

Federal Court



Cour fédérale

**Date: 20140723**

**Docket: T-1042-10**

**Citation: 2014 FC 732**

**Ottawa, Ontario, July 23, 2014**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**ASSOCIATED MECHANICAL TRADES  
INCORPORATED**

**Applicant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for an Order of mandamus, pursuant to section 18 of the *Federal Courts Act*, RSC 1985, c F-7. The Applicant seeks the Order to compel the Canada Revenue Agency [the CRA] to correct alleged errors in and provide a new accounting of the Applicant's payroll and Goods and Services Tax [GST] accounts.

I. Issues

[2] The issues in the present application are as follows:

A. Are there accounting errors in the Applicant's GST or payroll accounts?

B. If yes, do these errors warrant the Order of mandamus sought by the Applicant?

II. Background

[3] The Applicant is a mechanical contracting company that was incorporated in 1996. The CRA alleges that the Applicant has payroll and GST debt outstanding [the Debts]. As of July 25, 2011, the payroll debt was \$1,227,387.59 and the GST debt was \$275,055.54. The calculation of these debts is the source of the dispute underlying this application.

[4] According to the Affidavit of Jon-Paul Rebellato, a Complex Case Officer with the CRA, a payroll debt was first assessed against the Applicant in 1997, and it has been carried forward since that time. This debt arises from the Applicant's obligation to deduct applicable tax and Employment Insurance and Canada Pension Plan premiums from employee pay and remit the amounts collected to the CRA.

[5] Similarly, Mr. Rebellato states that GST debt was first assessed against the Applicant in 1997. This debt has been outstanding since 2001 and arises from the Applicant's obligation to collect and remit GST on most of its sales.

[6] In March, 2009, Mr. Rebellato was tasked with managing the collection of the Applicant's Debts. Mr. Rebellato alleges he spoke several times with the President of the Applicant, Edward Pupolin, but Mr. Pupolin did not agree on a repayment schedule.

[7] In April, 2009, Mr. Rebellato issued a Requirement to Pay [RTP] to an account receivable belonging to the Applicant, as no remittance had been made in 11 months. On April 20, 2009, Mr. Rebellato informed Mr. Pupolin via telephone that the RTP would be lifted if the Applicant's debts could be securitized, but no agreement was reached.

[8] On August 25, 2009, Mr. Rebellato sent a letter to the Applicant requesting information which included financial documents, organizational charts, and a list of all accounts receivable and payable [the August 25 Letter]. This letter stated that no payment agreement could be reached unless the Applicant provided the CRA with the requested information in 10 business days. The information was not provided by this deadline.

[9] On October 8, 2009, counsel for the Applicant, John Middlebrook, met with Mr. Rebellato. According to Mr. Rebellato, Mr. Middlebrook suggested during this meeting that there were errors in the Applicant's payroll and GST accounts, but did not offer specifics. Mr. Middlebrook provided some of the documents requested in the August 25 Letter, agreed to a one-year deadline to resolve the Applicant's Debts, and agreed that payments would commence on October 21, 2009. They also agreed to meet on October 22, 2009, so that Mr. Middlebrook could provide Mr. Rebellato with the outstanding items requested in the August 25 Letter and a proposed payment schedule. However, Mr. Middlebrook failed to attend this meeting.

[10] On October 13, 2009, Mr. Middlebrook wrote to Mr. Rebellato, requesting a detailed history of the Applicant's GST and payroll accounts.

[11] According to the affidavit of Lori Masatti, a former employee of the Applicant, Mr. Rebellato agreed during contact with Mr. Middlebrook in September and October, 2009, to refrain from taking collection action provided that communication with the CRA continue. The evidence of Mr. Rebellato differs: when he next met Mr. Middlebrook on October 28, 2009, Mr. Middlebrook informed him that he had been instructed by his clients to withhold the remaining documents requested in the August 25 Letter, as they feared legal action. Mr. Rebellato stated that no legal action would be forthcoming if the remaining information requested in the August 25 Letter was hand-delivered to the CRA the following day and communication and cooperation with the CRA continued. According to Mr. Rebellato, he was unable to communicate directly with Mr. Middlebrook until November 10, 2009, and the information requested was never delivered.

[12] On October 30, 2009, Mr. Rebellato sent the Applicant a payroll Statement of Account as was requested in Mr. Middlebrook's October 13, 2009, letter.

[13] On November 5, 2009, Mr. Rebellato sent RTPs in respect of the Applicant's Debts to two financial institutions.

[14] On November 13, 2009, Mr. Rebellato sent Mr. Middlebrook a copy of a proposed payment arrangement.

[15] On November 25, 2009, CRA agent Sharon Dworski sent the Applicant a GST Statement of Account, as was requested in Mr. Middlebrook's October 13, 2009, letter.

[16] On December 10, 2009, Mr. Middlebrook wrote to Ms. Dworski, stating there were errors in seven of the Applicant's GST reporting periods. These errors were described as follows:

"Reassessments/assessments have been raised to these periods resulting in a duplication of the Excise Tax payable on this account".

[17] On December 16, 2009, Mr. Rebellato sent RTPs to all account receivables of the Applicants known to the CRA.

[18] On February 5, 2010, Mr. Middlebrook wrote Mr. Rebellato, claiming that there were duplicate charges of \$339,851.38 and \$293,645.65 assessed on its payroll account in February, 1999. This letter demanded that these errors and all interest and penalties arising from them be reversed in ten days or legal proceedings would commence.

