

Date: 20091102

Docket: A-530-07

Citation: 2009 FCA 318

**Coram: NOËL J.A.
NADON J.A.
TRUDEL J.A.**

BETWEEN:

FAITH ASSEMBLIES MISSION INTERNATIONAL

Applicant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on November 2, 2009.

REASONS FOR ORDER BY:

NADON J.A.

CONCURRED IN BY:

**NOËL J.A.
TRUDEL J.A.**

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REASONS FOR ORDER

NADON J.A.

[1] Before me are two motions. The first is made by the respondent and it seeks an Order quashing the judicial review application filed by the applicant on November 22, 2007. The second motion is brought by the applicant and it seeks an Order extending the time to appeal the Minister of National Revenue's (the "Minister") Notice of Confirmation to revoke its charitable registration. These Reasons will dispose of both motions.

[2] A brief discussion of the relevant facts is necessary to place these motions into proper context.

[3] The applicant is a registered charity. On October 3, 2007, it received from the Minister a Notice of Intention to Revoke its charitable registration. After filing a Notice of Objection thereto, the applicant filed a judicial review application (the “application”) seeking “a stay of execution of the revocation pending hearing and disposition of the objection process and the appeal process.” The hearing of the applicant’s application is scheduled for Toronto on November 9, 2009, at 2:00 pm.

[4] However, following the filing of the applicant’s application, the Minister issued on August 7, 2009, pursuant to subsection 165(3) of the *Income Tax Act* (the “Act”), a Notice of Confirmation of his intent to revoke the applicant’s charitable registration. The applicant has not appealed the Minister’s Notice of Confirmation and the delay to do so has expired.

[5] As a result of the issuance of the Minister’s Notice of Confirmation, there can be no doubt that the applicant’s application is now moot. Consequently, I see no basis not to allow the respondent’s motion. The application shall therefore be dismissed.

[6] I should point out that the applicant has not responded to the respondent’s motion to quash its application. However, it has, by separate motion, sought an Order extending the time to appeal the Minister’s Notice of Confirmation. For the reasons that follow, the applicant’s motion will be dismissed.

[7] The applicant, in seeking an Order extending the time to appeal, has filed the affidavit of Elizabeth Magner, an employee in the office of the applicant's solicitors, sworn October 8, 2009. In her affidavit, Ms. Magner states that she has been advised by Mr. David Martin, counsel for the applicant, that he has been unable to contact his client since late July, adding that he was only able to speak to his client "last week", i.e. during the first week of October 2009. Ms. Magner further states that Pastor Oliogu, who has been giving the applicant's instructions to Mr. Martin, left Canada in July and could not be reached by Mr. Martin until very recently. It appears that Pastor Oliogu was expected back in Toronto on October 9, 2009, and that he has now instructed Mr. Martin, *inter alia*, "to seek to re-open the appeal for the Notice of Confirmation to October 16, to allow participation of Pastor Oliogu in the process; ..."

[8] In *Pharmascience Inc. v. Minister of Health*, 2003 FCA 333, my colleague, Sharlow J.A., indicated that the factors to be considered in determining whether or not an extension of time to commence an appeal should be extended were as follows:

[6] In deciding whether or not to grant an extension of time to commence an appeal, the basic test is whether the interests of justice favour granting the extension. The factors to be considered are conveniently summarized in *Karon Resources Inc. v. Canada* (1993), 71 F.T.R. 232, [1994] 1 C.T.C. 307 (F.C.T.D.); (1) whether there is an arguable case on appeal, (2) whether there are special circumstances that justify the delay in commencing the appeal, (3) whether there was a continuing intention to appeal, (4) whether the delay has been excessive, and (5) whether the respondent will be prejudiced if the extension of time is granted. The weight to be given to each of these factors will vary with the circumstances.

[9] As Madam Justice Sharlow indicates at the end of the above passage, the weight that is to be given to each factor will depend on the particular circumstances of the case.

[10] In the present matter, no evidence has been filed nor any submission made to satisfy me that the applicant has an arguable case on appeal. Second, there is also nothing in the record to show that the applicant had a continuing intention to appeal during the appeal period. According to Ms. Magner's affidavit, Pastor Oliogu left Canada in July and could not be reached by Mr. Martin until very recently. It appears that after his departure from Canada in July, Pastor Oliogu made no attempt whatsoever during the months of July, August and September, to keep in contact with Mr. Martin in respect of the ongoing litigation with the Minister regarding the registration of the applicant's charity. It also appears that Pastor Oliogu left no telephone or address at which he could be contacted by Mr. Martin. Ms. Magner further indicates that Mr. Martin was therefore not in a position to file an appeal with regard to the Notice of Confirmation because he had no instructions from his client to that effect.

[11] Considering that the applicant filed its Notice of Objection on December 26, 2007, that when Pastor Oliogu left for Nigeria in July of 2009, the Notice of Objection had been outstanding for almost eighteen months and that Pastor Oliogu ought to have known that a decision on the objection might be forthcoming at any time and thus, in the event of an unfavourable ruling on the objection, that the Minister would be confirming his intention to revoke the applicant's registration, it is somewhat surprising that Pastor Oliogu would not have left instructions with Mr. Martin or, at the very least, would not have taken steps to remain in contact with his attorney.

[12] In my respectful view, Pastor Oliogu's conduct does not denote a continuing intention to appeal, as required by the third factor set out by Madame Justice Sharlow in *Pharmascience, supra*. With respect to the second factor, I have not been persuaded that there are special circumstances which would justify the delay in commencing the appeal. It is true that Mr. Martin was unable to obtain instructions to appeal the Minister's Notice of Confirmation, but his inability results from Pastor Oliogu's lack of diligence with respect to the applicant's litigation with the Minister.

[13] Although the delay has not been excessive and there is no evidence that the respondent would be prejudiced by an extension of time, it is my view that in the particular circumstances of the case, the factors which must be considered dictate that the time to appeal the Minister's Notice of Confirmation should not be extended.

[14] Accordingly, the motion for an extension of time shall be dismissed.

“M. Nadon”

J.A.

“I agree.
Marc Noël J.A.”

“I agree.
Johanne Trudel J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-530-07

STYLE OF CAUSE: FAITH ASSEMBLIES MISSION
INTERNATIONAL v. H.M.Q.

MOTIONS DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: NADON J.A.

CONCURRED IN BY: NOËL J.A.
TRUDEL J.A.

DATED: November 2, 2009

WRITTEN REPRESENTATIONS BY:

Mr. David Martin FOR THE APPLICANT

Ms. Carol Calabrese FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Toronto, ON

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada