

BETWEEN:

PETER V. ABRAMETZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Respondent's Motion determined by Written Representations.

Before: The Honourable Justice David E. Graham

Participants:

For the Appellant: The Appellant Himself
Counsel for the Respondent: Ainslie Schroeder

ORDER

Paragraphs 8, 9, 13(i), 13(iv), 14, 16 and 17 of the Notice of Appeal are hereby struck.

The Court makes the following determinations of law:

- (a) it is not necessary for the Minister of National Revenue to meet the pre-conditions set out in subsection 323(2) of the *Excise Tax Act* before issuing a court ordered reassessment under subsection 323(4);
- (b) subsection 323(4) causes paragraph 298(3)(a) of the *Excise Tax Act* to apply to prevent the two year statute-barred period in subsection 323(5) from applying to a court ordered reassessment issued under subsection 323(4); and
- (c) the Court does not have jurisdiction to consider whether the amount for which a director is liable under subsection 323(1) has been

reduced as a result of the underlying corporation's GST obligations being paid, in full or in part, by that director or any other person, directly or indirectly, by any means whatsoever at any time whatsoever.

The Court makes a determination of fact that the Minister reassessed Mr. Abrametz in accordance with the decision of the Federal Court of Appeal in *Abrametz v. The Queen*, 2009 FCA 70.

The Respondent's Motion that the Appeal be dismissed is denied.

Costs are awarded to the Respondent in respect of this Motion. The parties are encouraged to reach an agreement on the quantum. Failing such an agreement, the parties have 60 days from the date of this Order to make submissions on costs.

Signed at Toronto, Ontario, this 17th day of July 2014.

"David E. Graham"

Graham J.

Citation: 2014 TCC 227
Date: 20140717
Docket: 2012-1470(GST)G

BETWEEN:

PETER V. ABRAMETZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Graham J.

[1] Peter Abrametz was assessed under subsection 323(1) of the *Excise Tax Act* (the “*ETA*”) as the sole director of Mada Construction Company Ltd. in respect of Mada’s outstanding GST, interest and penalties (the “Original Assessment”). Mr. Abrametz appealed the Original Assessment to this Court. His sole ground of appeal was that the underlying amount of GST, interest and penalties allegedly owed by Mada had been incorrectly calculated by the Minister of National Revenue. Justice Sheridan dismissed Mr. Abrametz’s appeal¹. Mr. Abrametz appealed that dismissal to the Federal Court of Appeal. His appeal was allowed and the matter was referred back to the Minister for reassessment on the basis that six amounts totalling \$166,250 “were loan proceeds and inter-bank transfers, none of which should have been subject to GST”². Neither the Respondent nor Mr. Abrametz appealed the decision of the Federal Court of Appeal. The Minister reassessed Mr. Abrametz with the intention of giving effect to the decision of the Federal Court of Appeal (the “Resulting Reassessment”). Mr. Abrametz has now appealed the Resulting Reassessment to this Court.

[2] The Respondent seeks an order under Rule 53 of the *Tax Court of Canada Rules (General Procedure)* striking out paragraphs 8, 9, 13(i), 13(iv), 14, 16

¹ 2007 TCC 316.

² 2009 FCA 70 at paragraph 8.

and 17 of the Notice of Appeal on the basis that Mr. Abrametz is estopped from arguing that the underlying assessment against Mada was incorrect, that he was duly diligent or that the pre-conditions under subsection 323 of the *ETA* were not met at the time that the Original Assessment was issued. In the alternative, the Respondent seeks an order striking out those paragraphs on the basis that allowing Mr. Abrametz to make those arguments would amount to an abuse of process.

[3] The Respondent also seeks, pursuant to Rule 58(1)(a), rulings that³:

- (a) the Minister was not required to repeat any steps contained in section 323 when he issued the Resulting Reassessment;
- (b) the Resulting Reassessment made the changes ordered by the Federal Court of Appeal; and
- (c) the issues raised by Mr. Abrametz with respect to the payment of his tax debt or that of Mada are outside the jurisdiction of this Court.

