Federal Court  Cour fédérale

Date: 20150728

Docket: T-2214-14

Citation: 2015 FC 926

Ottawa, Ontario, July 28, 2015

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

DAN MASON

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review brought by the Applicant, Dan Mason. As will be set out below, the Applicant does not identify in his Notice of Application what decision he seeks to have reviewed. However, in his written representations, and when appearing before me, he asserted that the decision in question is whether or not the Canada Revenue Agency ("CRA") reasonably and properly issued third party demands to his clients.

[2] For the reasons set out below, the application for judicial review is dismissed.

Background

[3] The Applicant is an accountant.

[4] The Minister of National Revenue ("Minister") asserts that the Applicant did not file goods and services tax ("GST") returns for the tax years 2003 to 2011 as required by s 238 of the *Excise Tax Act*, RSC, 1985 c E-15 ("*Excise Tax Act*").

[5] Notices of assessment ("Assessments") were issued to the Applicant for the reporting period of January 1, 2003 to December 31, 2011, pursuant to s 299 of the *Excise Tax Act*.

[6] On October 5, 2011, the Applicant filed a Notice of Appeal in the Tax Court of Canada in respect of the Assessments for the reporting period of January 1, 2003 to December 31, 2007, alleging, amongst other things, that the GST assessments were wrongly attributed to him. On October 3, 2014, Justice Miller of the Tax Court of Canada issued his decision in respect of the appeal, followed by an amended judgment on November 6, 2014, reducing the Applicant's debt (Docket: 2011-3228(IT)G, *Mason v R,* 2014 TCC 297). On October 28, 2014, the Applicant filed a Notice of Appeal of Justice Miller's decision with the Federal Court of Appeal (Court File No. A-480-14).

[7] On November 19, 2014, the Minister issued Notices of Reassessment for the Applicant for the January 1, 2003 to December 31, 2007 reporting period, reducing the amount of tax owed in accordance with the decision of the Tax Court of Canada.

[8] Meanwhile, as the Applicant's appeal to the Tax Court proceeded, on March 25, 2014 and August 5, 2014, pursuant to ss 317(1), (2), (3) and (6) of the *Excise Tax Act*, the Minister issued requirements to pay ("Requirements to Pay") for the January 1, 2003 to December 31, 2011 reporting period to persons that the Minister knew or suspected were, or would become, liable to make a payment to the Applicant. The Requirements to Pay referred to "DAN MASON (sometimes carrying on business as Mason and Associates Certified General Accountant)". The Applicant asserts that Mason and Associates is a trade name for 401422 Alberta Ltd.

[9] On March 28, 2014, the Applicant wrote to the Tax Court of Canada advising that he had received three calls from clients who had received Requirements to Pay and his alleged GST debt of $119,080.29. The Applicant requested that the Tax Court of Canada issue an order quashing the Minister's collection action. According to the Applicant, the Tax Court was unable to hear the request because it did not fall under its jurisdiction. However, no response from the Tax Court was filed in support of that claim.

[10] On September 2, 2014, the Applicant wrote to the Minister requesting that the collection proceedings be stayed as the matter was then before the Tax Court of Canada and would likely be before the Federal Court of Appeal. He stated: "No amounts before the court resemble anything close to the amount stated in the Third Party demand. The demands are based solely on arbitrary notional assessments. Further, no subsequent years can be dealt with until the Court rules on the years at bar". The Applicant followed up on his request for a stay on October 6, 2014, noting that he had not yet received a response.

[11] On October 28, 2014, having not received a response from the Minister, the Applicant brought this application for judicial review and, as noted above, on the same day he filed an appeal of the Tax Court of Canada's decision with the Federal Court of Appeal. In his application for judicial review, the Applicant sought an injunction requiring the Minister to cease collection activity until the matters before the Federal Court of Appeal are finalized, as well as an injunction requiring the Minister to withdraw all third party demands and to notify all parties that had received the demands of the withdrawal. On that date, the Applicant also brought a motion in this Court for the same injunctions that he seeks in this application. The Minister then brought a cross-motion for an order to strike the Applicant's application for judicial review. The Minister argued that the Applicant's application for judicial review was premature, because the Minister had not yet issued a decision with respect to the Applicant's request for a stay and, therefore, there was no decision to review.

[12] As will be discussed in greater detail below, Justice Gleason dismissed both the motion and the cross-motion by Order dated November 12, 2014. Regarding the Minister's cross-motion, Justice Gleason explained that it was not plain and obvious that an application for judicial review may not be brought in respect of decisions to issue Requirements to Pay, as there may well have been reviewable decisions made by the Minister in this matter. As to the Applicant's motion, Justice Gleason found that the Applicant had not established any of the three pre-requisites of the test for injunctive relief outlined in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311. The application did not raise a serious issue as it was clear that under the *Excise Tax Act* the Minister was entitled to enforce GST assessments while appeals were pending. The Applicant had also not established that he would suffer irreparable harm

through clear non-speculative evidence and, finally, the balance of convenience favoured the Minister, given that the Tax Court of Canada had found that the Applicant owed GST and failed to remit it.

[13] By letter of January 12, 2015, the Minister advised the Applicant there are no collection restrictions on GST accounts, even if a registrant has filed an objection or an appeal. Therefore, collection action would continue on his account. The Minister stated that she was also satisfied that the actions taken by CRA officials were in line with the CRA's collections policies.

[14] In his written submissions, the Applicant submits that as an accountant whose clients use his services once a year, there are no accounts receivables due to him. Further, that the Requirements to Pay will cause his clients to stop using his services and that this loss of clientele will bring about irreversible harm and damage to his ability to earn an income and pay amounts owing. This was also the point that he emphasized when appearing before me. However, as the Minister submits, this information was not contained in the Applicant's affidavit.

Issues

[15] The Applicant presents the issues as follows:

1. Whether or not the CRA reasonably and properly issued third party demands to his clients;

2. Whether or not an injunction should be allowed requiring the CRA to remove the third party demands; and,

3. An injunction requiring the Minister to cease collection activity against the Applicant until the matter before the Federal Court of Appeal is finalized.

[16] In my view, these can be restated as:

1. Should this Court grant an injunction staying the Minister's collection actions in relation to the GST amounts assessed against the Applicant until such time as his appeal of the Tax Court of Canada's decision to the Federal Court of Appeal has been disposed of?

2. Should this Court quash the Requirements to Pay issued to third parties in respect of the GST amounts assessed against the Applicant?

Preliminary Matter – Request for Adjournment

[17] When the Applicant appeared before me on the hearing date, he requested that this matter be adjourned. He had not previously made a motion to that effect or written to the Court to make the request. When asked the basis for the adjournment request, he advised that there was new evidence that supported his claim that the Minister wrongfully issued the Requirements to Pay. When asked as to the nature of this evidence, the Applicant produced an email to him from a Mr. Aidan O'Callaghan dated June 12, 2015, which concerns a complaint made by the Applicant under the *Privacy Act*, RSC, 1985, c P-21 ("*Privacy Act*"). The email states that the Applicant's original complaint was that the CRA did not have the authority to collect a business number from him, and, to use that business number to match the Applicant's clients to him. The email states that the first matter had been addressed and that a final report would articulate the position reached. As to the second aspect of the complaint, the email states that as the Applicant does not have a business number, it was difficult to understand how it could be used as alleged. Further,

that it would be difficult to proceed unless the Applicant could provide evidence to show how the CRA was using business numbers to match clients to the representative accounting firm.

[18] The Minister opposed the request for an adjournment as it had not been brought in a timely manner, there was no actual evidence concerning the issues before the Court and the email did not suggest that relevant evidence would follow.

