURANT),

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Boyle J.

[1] The Appellants in these general procedure appeals have brought motions to be represented by their presidents and directors who are not lawyers.

[2] The Appellants' earlier motions to be represented by their chartered professional accountant were denied by Justice Graham at 2017 TCC 239 for the reason that section 17.1 of the *Tax Court of Canada Act* requires that corporations be represented by counsel in a general procedure case as corporations are unable to appear in person. The Appellants did not appeal that decision.

[3] I have agreed with Justice Graham's earlier reasoning in *Suchocki Accounting Ltd. v. The Queen*, 2018 TCC 88, that a corporation cannot appear in person and must be represented by a lawyer in a general procedure appeal in this Court by virtue of section 17.1 of the *Tax Court of Canada Act*.¹

[4] For this same reason given by Justice Graham on the first motions and by me in *Suchocki Accounting*, I am dismissing these motions.

[5] In any event, as noted in *Suchocki Accounting*, 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 our Chief Justice in *White Star Copper Mines Limited v. The Queen*, 2007 TCC 669:

- (i) Whether the corporations can pay for a lawyer:

In these cases there is no evidence to suggest they could not. The motion materials only indicate that a suitable lawyer could not be found in Toronto without further detail or description. The motion materials indicate the Appellants will hire an interpreter for the pretrial steps and the trial as their presidents and directors are not fluent in the English language. The Appellants will also seek to retain outside consultants to advise them on the merits.

- (ii) Whether the proposed representative will be an advocate and a witness in the hearing:

Their presidents and directors can be expected to be primary witnesses for the Appellants as they are described as the persons who were responsible for all operations of the Appellants' businesses until their termination. 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.

¹ *Suchocki Accounting* has been appealed to the Federal Court of Appeal but it is yet to be heard.

- (iii) The complexity of the legal issues and whether it appears the representative will be able to handle them:

These are the second motions by the Appellants to be represented by a non-lawyer. In the first, Justice Graham ordered that fresh as amended notices of appeal that comply with the *Tax Court of Canada Rules (General Procedure)* be filed as the notices of appeal had little in the way of details.

- (iv) Whether the action can proceed in an expeditious manner without a lawyer representing the corporation:

The Appellants have already been ordered to file fresh as amended notices of appeal and have been unsuccessful in their previous motions. Their presidents and directors have sworn affidavits in English in support of these motions that they are not fluent in the English language and require an interpreter throughout. The motion materials on the second motions are thus deficient. A consideration of factors (iii) and (iv) convince me that these corporations should be represented by a lawyer in these appeals.

- (v) Importantly, a non-lawyer being authorized to represent a corporation should only be done in very exceptional circumstances:

In these cases, the Appellants have not provided sufficient explanation to convince me that special or exceptional circumstances exist in their particular cases.

[7] The motions are dismissed with costs.

Signed at Ottawa, Canada, this 30th day of May 2018.

“Patrick Boyle”

Boyle J.

CITATION: 2018 TCC 98

COURT FILE NOS.: 2017-3199(IT)G, 2018-977(GST)G
2017-3204(IT)G, 2018-978(GST)G

STYLE OF CAUSE: MASA SUSHI JAPANESE
RESTAURANT INC.,
2075957 ONTARIO INC. (o/a KATSU
JAPANESE RESTAURANT),
v. THE QUEEN

REASONS FOR ORDER BY: The Honourable Justice Patrick Boyle

DATE OF ORDER: May 30, 2018

REPRESENTATIVES:

Agent for the Appellant Masa
Sushi Japanese Restaurant Inc.: Hai-Guang Liu

Agent for the Appellant
2075957 Ontario Inc. (o/a Katsu
Japanese Restaurant): Ka Leung Lo

Counsel for the Respondent: Christopher Kitchen

COUNSEL OF RECORD:

For the Appellants:

Firm:

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