[4] The Respondent also seeks leave to introduce evidence on the Rule 58 Motion.

[5] Finally, if I find in favour of the Respondent on the Rule 53 and 58 Motions, the Respondent seeks an order dismissing the Appeal on the grounds that there are no issues left to be tried.

[6] Due to the confusing nature of Mr. Abrametz's pleadings, it is somewhat difficult to decipher the exact basis upon which he has appealed the Resulting Reassessment. As a consequence, it is not possible to fully consider the issues that the Respondent seeks to have determined without first delving into the basis of Mr. Abrametz's appeal.

[7] Accordingly, I will first determine the basis of Mr. Abrametz's appeal, then determine whether the Respondent is entitled to introduce evidence on this Motion, then turn to the specific issues that the Respondent has raised in this Motion and

³ Rules 53 and 58 were amended effective February 26, 2014. Since the Respondent's Motion was brought prior to that date, I will apply the old rules.

finally, if applicable, consider whether Mr. Abrametz's appeal should be dismissed with costs.

What is the Basis of the Appeal?

[8] The exact basis upon which Mr. Abrametz is appealing is not entirely clear. The issues set out in the Notice of Appeal do not match the reasons that Mr. Abrametz intends to rely on in the Notice of Appeal. The description of his positions both in the Notice of Appeal and the Appellant's Written Representations are often vague and intertwine issues in such a way as to make it difficult to determine exactly what Mr. Abrametz is disputing. Therefore, for the purpose of this Motion, in determining the issues upon which Mr. Abrametz is appealing, I am going to give the widest possible reading to the Notice of Appeal and the Appellant's Written Representations. Based on that reading, I conclude that Mr. Abrametz is raising five distinct grounds for appeal.

Underlying Assessment Argument

[9] The first ground for appeal is that Mr. Abrametz submits that the underlying assessment of Mada's GST liability was incorrect⁴. There is no further detail provided in respect of this argument in either the Notice of Appeal or the Appellant's Written Representations. For the purposes of this Motion, I will assume that Mr. Abrametz wishes to challenge the entire basis upon which Mada's underlying GST was determined. I will refer to this argument as the "Underlying Assessment Argument".

Original Assessment Pre-Conditions Argument and Resulting Reassessment Pre-Conditions Argument

[10] The second ground for appeal relates to various pre-conditions set out in subsections 323(2), (5) and (6). It is clear that Mr. Abrametz is appealing on the basis that the Resulting Reassessment should be vacated because these pre-conditions were not met⁵. However, it is not entirely clear whether his position is that the pre-conditions were not met at the time that the Original Assessment

⁴ Notice of Appeal, paragraph 13(i).

⁵ Notice of Appeal, paragraphs 13(ii) and (iv), 15 and 17.

was issued or at the time that the Resulting Reassessment was issued or both. For the purposes of this Motion, I will assume that he is arguing that all of the pre-conditions were not met at either of those two times. I will refer to the argument that the pre-conditions were not met at the time that the Original Assessment was issued as the “Original Assessment Pre-Conditions Argument” and the argument that the pre-conditions were not met at the time that the Resulting Reassessment was issued as the “Resulting Reassessment Pre-Conditions Argument”.

Due Diligence Argument

[11] The third ground for appeal relates to subsection 323(3). Mr. Abrametz is appealing on the basis that he exercised due diligence as a director of Mada⁶. I will refer to this argument as the “Due Diligence Argument”.

Resulting Reassessment Argument

[12] The fourth ground for appeal relates to the adjustment made in the Resulting Reassessment. Mr. Abrametz submits that, in issuing the Resulting Reassessment, the Minister failed to reassess in accordance with the Judgment of the Federal Court of Appeal⁷. I will refer to this argument as the “Resulting Reassessment Argument”.

Payment Argument

[13] The fifth ground for appeal is described in paragraph 13(iii) of the Notice of Appeal as follows:

Were the sums in dispute, having been imputed to the income of Peter V. Abrametz, covered in taxes paid by Peter V. Abrametz, or contained within his personal assessment?

[14] It is unclear what the foregoing means. The issue is described further at paragraphs 11 and 18 of the Notice of Appeal as follows:

⁶ Notice of Appeal, paragraphs 13(iv)(ii) and 16.

⁷ Notice of Appeal, paragraph 4.

[11] The corporate assessment was charged against Peter V. Abrametz on his personal assessment.

...

[18] The Appellant intends to further submit that the tax liability of MADA Construction was discharged by a personal assessment of the same and transfer of the same against the personal income tax of Peter V. Abrametz, which personal income tax has been duly paid.

[15] These descriptions do nothing to clarify the issue. There is a heading in the Appellant's Written Representations which reads "THE TAX COURT'S JURISDICTION OVER COLLECTION MATTERS". The paragraphs that follow that heading have nothing whatsoever to do with either the Court's jurisdiction or Mr. Abrametz's personal income tax but rather deal with the pre-conditions in section 323⁸. There is another heading in the Appellant's Written Representations which reads "THE TAX COURT JURISDICTION OVER COLLECTION MATTERS". The paragraph that follows that heading simply states that⁹:

It is respectfully submitted that the Tax Court has a wide and broad jurisdiction and has the legal status to consider all aspects of the appeal, including the efficacy of the Minister's Certificate, the legality of the Writs of Fieri Facia, and all matters relating to collection of tax owing by the taxpayer.

[16] The issues described in the above paragraph relate primarily to the section 323 pre-conditions. The simple statement that the Court has "wide and broad jurisdiction and has the legal status to consider ... all matters relating to collection of tax" does nothing to clarify what Mr. Abrametz meant in paragraphs 11, 13(iii) and 18 of the Notice of Appeal.

[17] For the purposes of this Motion, in order to give as broad an interpretation as possible to this fifth ground of appeal, I will treat the fifth ground of appeal as being a challenge as to whether Mr. Abrametz's liability was reduced as a result of Mada's GST obligations being paid, in full or in part, by Mr. Abrametz or any other person, directly or indirectly, by any means whatsoever either before the Original Assessment was issued, after the Resulting Reassessment was issued or between those two times. I will refer to this argument as the "Payment Argument".

⁸ Appellant's Written Representations, paragraphs 30 to 41.

⁹ Appellant's Written Representations, paragraph 48.

Should the Respondent Be Granted Leave to Introduce Evidence?

[18] There is no restriction against either party leading evidence on a motion under Rule 53. Pursuant to Rule 58(2)(a), evidence may not be lead on a motion under Rule 58(1)(a) without consent of the opposing party or leave of the Court. Both parties seek leave to introduce evidence and both filed affidavit evidence to support their positions. The Respondent did not oppose Mr. Abrametz's introducing evidence by way of affidavit.

[19] In his written representations, Mr. Abrametz argued that I should not permit the Respondent to introduce evidence. Mr. Abrametz stated his position as follows at paragraph 17:

17. ... to allow the Applicant [*sic* should presumably read Respondent] to lead evidence at this stage would have the following effects:

- i) preclude the Applicant (Appellant) from effectively having an appeal;
- ii) effectively precluding the Appellant from excising [*sic*] his right to examine and cross-examine witnesses and documents prepared by the Respondent, Her Majesty the Queen.

18. It is respectfully submitted that the evidence that the Respondent attempts to lead into evidence is not complete, that the Respondent has selectively brought forward evidence to this Court, and that the principal evidence dealing with the primary issues dealt with on the issues of the Appeal, as we see them, have not been brought forward by Canada.