[19] Rule 36 of the *Federal Courts Rules*, SOR/98-106 ("*Federal Courts Rules*") permits the Court to adjourn a hearing on such terms as it deems just. However, requests for adjournment must be made by way of motion with an affidavit detailing the reasons for the request. Adjournments will only be granted in exceptional circumstances (*Parrish & Heimbecker Ltd v Mapleglen (Ship)*, 2004 FC 1197; Canadian *Council of Professional Engineers v Memorial University of Newfoundland*, [1999] FCJ No 1197 (FCTD)). In this case, the email upon which the Applicant relies was received one month ago. If the Applicant believed that it suggested that further relevant evidence would be forthcoming, he could have brought a motion or written to the Court seeking an adjournment. Further, it is unknown when the Applicant made the *Privacy Act* complaint but certainly it was more than one month ago. Accordingly, his adjournment request was not timely nor was the response to the complaint unforeseen. Further, upon review of the email, I was not convinced that it was sufficient to establish that future relevant evidence concerning the reasonableness of the Minister's decision to issue the Requirements to Pay would follow and, therefore, that the Applicant would be prejudiced by the hearing proceeding. On the other hand, the Court and the Minister's counsel were in attendance at the hearing and prepared to proceed. For these reasons the adjournment request was denied.

Issue 1: Should this Court grant an injunction staying the Minister's collection actions in relation to the GST amounts assessed against the Applicant until such time as his appeal of the Tax Court of Canada's decision to the Federal Court of Appeal has been disposed of?

[20] As noted above, the Applicant has previously sought an interim injunction in this matter. His Notice of Motion in that regard and his Notice of Application in this application seek identical relief, specifically:

> 1. An injunction requiring the Minister of National Revenue to cease collection activity against the Applicant until the matters before the Federal Court of Appeal is finalized.
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> 2. An injunction requiring the Minister of National Revenue to withdraw all third party demands (Requirements to Pay) and notify all parties that have received the demands of the withdrawal.

[21] Significantly, the Applicant filed one affidavit, dated October 21, 2014, in support of the motion which is also relied upon in support of this application for judicial review. A second affidavit, dated March 3, 2014 provides a copy of the Minister's decision of January 12, 2015 denying the Applicant's request for a stay of collection actions, but does not speak to the grounds supporting the application. This is significant because Justice Gleason refused the interim injunction request contained in the motion by her Order of November 12, 2014 and the Applicant has subsequently put forward no new evidence in this application, other than the letter from the Minister.

[22] In fact, the only thing that has changed is that on January 12, 2015, the Minister advised the Applicant that his request for a discretionary stay of collection actions pending the outcome of his appeal would not be granted. However, the Applicant has not challenged that decision.

[23] Justice Gleason stated in her Order:

> I am not convinced that the Respondent has established the presence of such a flaw in the Applicant's judicial review application as it is not plain and obvious that a judicial review application may not be brought in respect of decisions to issue Requirements to Pay. In *Re Canadian Aggregate Co.*, 2001 FCT 1074, 108 ACWS (3d) 987, my colleague, Justice O'Keefe, indicated that such decisions may be subject to judicial review. It is therefore not plain and obvious that the Applicant cannot bring this judicial review application as, contrary to what the Respondent argues, there may well have been reviewable decisions made by the Minister of National Revenue in this matter. The Respondent's cross-motion will therefore be dismissed.
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> While this Court does possess jurisdiction to issue an injunction in the context of a judicial review application, in order to do so the Court must be satisfied that the party seeking injunctive relief has met the tri-partite test from *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, 46 ACWS (3d) 40. This requires that the applicant establish that there is a serious issue in the pending application for judicial review, that the applicant would suffer irreparable harm if the injunction is not granted and that the balance of convenience favours granting the injunction. Here, the Applicant has not established any of the foregoing three pre-requisites for the grant of injunctive relief.
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> The Applicant's application for judicial review does not raise a serious issue as it is clear that the Minister of National Revenue is entitled under sub-section 315(2) of the *Excise Tax Act*, R.S.C., 1985, c. E-15, to enforce GST assessments while appeals are pending as was confirmed in *Hoffman v Attorney General of Canada*, 2009 FC 832, 180 ACWS (3d) 176 at paragraph 28 and *Leroux v Canada Revenue Agency*, 2014 BCSC 720, 242 ACWS (3d) 987 at paragraph 376. In his Notice of Application, the Applicant offers no challenge to the Minister's collection activities other than stating that he has an appeal from the decision of the Tax Court pending before the Federal Court of Appeal. As the Minister is authorized to pursue collection activities irrespective of the appeal, the Applicant's application for judicial review does not raise a serious issue.
>
> Nor has the Applicant established that he would suffer irreparable harm if the motion for an injunction is refused. As the Respondent rightly notes, an applicant for injunctive relief is required to establish the presence of irreparable harm through clear, non-speculative evidence that shows that if the injunction is not granted

