

Date: 20050414

Docket: A-157-05

Citation: 2005 FCA 138

Present: SHARLOW J.A.

BETWEEN:

REDEEMER FOUNDATION

Respondent

(Applicant)

and

THE MINISTER OF NATIONAL REVENUE

Appellant

(Respondent)

Heard by teleconference at Ottawa and Toronto, Ontario on April 14, 2005.

Order delivered at Ottawa, Ontario on April 14, 2005.

REASONS FOR ORDER BY:
J.A.

SHARLOW

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REASONS FOR ORDER

SHARLOW J.A.

[1] This is a motion for a stay of the order of the Federal Court pending appeal. For the reasons that follow, the motion will be denied.

[2] The Redeemer Foundation is registered as a charity under the *Income Tax Act*, R.S.C. 1985 (5thsupp.), c. 1. In May of 2003, the Redeemer Foundation provided the Minister with certain information relating to its donors. The Redeemer Foundation alleges that it provided that information because it believed that it had a legal obligation to do so. The Minister has apparently used that information to reassess a number of donors, and it is anticipated that further reassessments may be made.

[3] Recently the Redeemer Foundation formed the view that it had never been under a legal obligation to provide the Minister with information about its donors because the Minister had failed to obtain an order under subsection 231.2(3) of the *Income Tax Act*. The Redeemer Foundation filed a motion to seek an extension of time to commence an application for judicial review of the decision of the Minister to request or require disclosure of the donor information.

[4] On Monday, April 11, 2005, after a hearing, a judge of the Federal Court made an order granting the extension of time, but also staying the order until Thursday, April 14, 2005, apparently to give the Minister time to commence an appeal. On Tuesday, April 12, 2005, the Minister filed a notice of appeal to challenge the order granting the extension of time, and also to challenge the decision of the Judge to deny the Minister's motion for an adjournment of the hearing.

[5] Before me is a motion by the Minister to stay the Federal Court order pending the disposition of this appeal. For that motion to succeed, I must be satisfied that there is an arguable case on appeal, that the Minister will suffer irreparable harm if the stay is not granted, and that the balance of convenience favours the Minister.

[6] In determining whether there is an arguable case, the threshold is low. In my view, that threshold is met in this case, despite the well known difficulties faced by an appellant in challenging a discretionary decision.

[7] With respect to irreparable harm, the Minister argues that if the stay is not granted, the appeal will be rendered moot because the Redeemer Foundation will file its application for judicial review. It is not clear to me that the mere filing of an application for judicial review constitutes irreparable harm. If the appeal proceeds and is successful, the application for judicial review will simply be discontinued.

[8] The filing of the application for judicial review may require the Minister to take some steps to prepare for a hearing in the Federal Court, while also preparing for a hearing of this appeal. However, the likelihood of wasted time and effort generally is not considered irreparable harm. In the circumstances of this case, that harm could be mitigated by seeking an expedited hearing of the appeal.

[9] The Redeemer Foundation had indicated that once the application for judicial review is filed, it intends to seek an order from the Federal Court enjoining the Minister from making any further use of the donor information it obtained from the Redeemer Foundation. However, it is only a matter of speculation that such an injunction will be granted, and even if it is granted, no irreparable harm will result from such an injunction unless the relevant taxation year of one or more of the donors becomes statute barred. The Minister knows who the donors are, and I have no reason to believe that they cannot be reassessed before it is too late to do so.

[10] In summary, I am not persuaded that irreparable harm will result if the stay is not granted.

[11] That conclusion makes it unnecessary to consider the question of balance of convenience.

(s) "K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-157-05

APPEAL FROM A JUDGMENT OR AN ORDER OF THE FEDERAL COURT

DATED APRIL 11, 2005, FEDERAL COURT DOCKET NO. 05-T-22

STYLE OF CAUSE: REDEEMER FOUNDATION v. THE MINISTER
OF NATIONAL REVENUE

PLACE OF HEARING: Ottawa and Toronto, Ontario, by teleconference

DATE OF HEARING: April 14, 2005

REASONS FOR ORDER BY: Sharlow J.A.

APPEARANCES:

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