[20] I will deal with each of those points in turn:

- (a) Appellant Precluded From Having An Appeal: I am unable to see how my permitting the Respondent to introduce evidence could preclude Mr. Abrametz from having an appeal unless the evidence led by the Respondent were such that it resulted in my ruling that Mr. Abrametz's appeal should be dismissed. If that is the case, Mr. Abrametz is simply arguing that the Respondent should not be allowed to lead evidence because it might cause Mr. Abrametz to lose the Motion. That is not a convincing argument.

(b) Loss of Right to Cross-Examine: Mr. Abrametz raised this issue previously in a request to cross-examine the Respondent's affiant. I denied that request in my Order dated March 10, 2014. My basis for doing so remains unchanged. The affidavit filed by the Respondent does little more than attach the following documents as exhibits:

- excerpts from the Respondent's Questions on Written Examination for Discovery;
- excerpts from the Appellant's Answers on Written Examination for Discovery;
- excerpts from the Respondent's Supplementary Questions on Written Examination for Discovery;
- excerpts from the Appellant's Supplementary Answers on Written Examination for Discovery;
- a copy of Justice Sheridan's decision in Mr. Abrametz's appeal; and
- a copy of the Federal Court of Appeal decision in Mr. Abrametz's appeal.

I can see nothing in the above materials that would require cross-examination. If Mr. Abrametz felt that the excerpts from the Written Examinations for Discovery did not fairly reflect the questions posed by the Respondent or his responses he could easily have included additional excerpts in his affidavit. The fact that he did not do so and that he did not even introduce any evidence in his affidavit that would in any way counter these excerpts leaves me to conclude that his claim to need an opportunity to cross-examine the Respondent's affiant is hollow.

(c) Incomplete or Selective Evidence: Mr. Abrametz makes nothing more than bald assertions that the evidence brought forward by the Respondent is incomplete or selective. He does not specify what evidence is missing. As stated above, Mr. Abrametz could easily have included additional excerpts from the Written Examinations for

Discovery in his affidavit if he felt it was necessary. Mr. Abrametz's concern that the Respondent did not submit evidence dealing with the primary issues is similarly flawed. What Mr. Abrametz is really saying is that he thinks the Appeal should be determined based on the issues that he has identified and that he wants the Respondent to focus its evidence on those issues rather than on attacking the issues themselves. If the Respondent's Motion fails, Mr. Abrametz will have a full opportunity at trial to bring forth the evidence that he needs to address the issues that he has identified.

[21] In addition to the foregoing, I note that Mr. Abrametz previously agreed that evidence could be introduced on the Motion. On November 4, 2013, the parties wrote to the Court to provide an update on the status of the Appeal. Mr. Abrametz signed that letter. The second paragraph of that letter states:

The parties agree, however, that such a motion could be handled efficaciously by way of a motion in writing in accordance with General Procedure Rule 69, and therefore request (in reliance on Rule 12) that the Court permit us to proceed with such a motion on the following schedule: that the respondent file its motion (including any supporting evidence and representations) on or by January 30, 2014 and the appellant file its [*sic*] response (including any supporting evidence and representations) on or by March 14, 2014.

[emphasis added]

[22] Based on all of the foregoing, leave to introduce affidavit evidence in the form already filed is granted to both parties.

Does Issue Estoppel Prevent Mr. Abrametz From Making Various Arguments?

[23] The Respondent submits that Mr. Abrametz should be estopped from making the Underlying Assessment Argument, the Original Assessment Pre-Conditions Argument and the Due Diligence Argument and accordingly seeks to strike various portions of the Notice of Appeal.

[24] Three conditions must be met for issue estoppel to apply¹⁰:

- (a) the issue must be the same one that has been decided in the previous decision;
- (b) the previous decision must have been final; and
- (c) the parties to the both proceedings must be the same or be their privies.