> the applicant would suffer such harm between the date of the injunction application and the date the Federal Court decides the judicial review application on the merits (see e.g. *Patry v Attorney General of Canada*, 2011 FC 1032, 207 ACWS (3d) 593 at paragraphs 52 and 53). The Applicant alleges that the service of the Requirements to Pay has and will cost him clients, but there is no proof of this in his affidavit beyond a bald assertion. This falls well short of the type of proof required to establish irreparable harm. Moreover, as the Respondent also notes, if the service of the Requirements damaged the Applicant's reputation, that harm has already been done and cannot be undone through the requested injunction.
>
> Finally, in the circumstances, the balance of convenience favours the Respondent as the Tax Court found that the Applicant owed GST, failed to remit it, advanced unmeritorious positions and lacked credibility.
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> The Applicant's motion must therefore be dismissed.
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> As success in respect of these matters was divided, there is no order as to costs;

[24] As no new relevant evidence has been filed in support of the requested injunction, there is no basis on which to depart from this prior finding, with which I agree and adopt.

Issue 2: Should this Court quash the Requirements to Pay issued to third parties in respect of the GST amounts assessed against the Applicant?

Applicant's Position

[25] In his written submissions the Applicant states that GST amounts must be correctly applied to the correct taxpayer, and that the intent of the tax legislation is not to bankrupt taxpayers or extract from them anything more than what is fair and equitable. He disputes the amount that he allegedly owes, arguing that it was arbitrarily derived and a grave exaggeration of

a fabricated unproven debt, and he claims that the demands made by the CRA are damaging to him.

[26] With respect to the Requirements to Pay that were issued to his clients, the Applicant submits that the CRA did not have regard to whether the deposits to the clients' corporate accounts were revenues and or expenses being deducted from the revenues, as was noted by the Tax Court of Canada. The Applicant claims that it is not the intention of the legislation with respect to trust funds to arbitrarily create amounts that are unrealistic and then pursue collection unless there are reasonable and probable grounds that the amounts will become real. Further, the alleged debt owed is a corporate debt rather than a person debt. Based on this, he asserts that the grounds assumed by the Minister for issuance of Requirements to Pay "are faulty and unreal".

[27] When appearing before me, the Applicant emphasized his belief that the Assessments are wrong and that the *Excise Tax Act* was never intended to allow collection actions in circumstances such as these where the possibility of success on appeal is high and where an average person wants to simply continue doing business while the matter is being resolved without being forced into bankruptcy. He submitted that the cases relied upon by the Minister are distinguishable on their facts. He further submitted that the amount on the face of the Requirements to Pay is wrong as the Tax Court decision reduced his indebtedness and, therefore, the issuance of the demands was unreasonable.