[19] On February 10, 2010, Mr. Middlebrook and Mr. Rebellato spoke by telephone. According to Mr. Rebellato, Mr. Middlebrook stated that the payroll and GST accountings provided by the CRA on October 30 and November 25, 2009, were insufficient for him to complete a reconciliation of the accounts. Mr. Middlebrook requested a stay on the collection action until the accounts had been reconciled. Mr. Rebellato noted that the Applicant had failed to comply with any of his requests to date.

[20] Mr. Rebellato states that he was advised on February 11, 2010, that addressing the errors alleged by the Applicant in its letter of December 10, 2009, would require the Applicant to file amended GST returns.

[21] On February 19, 2010, Mr. Middlebrook wrote to Mr. Rebellato, suggesting that Mr. Rebellato was acting in bad faith and disregarding the rights of the Applicant. The same day, Mr. Middlebrook wrote to Ms. Dworski, stating that he did not receive a response to his letter of December 10, 2009.

[22] On February 25, 2010, Mr. Rebellato wrote to Mr. Middlebrook, stating that the payroll account was under review as per Mr. Middlebrook's letter of February 5, 2010. He reminded Mr. Middlebrook that the Applicant's obligation to pay its Debts remained.

[23] On May 3, 2010, Mr. Middlebrook wrote to Mr. Rebellato, stating that he had not received any correspondence from the CRA regarding the payroll errors alleged in his February 5, 2010 letter, or the GST errors described in his December 10, 2009, letter.

[24] Mr. Rebellato wrote back on May 13, 2010, stating that the Applicant's payroll account had been reconciled and was accurate, and that any corrections to the Applicant's GST account must be completed by filing amended GST returns.

[25] The reconciliation of the Applicant's payroll account was conducted by Harish Manocha, a Technical Advisor with CRA. Mr. Manocha searched for any duplicate assessments and

examined if there were discrepancies between the assessments and the amounts the Applicant deducted from employee pay. After examining relevant CRA documents, he determined that these assessments were not duplicates and that no errors had been made.

[26] On June 30, 2010, the Applicant filed the instant application at the Federal Court.

### III. Analysis

#### A. *Are there accounting errors in the Applicant's GST or payroll accounts?*

[27] The specific errors alleged by the Applicant in its Initial Memorandum of Fact and Law are drawn from the affidavit of Ms. Masatti at paras 24-31:

- a. \$633,497.03 in payroll assessments which are duplications of earlier charges. This discrepancy concerns assessments on the payroll account made in 1999 in relation to alleged duplicate charges of \$339,851.38 and \$293,645.65, made in the 1997 and 1998 taxation years, respectively;
- b. A \$145,829.55 discrepancy between a credit described in the October 30, 2009 payroll statement of account and a May 3, 2000 Discrepancy Notice. This discrepancy relates to the payroll account in the 1999 taxation year;
- c. A \$25,030.21 discrepancy between the October 30, 2009 payroll statement of account and a Discrepancy Notice dated April 4, 2007. This discrepancy relates to the payroll account in the 2006 taxation year;

- d. A \$21,393.23 discrepancy between the October 30, 2009 payroll statement of account and a Discrepancy Notice dated April 16, 2008. This discrepancy relates to the payroll account in the 2007 taxation year;
- e. A \$331,720.87 discrepancy between a CRA examiner's statement of account, dated April 21, 2009, and a Discrepancy Notice dated April 29, 2009. This discrepancy relates to the payroll account in the 2008 taxation year.

[28] Pursuant to an Order of this Court dated April 24, 2013, the Applicant cross-examined Harish Manocha on his affidavit affirmed on November 3, 2013, for a second time. Mr. Manocha confirmed that based on his review of the Applicant's payroll account, on or around February 23, 2010, to determine whether duplicate assessments were raised, he determined that the CRA did not raise duplicate assessments. All documents Mr. Manocha reviewed were provided to the Applicant.

[29] The Applicant's allegations are without merit. Its claims can be reduced to the five alleged errors in the payroll accounts and the seven alleged errors in the various GST reporting periods. These are all addressed by the affidavits of Mr. Rebellato, Mr. Baker, and Mr. Manocha. Their explanations are logical and reasonable, and the Applicant has done nothing to rebut them. While the Applicant takes issue with the review of Mr. Manocha, I believe his review was reasonable, given the discrete nature of the task assigned to him. He had no need to produce notes or review the entire payroll account. The Respondent has addressed each error alleged by the Applicant in this application.



[30] Further, there is nothing in the conduct of the CRA's representatives which would lead me to doubt the credibility of their explanations. In contrast to Ms. Masatti's affidavit, Mr. Rebellato's affidavit is specific with dates and the nature of the conversations he had with Mr. Middlebrook. I find it a more reliable history of the substance and nature of the interactions between the parties. It shows that the CRA's representatives were reasonably diligent, cooperative and forthright in their interactions with the Applicant. They provided a detailed statement of the Applicant's GST and payroll accounts, before any specific errors were alleged by the Applicant. They repeatedly sought communication with the Applicant and a means to resolve the Applicant's debt obligations and have done so continuously up to the hearing of this application on July 18, 2014. The same cannot be said of the Applicant. The Applicant was not forthcoming with documents requested, was unavailable to Mr. Rebellato for long periods of time, and did not appear to facilitate progress on resolving the issues between the parties.

B. *If yes, do these errors warrant the Order of mandamus sought by the Applicant?*

[31] Given my findings that there are no errors to correct, and that the Applicant has not established that another form of accounting would be reasonable or more appropriate than that provided by the Respondent, no order of mandamus is warranted.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed;
2. No questions to be certified.

"Michael D. Manson"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1042-10

**STYLE OF CAUSE:** ASSOCIATED MECHANICAL TRADES  
INCORPORATED v HER MAJESTY THE QUEEN

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 18, 2014

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** JULY 23, 2014

**APPEARANCES:**

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