[25] The decision of the Federal Court of Appeal in Mr. Abrametz's appeal was a final decision. The parties to that appeal are identical to the parties in the current appeal. Therefore, the only question that remains is whether the issues on the current appeal are the same as the ones that were decided in the previous appeal.

[26] The global issue in the two appeals is identical. Mr. Abrametz was and is disputing a director's liability assessment in respect of Mada's GST obligations for a specific set of reporting periods. The only thing that has changed on a global basis is that the Resulting Reassessment is slightly smaller than the Original Assessment as a result of the decision of the Federal Court of Appeal. There is no question that the specific issues in the current appeal are not the same as those in the original appeal¹¹. However, the Federal Court of Appeal has held that the fact that a judgment does not "extend to all of the issues that ... could have been raised

¹⁰ *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at paragraph 25.

¹¹ The sole issue in Mr. Abrametz's original appeal was whether the underlying assessment was correct in respect of the six bank deposits totalling \$166,250. Mr. Abrametz did not raise the Original Assessment Pre-Conditions Argument or the Due Diligence Argument at trial nor did he argue any aspect of the Underlying Assessment Argument other than the six deposits.

in the earlier proceedings in connection with the appellant's cause of action" does not mean that issue estoppel cannot apply¹². Similarly, in a case very comparable to Mr. Abrametz's, Justice Woods held that issue estoppel applied to a GST directors liability appeal where the director could have raised the relevant issues in the original appeal¹³. Based on the foregoing, I conclude that the three conditions for issue estoppel have been met.

[27] The Court has limited discretion to ignore issue estoppel in situations where it would result in an injustice. This is not one of those cases. Mr. Abrametz has not provided any explanation why an injustice would result. I am not aware of anything that would have prevented Mr. Abrametz from raising the Original Assessment Pre-Conditions Argument, the Due Diligence Argument or the balance of the Underlying Assessment Argument at trial. In fact, the trial transcript indicates that, at the opening of the trial, Mr. Abrametz abandoned other issues raised by him in his Notice of Appeal¹⁴. Furthermore, Mr. Abrametz was represented by counsel in his original trial. He is also a lawyer himself and is thus presumably familiar with the concept of issue estoppel and the corresponding need to address all relevant issues at trial.

[28] Based on all of the foregoing, the Respondent's Motion to strike the specified portions of the Notice of Appeal is granted.

Abuse of Process

[29] In light of my conclusions regarding issue estoppel it is unnecessary for me to address the Respondent's alternative argument regarding abuse of process.

¹² *Goodfellow v. The Queen*, 2010 FCA 23 at paragraph 5.

¹³ *Lee v. The Queen*, 2012 TCC 335.

¹⁴ Tax Court of Canada transcript from Mr. Abrametz's trial before Justice Sheridan, page 3. There is no evidence before me as to what issues were raised in the original Notice of Appeal but paragraph 3 of Justice Sheridan's decision indicates that they may have involved the Due Diligence Argument.

Question of Law – Result Reassessment Pre-Conditions Argument

[30] The Respondent would like me to make a determination under Rule 58(1)(a) of the question of law of whether it is necessary for the Minister to meet various pre-conditions set out in sections 323 before issuing a reassessment pursuant to an Order of the Federal Court of Appeal. In my view, this is an appropriate question of law for me to consider under Rule 58(1)(a). If I were to answer the question in the manner that the Respondent wishes me to, it would mean that Mr. Abrametz had no hope of succeeding on the Resulting Reassessment Pre-Conditions Argument. Eliminating that argument would have the effect of substantially shortening the proceedings and thus saving both parties substantial costs.

[31] In the Resulting Reassessment Pre-Conditions Argument Mr. Abrametz focuses on subsections 323(2), (5) and (6). I will deal the Respondent's question of law as it relates to each of these subsections in turn.

Subsection 323(2)

[32] Subsection 323(2) states that a director is not liable under subsection 323(1) unless one of three pre-conditions have been met. In simple terms, those pre-conditions relate to evidence of the inability of the underlying corporation to pay its GST obligations. It appears that Mr. Abrametz intends to argue that the Resulting Reassessment should be vacated because one of the three pre-conditions was not met before it was issued.

[33] If the Minister believes that one of the pre-conditions in subsection 323(2) has been met and that a director is liable under subsection 323(1), the Minister may issue an assessment under subsection 323(4). If a director appeals a director's liability assessment and the Court orders the Minister to reassess the director to reduce his or her liability, the Minister does not, once again, have to satisfy one of the pre-conditions in subsection 323(2) before issuing the reassessment. The pre-conditions in subsection 323(2) are pre-conditions to liability, not pre-conditions to assessment. The Federal Court of Appeal did not, as Mr. Abrametz contends, vacate the Original Assessment leaving the Minister back at square one with no determination of liability but rather the Court itself determined the director's liability and ordered the Minister to reassess on that basis.

[34] Based on the foregoing, I make a determination of law that it is not necessary for the Minister to meet one of the three pre-conditions set out in subsection 323(2) prior to issuing a court ordered reassessment under subsection 323(4).

Subsection 323(5)

[35] Unlike subsection 323(2) which limits the circumstances in which a director can be found liable, subsection 323(5) limits the circumstances in which a director can be assessed. Under subsection 323(5), a director who would otherwise be liable cannot be assessed more than two years after he or she last ceased to be a director of the underlying corporation. It appears that Mr. Abrametz intends to argue that he cannot be reassessed because he ceased to be a director more than 2 years before the Resulting Reassessment was issued.

[36] Subsection 123(1) of the *ETA* states that an assessment includes a reassessment. Therefore, at first glance, subsection 323(5) would appear to prevent the Minister from issuing a reassessment of any amount under section 323 to a director who had last ceased to be a director more than 2 years ago. However, this conclusion is not supported by a closer reading of the relevant provisions. Subsection 323(5) creates a statute-barred period for assessments under subsection 323(1). The equivalent statute-barred periods for general assessments under section 296 of the *ETA* is found in subsection 298(1). Paragraph 298(3)(a) states that the statute-barred periods set out in subsection 298(1) do not apply to reassessments made to give effect to decisions on appeals. Subsection 323(4) states that, the provisions of section 298 apply, with such modifications as the circumstances require, to assessments under subsection 323(4). Therefore paragraph 298(3)(a) prevents the 2 year limitation period in subsection 323(5) from applying to a reassessment issued under subsection 323(4) pursuant to a court order. Any interpretation of subsection 323(5) other than the foregoing would render the appeal process moot for any director who had ceased to be a director more than 2 years before the Tax Court of Canada issued judgment in his or her appeal as the Minister would be statute-barred from reassessing the director to give effect to a court order resulting from a successful appeal. Parliament simply cannot have intended such an absurd result.

[37] Based on the foregoing, I make a determination of law that subsection 323(4) causes paragraph 298(3)(a) to apply to prevent the 2 year

statute-barred period in subsection 323(5) from applying to a court ordered reassessment issued under subsection 323(4).

Subsection 323(6)

[38] Subsection 323(6) puts a cap on the amount of a corporation's liability that the Minister can collect from a director. The cap is the amount set out in the certificate that the Minister may register to meet the pre-condition in paragraph 323(2)(a). It is unclear whether Mr. Abrametz intends to argue that subsection 323(6) has been breached because the Minister did not obtain a new certificate prior to issuing the Resulting Reassessment or because the Minister is attempting to collect an amount greater than the amount set out in the certificate that was obtained prior to issuing the Original Assessment. If it is the former argument, then it will fail for the reasons described in respect of subsection 323(2) above. If it is the latter argument, then it will fail for the reasons described below regarding the Payment Argument. In either case, there is no need for me to issue a specific determination of law with respect to subsection 323(6).

Question of Law – Payment Argument

[39] The Respondent would like me to make a determination under Rule 58(1)(a) of the question of law of whether the Court has jurisdiction to hear the Payment Argument. In my view, this is an appropriate question of law for me to consider under Rule 58(1)(a). If I were to answer the question in the manner that the Respondent wishes me to, it would have the effect of substantially shortening the proceedings and thus saving both parties substantial costs.

[40] To recap, the Payment Argument relates to whether the Court has jurisdiction to consider whether the amount for which a director is liable under subsection 323(1) has been reduced as a result of the underlying corporation's GST obligations being paid, in full or in part, by that director or any other person, directly or indirectly, by any means whatsoever at any time whatsoever. This argument relates to the collection of tax rather than the determination of tax. The jurisdiction to consider collection matters rests with the Federal Court, not this Court.

[41] Based on the foregoing, I make a determination of law that the Court does not have jurisdiction to consider whether the amount for which a director is liable

under subsection 323(1) has been reduced as a result of the underlying corporation's GST obligations being paid, in full or in part, by that director or any other person, directly or indirectly, by any means whatsoever at any time whatsoever.

Question of Fact – Resulting Reassessment Argument

[42] The Respondent would like me to make a determination under Rule 58(1)(a) of the question of fact of whether the Resulting Reassessment made the changes ordered by the Federal Court of Appeal. In my view, this is an appropriate question of fact for me to consider under Rule 58(1)(a). If I were to answer the question in the manner that the Respondent wishes me to, it would mean that Mr. Abrametz had no hope of succeeding on the Resulting Reassessment Argument. Given my conclusion above, the Resulting Reassessment Argument is the only argument remaining for Mr. Abrametz to make. Eliminating that argument would have the effect of entirely eliminating the balance of the proceedings and thus saving both parties substantial costs.

[43] Mr. Abrametz contends in his Notice of Appeal that the Resulting Reassessment failed to reduce the amount of net tax assessed against him by the appropriate amount. The Federal Court of Appeal ordered the Minister to reassess on the basis that \$166,250 worth of deposits made to Mada's bank account were loan proceeds and bank transfers and thus not subject to GST. Mr. Abrametz believes that this should have resulted in a reduction in the net tax assessed against him equal to \$11,637.50. He calculates this figure by multiplying \$166,250 by 7% GST.

[44] Mr. Abrametz agrees that the Resulting Reassessment adjusted the net tax assessed against him by \$10,876.17¹⁵. The Respondent submits that this figure was calculated by multiplying the \$166,250 by 7/107. This method of calculation is one that would be used to determine the amount of GST that was included in an amount if the amount were presumed to be a GST included total. Mr. Abrametz's

¹⁵ Answers on written examination for discovery, paragraph 1(e).

own accountant testified at trial that this was the method used by the auditor to determine the GST¹⁶.

[45] At paragraph 1(u) of the Answers, Mr. Abrametz agrees that in assessing Mada, the Minister assumed that each deposit made to Mada's bank account "was comprised of consideration for taxable supplies made by [Mada] and 7% GST on that consideration". It follows that if Mr. Abrametz agrees that the underlying assessment was calculated in this manner then the method that should be used to reverse the GST on the \$166,250 worth of deposits made to Mada's bank account was the method actually used by the Minister, not the method proposed by Mr. Abrametz.

[46] Based on the foregoing, I make a determination of fact that the Minister reassessed Mr. Abrametz in accordance with the decision of the Federal Court of Appeal.

Should the Appeal Be Dismissed?

[47] The only arguments that have not been struck from the Notice of Appeal as a result of the estoppel issue are the Resulting Reassessment Argument, the Resulting Reassessment Pre-Conditions Argument and the Payment Argument. The foregoing determination of fact has made it clear that Mr. Abrametz has no hope of succeeding on the Resulting Reassessment Argument and the foregoing determinations of law have made it clear that he has no hope of succeeding on the Resulting Reassessment Pre-Conditions Argument and the Payment Argument.