Minister's Position

[28] The Minister submits that, to the extent that the Applicant is challenging the Minister's decision to issue the Requirements to Pay, reasonableness is the applicable standard of review and the decision was reasonable (*Dingman v Canada (National Revenue)*, 2009 FC 395 at paras 24-26; *Coombs v Canada (National Revenue)*, 2012 FC 1499, at para 14 ("*Coombs*"); *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[29] The Minister takes the position that the Applicant's challenge to the Requirements to Pay is essentially a challenge to the validity of the underlying GST assessment and that a judicial review application is not the proper venue to address this. The Tax Court of Canada has exclusive jurisdiction to consider appeals of the correctness of assessments made under the *Excise Tax Act* (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at paras 80-82 ("*JP Morgan*"); *Johnson v Canada (National Revenue)*, 2015 FCA 51 at paras 21-24 ("*Johnson*"); *Federal Courts Act*, RCS 1985, c F-7, s 18.5 ("*Federal Courts Act*"); *Tax Court of Canada Act*, RSC 1985, c T-2, s 12(1) ("*Tax Court of Canada Act*"); *Excise Tax Act*, ss 301, 302 and 306) and the Applicant has properly sought recourse in the Tax Court of Canada, and on appeal to the Federal Court of Appeal, in respect of some of the GST reporting periods at issue.

[30] The Minister submits that the Applicant's written and oral submissions make it clear that his challenge to the Requirements to Pay is, in reality, an argument that he has been assessed an incorrect amount of GST owing. His argument essentially being that the Requirements to Pay

are invalid because the amounts assessed are incorrect. The Minister asserts that this Court has no jurisdiction to consider that argument and the Applicant's challenge to the correctness of the GST assessments is a collateral attack on Justice Miller's Tax Court of Canada decision. As to the amount on the face of the Requirements to Pay, $121,236.35 on the latter group, this reflects the amount due and owing pursuant the Assessments. Subsequent to the Tax Court's decision, a reassessment was issued reducing the amount owed by $45,219.64. However, the Requirements to Pay were issued prior to the reassessment and there is no obligation on the Minster to amend the demands upon reassessment or whenever a payment is received from a party to whom a demand is made. The face value does not affect the validity of the Requirements to Pay and the Minister can only collect what is actually owing.

[31] Further, the Minister points out that the only other ground on which the decision to issue the Requirements to Pay is challenged by the Applicant is that they lead to irreversible harm or damage to him, by denying him the chance of earning an income. However, even if it were a valid basis to set aside the decision, which the Minister denies, no evidence has been advanced to support this.

Analysis

[32] Section 18.5 of the *Federal Courts Act* states that if an act provides for an appeal of a decision to a court, that decision is not subject to review except in accordance with that act.

[33] The Tax Court of Canada has exclusive original jurisdiction to hear and determine references and appeals on matters arising under Part IX of the *Excise Tax Act* and the *Income Tax Act* (*Tax Court of Canada Act*, s 12(1)) and s 306 of the *Excise Tax Act* states that a person may appeal a Minister's assessment or reassessment to the Tax Court of Canada. In fact, ss 301, 302 and 306 of that Act have been held to constitute a complete appeal procedure that allows taxpayers to raise in the Tax Court all issues relating to the correctness of assessments (*Johnson* at para 23).

[34] That said, the Federal Court does have jurisdiction to deal with certain matters arising from the *Income Tax Act* and the *Excise Tax Act*, such as when an applicant attacks the validity of a certificate or other processes contemplated by the *Federal Courts Rules* stated to be preconditions to certain sections of the *Income Tax Act* or the *Excise Tax Act* (*Siow v The Queen*, 2010 TCC 594 at para 17). The Federal Court also has jurisdiction to grant a discretionary stay or injunction with respect to matters arising under the *Income Tax Act* and *Excise Tax Act* (*Leroux v Canada Revenue Agency*, 2012 BCCA 63 at para 53; *Canada (Minister of National Revenue) v Swiftsure Taxi Co*, 2005 FCA 136 at para 6). This includes discretionary decisions of the CRA to issue Requirements to Pay (*Coombs* at para 16). The Federal Court also has jurisdiction to deal with challenges to collection measures taken by the Minister (*Johnson* at paras 46-48; *Walker v Canada*, 2005 FCA 393).

[35] However, because the Federal Court does not have jurisdiction to hear challenges to tax assessments, as these are within the jurisdiction of the Tax Court of Canada, if an application is, in reality, challenging the correctness of the assessment under the guise of seeking judicial

review, judicial review will not be available (*Coombs* at para 15; *Johnson* at para 23). Nor does the Federal Court have jurisdiction to award damages or grant any other relief sought on the basis of an invalid reassessment of tax, unless the reassessment has been overturned by the Tax Court, as doing so would permit a collateral attack on the correctness of an assessment (*Canada v Roitman*, 2006 FCA 266 at para 20). Therefore, the Minister is correct that if the Applicant was not satisfied with the results of his objection, his recourse lay in an appeal to the Tax Court of Canada (*Newcombe v Canada*, 2013 FC 955 at para 30) and then to the Federal Court of Appeal, which he did for some of the tax years in issue.

[36] In *JP Morgan*, the Federal Court of Appeal outlined a list of situations where an appeal to the Tax Court is available, adequate and effective in giving the taxpayer the relief sought, making judicial review to the Federal Court unavailable, which includes the validity of assessment. The Federal Court of Appeal further explained that judicial review remedies are remedies of last resort, and so judicial reviews brought in the face of adequate, effective recourse elsewhere or at another time cannot be entertained (*JP Morgan* at paras 82, 84-85).

[37] The question then becomes, what is the true character of the application? Justice Rennie explored this question in *Sifto Canada Corp v Canada (National Revenue)*, 2013 FC 986 at paras 17 and 21. Acknowledging that there is a very narrow opening for judicial review with respect to decisions of the Minister of National Revenue, Justice Rennie wrote:

> [17] The contention that each and every action or decision of the Minister of National Revenue is entirely and exclusively derivative of statute and can never be subject to review has scant support in the jurisprudence. Indeed, the proposition is at variance with the position taken by the Minister in other proceedings (see for example, Response to Application for Leave to Appeal, *Ronald*

> *Ereiser v Her Majesty the Queen*, Supreme Court of Canada Docket: 35296, at para 18) and with established jurisprudence. There exists a very narrow opening for judicial review. The question is whether, on these pleadings, and at this preliminary stage of the proceedings, it can be said that the Prothonotary erred in concluding that Sifto's applications were not bereft of any hope of success.
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> …
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> [21] The role of the Court in these circumstances, where jurisdiction is contingent on characterization of the allegations is to determine the essential nature of the claim. The Court must make a "realistic appreciation of the practical result sought by the claimant": *Canada v Domtar Inc*, 2009 FCA 218 and look beyond the words used, the facts alleged and the remedy sought: *Canada v Roitman*, 2006 FCA 266 at para 16. *Roitman* also teaches that the claim "is not to be blindly read at its face meaning." To paraphrase Justice Binnie in *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, [2010] 3 SCR 585, at para 78, a court should look beyond the pleadings and determine their "essential character".

[38] The Federal Court of Appeal, in affirming Justice Rennie's decision, stated in *Canada (National Revenue) v Sifto Canada Corp*, 2014 FCA 140 at para 25:

> [25] The Minister also takes issue with the remedies sought by Sifto in the Improper Penalties application, arguing that the Federal Court cannot grant the relief sought. I do not accept that argument because it is based on a technical and microscopic reading of the notice of application. The proper approach is to read the application holistically with a view to understanding its essential character, rather than fastening on matters of form (*JP Morgan* at paragraph 50). Thus, for example, while it is true that the Federal Court cannot invalidate an assessment (which is one of the remedies sought), the Federal Court may grant a declaration based on administrative law principles that the Minister acted unreasonably in failing to waive the penalties, or a declaration that the penalties should not have been assessed in the face of the valid voluntary disclosure. Similarly, the Federal Court may on the same basis grant another of the remedies sought, which an order precluding the Minister from enforcing the penalty assessment or collecting the resulting tax debt. And if the application is not perfectly drafted at this stage, the Federal Court has ample scope

> for permitting amendments if required to ensure that the actual dispute is properly before the Court.

