

CITATION: Carter v. Minister of Revenue, 2010 ONSC 2825
DIVISIONAL COURT FILE NO.: 268/09
DATE: 20100513

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
JENNINGS, LEDERMAN AND SACHS JJ.

BETWEEN:)
)
ROBERT CARTER) *Adam D. H. Chisholm*, for the Applicant
)
Applicant)
)
- and -)
)
MINISTER OF REVENUE (ONTARIO)) *Walter Kim*, for the Respondent
)
Respondent)
)
)
)
) **HEARD at Toronto:** May 13, 2010

JENNINGS J.

[1] This is an application for an order in the nature of *certiorari* quashing the warrant of seizure and sale issued on behalf of the Minister of Revenue, pursuant to the *Retail Sales Tax Act, R.S.O. 1990, R.31* (the “Act”) against the applicant Robert Carter and dated October 14, 2008.

[2] Although a number of grounds were advanced by the applicant going to the validity of the warrant, we find the application can be disposed of by reference to Rules 60.07(2) and 60.07.1(1).

[3] Rule 60.07(2) provides that:

If six years or more have elapsed since the date of the Order, or if its enforcement is subject to a condition, a Writ of Seizure and Sale shall not be issued unless leave of the Court is first obtained.

[4] Rule 60.07.1(1) provides:

These rules apply, with necessary modifications, to a warrant that is issued by the Minister of Finance under an Act and directed to a sheriff, as if the warrant were a writ of seizure and sale.

[5] It is not in dispute that Rule 60.07.1 applies to the respondent in this case.

[6] There is no dispute that no leave to issue the warrant was obtained by the Minister.

[7] Accepting, without deciding the respondent's position that a Notice of Assessment was issued on August 4, 1995, the assessment was deemed valid and binding 180 days thereafter pursuant to s.18(8) of the *Act*.

[8] Clearly, more than six years had passed before the warrant was issued.

[9] The Minister submits that Rule 60.07(2) does not apply to his warrant in this case because:

- (i) There is no limitation period for tax debts, and
- (ii) It would be impractical to calculate the commencement of the six year period.

[10] Alternatively, the Minister submits that if the rule does apply, the warrant in question was merely a renewal of a warrant that had been issued in 2002.

[11] With respect to the first submission, there is no reference in the rule to limitation periods. Moreover, the language of the rule is clear “these rules apply”.

[12] We disagree with the second submission. On the facts of this case, whether the date of assessment or the date the assessment became binding is chosen as the commencement date, they are both outside the time period.

[13] Turning to the alternative point, there was no probative evidence before us to support the submission that a warrant had been issued in 2002.

[14] We therefore conclude that the Minister was required to obtain leave to issue the warrant in question, some thirteen years after the alleged assessment became final and binding.

[15] No leave was obtained. The warrant must be quashed.

[16] We fix costs at \$7,000.00 inclusive, payable by the Minister to the applicant forthwith.

JENNINGS J.

LEDERMAN J.

SACHS J.

Date of Reasons for Judgment: May 13, 2010

Date of Release: May 18, 2010

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ROBERT CARTER

Applicant

– and –

MINISTER OF REVENUE (ONTARIO)

Respondent

REASONS FOR JUDGMENT

JENNINGS J.

Date of Reasons for Judgment: May 13, 2010

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