[48] As a result, the Respondent would like me to dismiss the Appeal. The Motion does not state the Rule pursuant to which the Respondent wants me to do so. Presumably the Respondent is relying on Rule 58(1)(b) as it read at the time the Motion was brought. That Rule allows me to dismiss an appeal if it discloses no reasonable grounds for appeal. However, Rule 58(2)(b) states that no evidence may be lead on a motion under Rule 58(1)(b). The Respondent led evidence in support of its motion for a determination of a question of fact. It would be a perversion of the Rules if, having made a determination of fact that favours the Respondent using evidence put forward by the Respondent, I now concluded that I could,

¹⁶ Tax Court of Canada transcript from Mr. Abrametz's trial before Justice Sheridan, at page 19, lines 7-9.

relying on my determination of fact (as opposed to the evidence that lead to it) find that Mr. Abrametz had no reasonable grounds for appeal and dismissed his appeal. Accordingly, the Respondent's Motion to have the Appeal dismissed is denied.

[49] Despite the foregoing, I caution Mr. Abrametz in the strongest terms possible that, if, in the face of my conclusion that he has no chance of succeeding at trial, he nonetheless chooses to take this matter to trial, I anticipate that the Judge that hears the trial will give significant weight to that poor choice when awarding costs.

Summary

[50] In summary:

- (a) paragraphs 8, 9, 13(i), 13(iv), 14, 16 and 17 of the Notice of Appeal are hereby struck;
- (b) the Court makes a determination of law that it is not necessary for the Minister to meet the pre-conditions set out in subsection 323(2) of the *ETA* prior to issuing a court ordered reassessment under subsection 323(4);
- (c) the Court makes a determination of law that subsection 323(4) causes paragraph 298(3)(a) of the *ETA* to apply to prevent the two year statute-barred period in subsection 323(5) from applying to a court ordered reassessment issued under subsection 323(4);
- (d) the Court makes a determination of law that the Court does not have jurisdiction to consider whether the amount for which a director is liable under subsection 323(1) has been reduced as a result of the underlying corporation's GST obligations being paid, in full or in part, by that director or any other person, directly or indirectly, by any means whatsoever at any time whatsoever;
- (e) the Court makes a determination of fact that the Minister reassessed Mr. Abrametz in accordance with the decision of the Federal Court of Appeal; and
- (f) the Respondent's Motion that the Appeal be dismissed is denied.

Costs

[51] Costs are awarded to the Respondent in respect of this Motion. I encourage the parties to reach an agreement on the quantum. Failing such an agreement, the parties have 60 days from the date of this Order to make submissions on costs.

[52] In endeavouring to reach an agreement, Mr. Abrametz may wish to bear in mind the fact that I consider this Motion to have been made unnecessarily complex by the confusing nature of the Notice of Appeal, his baseless objection to the Respondent introducing non-controversial evidence by way of affidavit and his obstinate refusal to acknowledge that the Resulting Reassessment was issued in accordance with the decision of the Federal Court of Appeal. Unless Mr. Abrametz is able to convince me that I am wrong, any decision that I am required to issue in respect of costs will reflect those views.

Signed at Toronto, Ontario, this 17th day of July 2014.

“David E. Graham”

Graham J.

CITATION: 2014 TCC 227

COURT FILE NO.: 2012-1470(GST)G

STYLE OF CAUSE: PETER V. ABRAMETZ AND THE QUEEN

DATE OF HEARING: Motion determined by Written Submissions

REASONS FOR ORDER BY: The Honourable Justice David E. Graham

DATE OF ORDER: July 17, 2014

PARTICIPANTS:

For the Appellant: The Appellant Himself
Counsel for the Respondent: Ainslie Schroeder

COUNSEL OF RECORD:

For the Appellant:

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