[39] Here the Applicant is self-represented. Reading his application and hearing his submissions in whole, I do not believe that it was his intent to collaterally attack the findings of the Tax Court of Canada. However, all of the issues that he raises in his submissions in support of his challenge to the decision to issue the Requirements to Pay, and in seeking injunctive relief, were all issues that were dealt with by the Tax Court of Canada and that will be dealt with by the Federal Court of Appeal. For example, Justice Miller found that it was indeed the Applicant personally who earned the revenue from his accounting practice, rather than what Justice Miller described as "an elaborate structure of corporations and trusts". For GST purposes, Justice Miller found there was only one business, and that the supplier was the Applicant, and not the registered corporations under Mason and Associates. The amounts assessed as owing were also addressed in that decision.

[40] In my view, the essential nature of the Applicant's claim is that the Minister incorrectly assessed his GST liability. As a result, the Requirements to Pay should not have been issued and, more importantly, collection should not have been pursued while this matter remains in dispute before the Federal Court of Appeal. Because the issues that the Applicant identifies are all matters that concern the correctness of the Minister's GST assessment, which will be dealt with by the Federal Court of Appeal, this Court has no jurisdiction, pursuant to s 18.5 of the *Federal Courts Rules*, to address them.

[41] As acknowledged by the Minister, this Court does have jurisdiction to consider whether the Minister's decision to issue the Requirements to Pay was reasonable. However, the Assessments are deemed to be valid and binding until varied or vacated on objection or appeal and, unlike the *Income Tax Act* (ss 225.1(2) and (3)), there is no statutory stay on collection activity under the *Excise Tax Act* while an objection or appeal is outstanding (*Excise Tax Act*, s 315(2); *Hoffman v Canada (Attorney General),* 2009 FC 832 at para 28, affirmed in 2010 FCA 310 ("*Hoffman*"); *Canada (Minister of National Revenue) v Vu*, 2004 FC 1783 at para 3 ("*Vu*"); *Leroux v Canada Revenue Agency*, 2014 BCSC 720 at para 376 ("*Leroux*")).

[42] Therefore, in my view, the Minister is entitled to pursue collection activities, even while an appeal is pending at the Federal Court of Appeal, as was noted by Justice Gleason when hearing the motion for interlocutory injunction. Thus, the decision to issue the Requirements to Pay was reasonable as collection actions taken in respect of a valid assessment are lawful (*Coombs* at paras 15 and 19) and as there was no evidence to suggest that the decision had otherwise been unreasonably made. Nor is there any legal basis to find that this Court can grant a stay of the collection actions (*Hoffman* at para 28; *Vu* at para 3; *Leroux* at para 376). Injunctions cannot be issued where the Minister is acting within the powers granted by law (*North of Smokey Fishermen's Assn v Canada (Attorney General),* 2003 FCT 33 at paras 10-11; *Pacific Salmon Industries Inc v the Queen,* [1985] 1 FC 504 (FCTD) at para 10).

[43] Finally, while the Minister may postpone collection actions in respect of all or any part of an amount assessed that is the subject of a dispute (*Excise Tax Act*, s 315(3)), the use of the word "may" in the provision indicates that this is a discretionary decision. Here, there is insufficient

evidence to support an argument that the refusal was unreasonable, nor has the Applicant challenged that decision.

[44] Accordingly, the application for judicial review is dismissed.

[45] The Minister submitted a draft Bill of Costs at the conclusion of the hearing seeking $1,941.85 in fees and disbursements. Given that this is a relatively straight forward matter which the Minister had previously responded to in the context of the interim injunction motion, meaning that no new issues arose, I will award a lump sum costs to the Minister in the amount of $1,000.00. The Applicant shall have 90 days to make payment.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. The Respondent shall have its costs in the amount of $1,000.00 to be paid by the Applicant within 90 days from the date of this Judgment.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2214-14
STYLE OF CAUSE:	DAN MASON v THE ATTORNEY GENERAL OF CANADA
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DATED:	JULY 28, 2015

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